



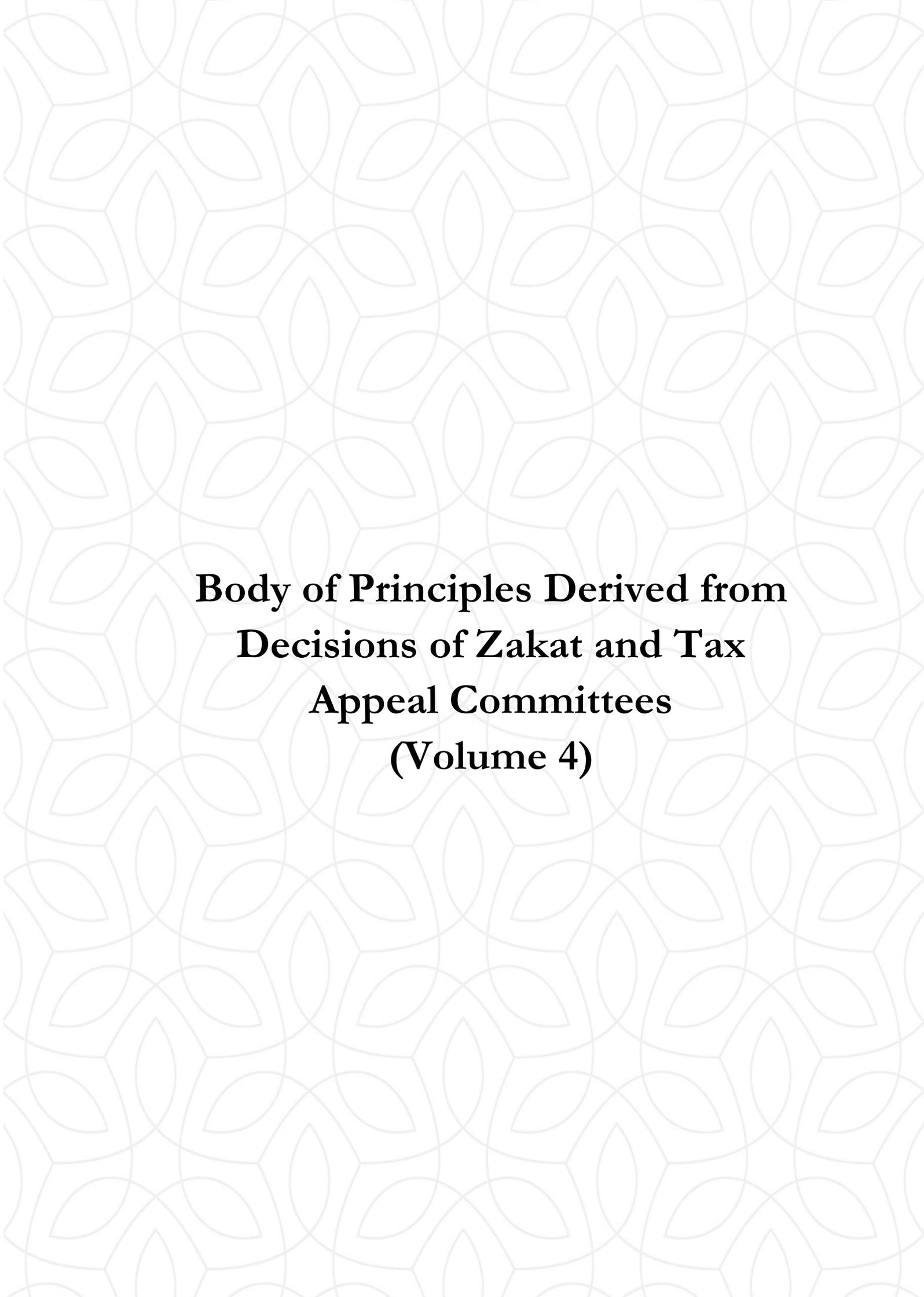
الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

Body of Principles Derived from Decisions of Zakat and Tax Appeal Committees

Volume 4



الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

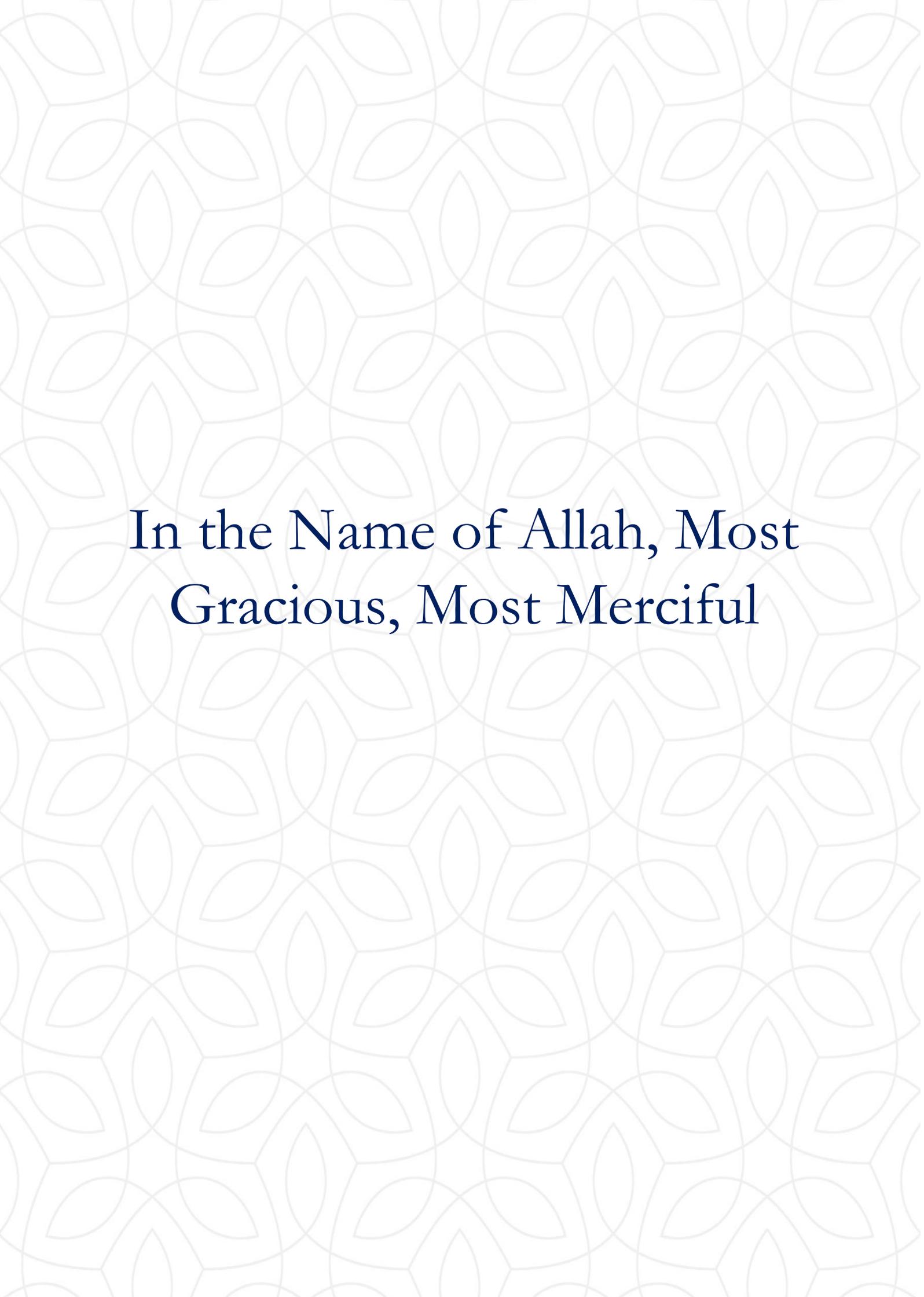


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Decisions of Zakat and Tax
Appeal Committees
(Volume 4)**



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**In the Name of Allah, Most
Gracious, Most Merciful**

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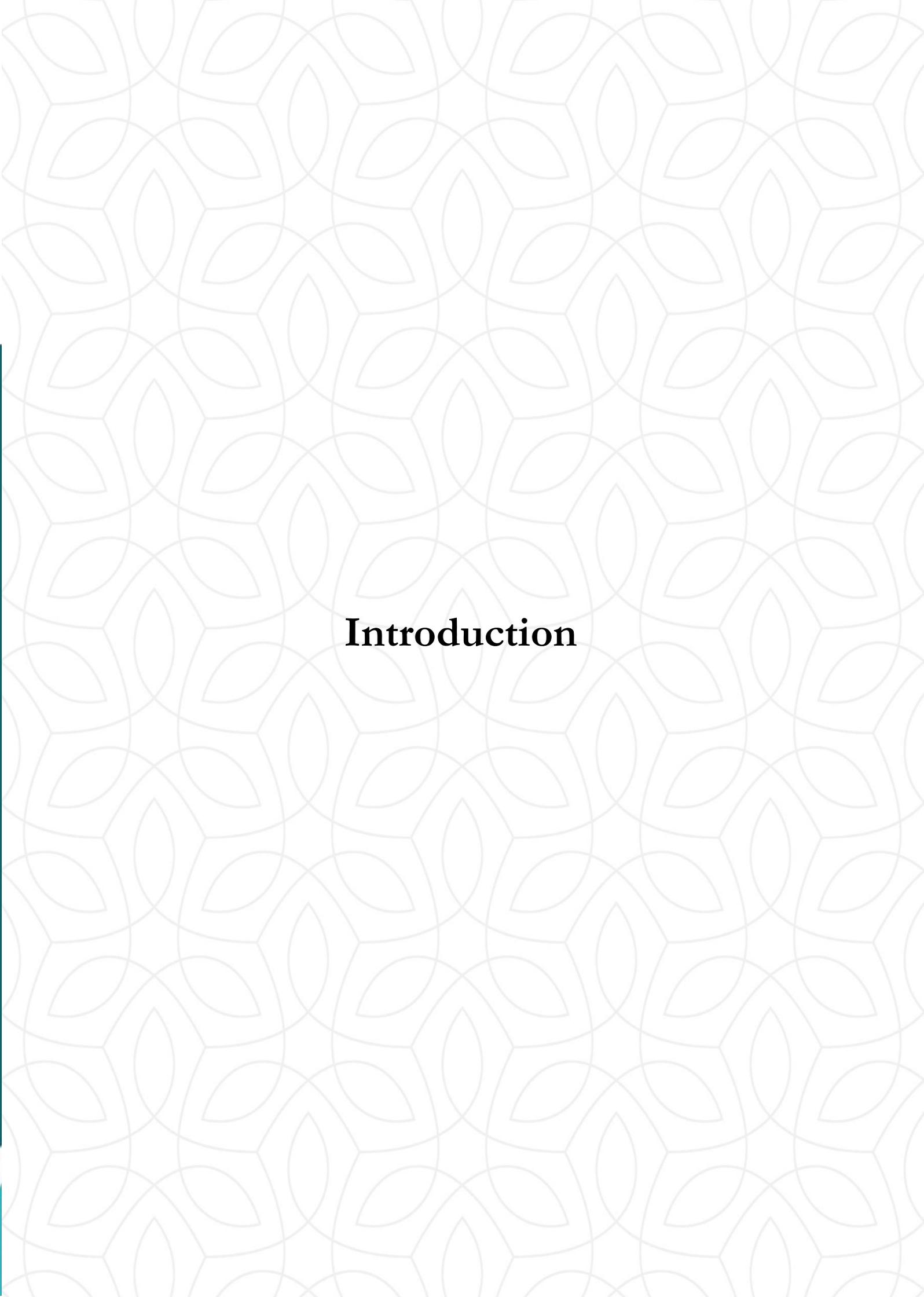
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Introduction



Praise be to Allah, the Lord of the Worlds; and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

It goes without saying that the efforts made by the courts and judicial commission, and the rulings and decisions delivered by them are in their entirety a priceless jurisprudential and judicial wealth, and a product that should be taken care of, and in the context of the commercial and industrial revolution that the Kingdom is going through under the Saudi Vision 2030, many zakat and tax controversies have arisen affecting many people. Therefore, and based on the social responsibility of the General Secretariat of the Zakat, Tax and Customs Committees, the Secretariat has sought to create a solid foundation and reference for the committee members, Taxpayers and interested parties by publishing these Body of Principles Derived from Decisions of Zakat and Tax Appeal Committees (Volume 4), that serve the zakat and tax sector and contribute to limiting the time taken for deciding upon a case. This record clarifies the decisions that the appeal committees have reached, which would have a positive impact on shortening the litigation period, saving efforts for the case examiner, fulfilling the principle of transparency pursued by the General Secretariat, and introducing the practical aspects to the bodies concerned with legal research, in particular the academic, training and other bodies.

The Secretariat has been keen to keep record of the principles established by Zakat and Tax Appeal Committee in fulfillment of its objective to save efforts and create a case law of Appeal Committee that helps reduce the number of cases brought before it if the parties to the case know in advance the Committee's opinion on the subject matter of case they intend to bring.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Praise be to Allah almighty,

Based on the vision and values of the General Secretariat of the Zakat, Tax and Customs Committees, which has taken upon itself to excel in resolving zakat, tax and customs disputes, adopt innovative and effective approaches, enhance transparency and neutrality, develop cooperation between the parties of the zakat, tax and customs ecosystem, and play an effective role in raising the efficiency of legal consideration. This is with the aim of enabling the zakat, tax and customs committees to successfully resolve the disputes before them, and providing support and assistance to the committees at all stages by conducting studies and research, and also helping the Taxpayers by clarifying the laws, decisions and judicial precedents, and updating the same periodically. This fourth volume entitled Body of Principles Derived from Decisions of Zakat and Tax Appeal Committees is part of these efforts.

The General Secretariat has attached special importance to the decisions delivered by appeal committees, being the final product of well-established judicial jurisprudence, and due to their ability to be developed and updated as per the real world updates. This is also because the recording of those precedents helps decide the similar disputes heard by judicial committees, and knowing them eliminates disagreements and disputes and supports the litigants' position before the committees.

For their priceless value, the appeal committees principles had to be assembled and published for public to achieve principle of transparency, consolidate existing efforts, and enrich scientific field for the benefit of scholars, specialists and research centers.

Indeed, the publishing of these final decisions is a noble effort of the General Secretariat which comes in line with its mandate, and demonstrates its resoluteness to spare no effort for promoting justice according to the support and directives of our blessed leadership with its unlimited support for the legislative and regulatory ecosystem.

In conclusion, I would like to extend my sincere thanks to His Royal Highness the Custodian of the Two Holy Mosques, King Salman bin Abdulaziz, and his Crown Prince, His Royal Highness Prince Mohammed bin Salman bin Abdulaziz, Prime Minister, may Allah protect them, for their generous patronage and support for judicial activities in various fields. I also extend my sincere recognition to the employees of the General Secretariat for their distinguished efforts in issuing this product, which I hope will achieve its goals and be a qualitative addition to the legal and accounting fields.

Secretary General

Abdullah bin Abdulrahman Al-Suhaibani



Work Methodology:

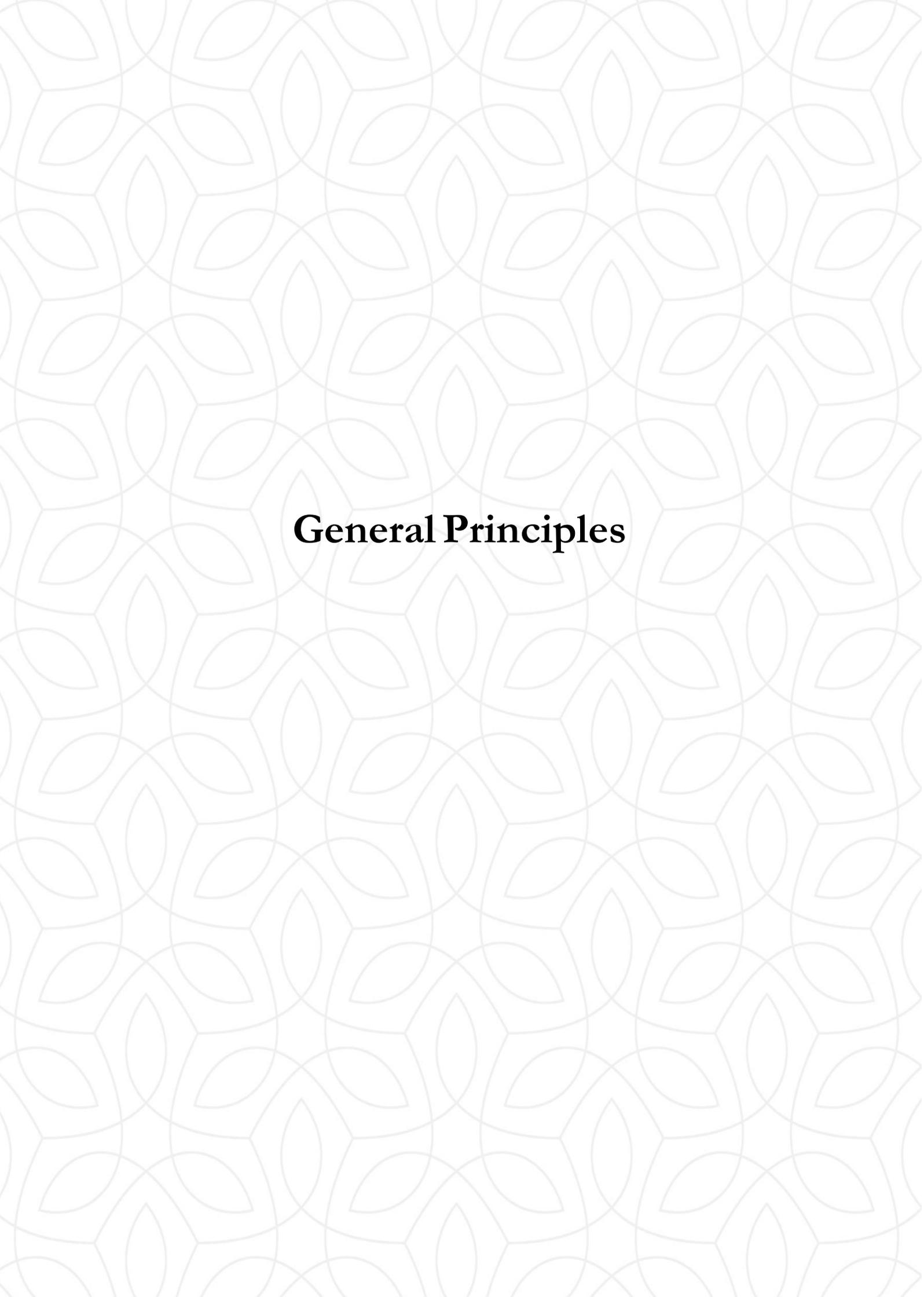
The Secretariat was keen to choose the principles well established by the committees, which have a general character that fits a large number of matters rather than less general matters, that were not also provided for by a legal provision. Duplicate principles were also avoided. For their versatile circumstances, the zakat and tax cases have been arranged and classified according to topics for easy reference and search.

The principles have been arranged as per this classification:

- Formal Principles.
- General Principles.
- Zakat Principles.
- Tax Principles.
 - Income Tax Principles.
 - Withholding Tax Principles.
 - Value Added and Excise Goods Principles.
 - Real Estate Transactions Tax:

The work required a well-thought-out plan and a well-crafted methodology to produce it in an easy and accessible style. The work was divided into several stages as follows:

- The final decisions delivered by Appeal Committee in 2022 and 2023 were carefully inventoried.
- Highlight the principles and the committees opinions while narrating the case proceedings and pleadings of the parties.
- Extract the committees principles usually from the grounds for decisions, which have a general nature and set out a rule that applies to similar cases.
- Record the number of the appeal decision containing the principle even if the principle was repeated in multiple decisions.
- Merge principles that are similar in wording into one principle while mentioning the decisions in which they were contained.
- Merge principles that are similar in meaning and connotation into one principle, choosing the best, clearest and most general wordings, and adding wordings to each other in some cases.
- Exclude principles that were previously extracted during previous years.
- Categorize the principles as per the categories mentioned above (Formal Principles, General Principles, Zakat Principles, Tax Principles, Customs Principles).
- Arrange the principles in sequential numbering.
- Not to include any principle that is currently provided for in the applicable laws and any new circulars, unless necessary.
- To facilitate review of the appeal decision, the decision of the Appeal Committee from which the principle was extracted has been included with its facts, grounds and operative part.
- If there is more than one decision from which the principle was derived, only one decision is included in addition to reference to the number and details of similar decisions, if any.
- Ensure anonymity of litigants without affecting the decision.
- Adhering to exact text of decision including its facts, grounds and operative part, without any addition or amendment except for spelling and grammatical errors.



General Principles



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-262)
Delivered in Case No. (ZI-21519-2020)

Principle No. 375

Exempting Taxpayers from Zakat on Retained Instruments for Procedural Grounds related to Collection by ZATCA of Zakat and not the Taxpayer's discharge from zakat obligation.

Facts:

The Department convened to consider the appeal filed on 30/11/1441 AH, corresponding to 20/07/2020 AD by ..., National ID No., in his capacity as the attorney for the appellant company under POA No., and the appeal filed on 02/12/1441 AH, corresponding to 22/07/2020 AD against Decision No. (IZJ-2020-50) delivered by the First Department to Adjudicate Income Tax Violations and Disputes in Jeddah in case No. (Z-94-2018) in connection with the zakat assessment for the years from 1998 to 2010 filed by the appellant against ZATCA. The appealed decision ruled as follows:

First: In form:

Accept the case filed by PlaintiffCompany, C.R. No. in form for being filed within the time limit prescribed by law.

Second: On merits:

1. Accept Plaintiff's objection and cancel Defendant's decision regarding the Contributions item (loans from partners) for covering the losses of affiliated companies for the following years 1998-2000-2001-2002).
2. Resolution of dispute related to the Affiliates Expenses item for the years from 1998 to 2003 where Defendant has accepted Plaintiff's argument regarding this item.
3. Dismiss Plaintiff's objection regarding the Remunerations and Incentives item for the years from 1998 to 2007.
4. Resolution of dispute regarding the Car Loan Amortization item for the years from 1998 to 2000, where Defendant has accepted Plaintiff's argument regarding this item.
5. Dismiss Plaintiff's objection regarding the item of Technical Remunerations, Board Remunerations and Dividends distributed for the years from 1998 to 2010.
6. Regarding the Investments item for the years from 1998 to 2010: 1. Dismiss Plaintiff's objection regarding the item of Foreign Investment inCompany for the years from 1998 to 2010. 2. Accept Plaintiff's objection and cancel Defendant's decision regarding the item of Foreign Investment inCompany for the years 2009 and 2010. 3. Dismiss Plaintiff's objection regarding the Stock Portfolio item for the years from 1998 to 2006. 4. Accept Plaintiff's objection and cancel Defendant's decision regarding the Investments in Stock Portfolio item for the years from 2007 to 2010. 5. Dismiss Plaintiff's objection



- regarding Attorney's Fees item. 6. Dismiss Plaintiff's objection regarding the government Bonds item for the years 1998 to 2006. 7. Dismiss Plaintiff's objection regarding the Supporting (Additional) Financing item in affiliates.
7. Accept Plaintiff's objection and cancel Defendant's decision regarding the Creditor Partner's Current Account item for the years 2007 and 2008.
 8. Accept Plaintiff's objection and cancel Defendant's decision regarding the Debtor Partner's Current Account item for the year 2009.
 9. Modify Defendant's decision regarding the Loan Balance item for the year 2006 adding the loan amounting to SAR 160,409,540.
 10. Accept Plaintiff's objection and cancel Defendant's decision regarding the Technical Fees for Avon Company item for the year 1999.
 11. Accept Plaintiff's objection and cancel Defendant's decision regarding the Fixed Assets and Depreciation Differences Item for the years from 2006 to 2009.
 12. Dismiss Plaintiff's objection regarding the other items that were not allowed to be deducted for the years from 2004 to 2009.
 13. Settlement of dispute related to the item of the Provision to Set Off the Recovered Investment Value for the years 2009 and 2010, where Defendant has accepted Plaintiff's argument. regarding this item.
 14. Dismiss Plaintiff's objection regarding the claim related to Allocations for the Years 2006 to 2010.
 15. Cancel Defendant's decision regarding the Leaves item for the year 2004, and dismiss Plaintiff's objection regarding the Travel Tickets item for the year 2004.

Dissatisfied with that decision, both parties filed a statement of appeal including the following claims.

The Taxpayer's appeal against the primary department's decision is summarized as follows: With regard to the item (Remunerations and Incentives for the years from 1998 to 2007), the Taxpayer claims that these expenses have been incurred during the normal course of business and they were necessary and thus they were paid and were not retained by the company for twelve months. With regard to the item (Technical Remunerations, Board Remunerations and Dividends for the years from 1998 to 2010), the Taxpayer claims that the technical fees obtained from Company Ltd. (TIN No.: ...) were subject to zakat and tax in the affiliate company, and for the purpose of justice, this income should not be subject to zakat in the same year in which ... company paid zakat on it. With regard to the board of directors' remunerations, the Taxpayer claimed that no zakat should be charged on these remunerations to avoid double taxation as they were already subject to zakat in the affiliates. As for the Dividends item, it was also double taxed as it was subject to zakat for the current year and once again in the invested companies. With regard to the item (Investments), the Taxpayer claims that the investments be deducted in the stock portfolio for all the years from 2005 to 2010, as the management's intention is to keep the investments for a long period for the purpose of increasing capital instead of short-term profit, and that government bonds must be removed from the zakat assessment, as these funds had left the company in the form of investments and did not remain in the company's possession for twelve months. With regard to the other items that were not allowed to be deducted for the years from 2004 to 2009, Donations and General Administrative Expenses and Hospitality Expenses), the Taxpayer claims that these expenses must be deducted because they are considered normal and necessary business expenses. With regard to the item (Allocations for the Years from 2004 to 2009), the Taxpayer claims that it does not know the grounds on which ZATCA did not allow or claim the differences in allocations. With regard to the item (Travel Tickets for the year 2004), the Taxpayer claims that the travel tickets were due and not allocated, and also the costs of these tickets do not remain in the company for a period of twelve months.



Accordingly, the Taxpayer requested that the primary department's decision be reversed for the grounds it submitted.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

ZATCA challenged the decision regarding the item (Contributions (loans from partners) for covering the losses of affiliated companies for the years 2000, 2001 and 2002), indicating that the coverage of losses that the Taxpayer states were provided as loans to affiliated companies were not subject to zakat in the affiliated companies in the taxable year, and were also added to the company's accounts. Therefore, ZATCA did not accept that they are deducted from the zakat assessment being nondeductible expenses. Moreover, the conversion of that item by the Taxpayer to loans and contributions to the affiliated companies does not change the nature of the item, which was confirmed by the primary department (as an expense that should be recognized in the income statement). If the Taxpayer's claim that the item is loans and advances to affiliated companies is proven, then the amount that should be deducted from the Taxpayer's zakat assessment is within the limits of contribution to the capital of the affiliated companies. Regarding the item (Investments), ZATCA clarified that the department accepted the documents submitted by the Taxpayer, while the same documents were requested during the inspection and objection stage, but yet had not been provided. As for Investments in Stock Portfolio, ZATCA indicated that the dispute is not limited to supporting documents, as ZATCA did not accept to deduct those investments because they appear in the financial statements as Available-for-sale Traded Investments, which proves that the investments are traded and their purpose is speculation. As for the item (Partner Creditor's Current Account for the years 2007 and 2008), Partner Debtor's Current Account for the year 2009), Loans for the year 2006), and Technical Fees forCompany for the year 1999), ZATCA stated that the primary department accepted the documents submitted by the Taxpayer, while the same documents were requested during the inspection and objection stage, but yet had not been provided. As for the item (Fixed Assets and Depreciation Differences for the Years from 2006 to 2009), ZATCA clarifies that it applied Circular No. (2574/9) of 14/05/1426 AH, which required that the procedural provisions and accounting rules included in the Tax Law be applied to zakat payers to standardize the treatment including the calculation of depreciation included in Article (17) of the Income Tax Law. Accordingly, the depreciation schedule was prepared and the depreciation differences were adjusted for the net book profit and the fixed assets were deducted from the zakat assessment. With regard to the item (Leaves for the year 2004), ZATCA stated that it treated that item as a provision, where the produced part was added to the taxable year's profits and the used part was deducted as well. Accordingly, the accounts of leave pay item were modified because it is payable to the employees for their annual leaves. Therefore, ZATCA maintains that its procedure is valid and sound, and requests that the primary decision be reversed for the stated grounds.

On Thursday 17/11/1443 AH corresponding to 16/06/2022 AD, the Department decided to hold e-sessions to hear the parties' pleadings over 10 days. ZATCA submitted a reply, in which it maintained the validity and soundness of its procedures, claiming that Plaintiff's claims are nothing but reiteration of the same claims it has previously submitted and ZATCA responded to. With regard to the item (Contributions to Cover the Losses of Affiliates), ZATCA stated that it challenges the primary decision in this respect and refers to its statements of appeal to avoid repetition. With regard to the item (Remunerations and Incentives), ZATCA stated that it had included this item in the zakat assessment base based on Article 5.1 of the Implementing Regulations of the Collection of Zakat issued in 1438 AH and also Article 6.2 of the same regulations. With regard to the item (Technical Remunerations, Board Remunerations and Dividends), ZATCA found that the expenses



may not be deducted as per the law and ZATCA's letter No. (5097/10) of 1423 AH and based on Article 20.3 of the Implementing Regulations of the Collection of Zakat, the zakat payer's objection was rejected. As for the item (Investments), and specifically the Foreign Investments, ZATCA relied upon on Paragraph 4(b) of Clause (Second) of Article (4) of the Implementing Regulations of the Collection of Zakat issued in 1438 AH. With regard to the Stock Portfolio item, ZATCA stated that it challenges the primary decision in its respect and refers to its statement of appeal to avoid repetition. As for the Government Bonds item, they are treated as loans and not as investments based on Paragraph (4-c) of Clause (Second) of Article (4) of the Implementing Regulations of the Collection of Zakat. As for Loans to Affiliated Companies item, they are treated as loans and not as investments based on multiple fatwas, including Fatwa No. (18497) of 1408 AH and Fatwa No. (2/3077) of 1426 AH. As for the attorney's fees, ZATCA determined that such investments are not of a capital nature and cannot be treated as fixed assets for the purpose of deduction from the zakat base, in addition to the fact that ZATCA does not object to recognizing these expenses for each year according to the principle of the Matching Principle (matching revenues with expenses). With regard to the items (Partners' Current Account), (Partners' Loans), (Technical Fees ofCompany), and (Fixed Assets and Depreciation Differences), ZATCA stated that it has appealed against these items in its statement of appeal deposited with this Department, to which it refers in avoidance of repetition. As for the item (other items that were not allowed to be deducted - donations - hospitality - general administrative expenses - other expenses and losses in managing services), ZATCA has added these items to the zakat assessment base based on Article 5.1 of the Implementing Regulations of the Collection of Zakat issued in 1438 AH and Article 6.2 of the same regulation. As for the item (loss from sale of an investment), ZATCA found that this item is about buying and sale of shared traded in the local market, and since ZATCA has rejected investments in securities because they are tradable and speculative shares, and therefore are considered trade investments (trade assets) which are subject to zakat. As for the item (Claims against Provisions), ZATCA has added the balance to the adjusted profit based on Article 4.9 of the Implementing Regulations of the Collection of Zakat and Article 6.6 of the same regulations. As for the item (Travel Tickets and Accrued Leaves), ZATCA stated that it has appealed against these items and refers to its statement of appeal in avoidance of repetition. ZATCA also requested that no new documents are accepted from the zakat payer that were not submitted during the inspection and objection stages, and also requested that the Department do not accept any new documents based on Article (186) of the Law of Procedure Before Sharia Courts, and in conclusion of its reply, it reaffirmed that it maintains the validity and soundness of its procedure and requests that the zakat payer's appeal be dismissed and that the primary decision be upheld for the stated grounds. The zakat payer also submitted a replication moving thereby to uphold the primary decision and dismiss ZATCA's appeal for the items it challenged. On Sunday 25/12/1443 AH corresponding to 24/07/2022 AD, the Department, having considered the Parties' submissions, case file and documents, it established that the case was ready for adjudication and accordingly, it decided to close the pleadings and set the case for adjudication.

Grounds:

Having reviewed the case papers and statements of appeal submitted by the Appellant and ZATCA, the Department found that the two appeals are accepted in form as per the relevant laws, regulations and decisions, being filed within the period prescribed by law and by persons with capacities.



Moving to the merits of appeals, the Department held that ZATCA's assessments for the years 1998 to 2000 and for the years 2004 to 2010 were after the lapse of the period stipulated by the law for amending to the zakat payer's declaration, which is five years from the end of the period set for submitting zakat declaration. Since these rules were issued in order to maintain stability of transactions and protect zakat payers' financial positions by specifying a specific period to ensure stability of their financial positions, this matter however does not result in the zakat payer being discharged from the sharia obligation if he actually bears that obligation. Rather, it is a procedural issue related to ZATCA's right to make the zakat assessment for the zakat payer after the lapse of the period stipulated by the law, and accordingly the Department determines that ZATCA's decision to make those amendments is invalid, and consequently accept the zakat calculation as submitted in the zakat payer's declarations. Therefore, the Department concludes to dismiss ZATCA's and the zakat payer's appeals regarding the items related to these years, and quash the primary decision as to the conclusions it had in this regard.

As for ZATCA's appeal regarding the item (Contributions (Loans from Partners) to Cover the Losses of Affiliated Companies for the years 2001 and 2002), ZATCA's appeal in this respect was against the primary department having accepted the zakat payer's objection regarding this item, claiming that the coverage of losses was not subject to zakat in the affiliates in the taxable year and was charged to the Company's accounts, therefore they were not deducted because they are nondeductible expenses. Meanwhile, the zakat payer moved to dismiss ZATCA's appeal and uphold the primary decision. Having considered ZATCA's appeal and examined the case file, it was found that the zakat payer's contribution to covering the losses of affiliates, whether that coverage was to fulfill the provisions of the Companies Law or was optional coverage, is considered a type of investment in those companies that should be deducted from zakat payer's zakat base. According to the financial statements, the Department established that the taxpayer has covered losses of the affiliated companies, and it thus concludes to dismiss ZATCA's appeal and uphold the primary decision in this part.

As for the zakat payer's appeal regarding the item (Remunerations and Incentives for the Years 2001 to 2003), the zakat payer objected to the primary decision having upheld ZATCA's decision to not deduct this item from the zakat base. The Zakat Payer claimed that these expenses must be deducted because they are documented and necessary for the income-generating activity to take place, while ZATCA argued that it adheres to the validity and soundness of its decision and requested that the zakat payer's appeal be dismissed and the Primary Department's decision be upheld. Having considered Zakat Payer's appeal and examined the case file, it was established that all regular and necessary expenses required for running the Zakat Payer's activity, whether paid or payable, may be deducted if they are actual expenses substantiated by supporting documents or other evidence that enables ZATCA to verify them. Since the general rule for imposing zakat is that one year passes with the funds subject of zakat are held in the possession of the zakat payer, and since it is established that the funds in issue were taken out from the zakat payer's account and spent on those the employees incentives and benefits, and the spending of these funds had never been disputed, and since ZATCA's statements as to the legality of those benefits and that they should comply with the provisions of labor law are irrelevant when calculating the zakat transaction and to whether to include these amounts into the zakat base of the zakat payer or not. Rather, those provisions are intended for another purpose, namely to safeguard the employees' rights. Accordingly, the Department concludes to consider the entire amounts as an expense that may be deducted when making the zakat assessment contrary to what was decided in the primary decision. Therefore, the Department decides to accept the zakat payer's appeal and quash the primary decision in this respect.

As for the zakat payer's appeal against the item (Technical Remunerations, Board Remunerations and Dividends for the Years 2001 to 2003), the zakat payer challenges the primary decision as it upholds ZATCA's decision to not deduct this item from the zakat base, claiming that this item should be deducted to avoid double taxation that is forbidden by Sharia, while ZATCA argued



that it maintains the validity and soundness of its procedure and requests that the zakat payer's appeal be dismissed and that the primary decision be upheld in this respect. Having considered the zakat payer's appeal, and examined the case file, it was established that ZATCA refused to deduct the amounts in dispute merely on grounds that the Zakat Payer had not submitted copies of the amended zakat assessments for the affiliates for the years in question, and since the zakat assessments amended based on the appeal decisions are decisions issued by ZATCA, and it has full access to them, this does not constitute a justification for ZATCA to reject the zakat payer's declaration on the basis of the failure to submit those assessments, especially since they relate to a legal entity separate from the zakat payer, and since the Department's demand that the zakat payer submits supporting documents for the disputed amounts is unreasonable given that ZATCA did not base its decision on the zakat payer's failure to submit documents supporting the disputed amounts. Accordingly, the Department concludes to accept the zakat payer's appeal and overturn the primary decision in this connection.

As for the zakat payer's appeal against the item (Investments for the Years 2001 to 2003), the zakat payer objects to the primary decision having accepted ZATCA's decision to not deduct this item from the zakat base, claiming that this item should be deducted since those investments are possession assets but not yet possessed for a year by the Taxpayer to be subject to zakat. ZATCA on its part maintains the validity and soundness of its decision and requests that zakat payer's appeal be dismissed and the primary decision be upheld. Having considered the zakat payer's appeal, and examined the case file, the Department concluded that the investments in dispute for the years in dispute that this Department accepted to decide upon consist of foreign investment in the Egyptian company named..... and investments in government bonds, and since zakat payer did not submit the audited financial statements of the foreign company certified by a chartered accountant in the country of investment, the Department hereby dismiss the zakat payer's appeal regarding this investment. As for the investment in government bonds for the years 2001 to 2003, and having reviewed the zakat payer's appeal, and examined the case file, it was found that the bonds are considered in principle debt instruments that are subject to the same rules as all other types of debts as to zakat assessment. The Ministerial Resolution No. (32/925) dated 25/05/1409 AH instructed to exempt bonds held in possession from zakat. That resolution however is related to the procedural aspect, which is the collection by ZATCA of zakat, and is not related to the discharge of zakat payer from zakat obligation, accordingly, the Department concludes to accept the zakat payer's appeal and that ZATCA may not collect zakat on those bonds for the years in dispute.

Decision:

First: Accept in form the appeal submitted by the zakat payer,Company, C.R. No., TIN No. ... and the appeal submitted by ZATCA, against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah, bearing number (IZJ-2020-50), issued in Case No. (Z-94-2018) in relation to the zakat assessment for the years from 1998 to 2010 AD.

Second: On Merits:

1. Dismiss ZATCA's and the zakat payer's appeal regarding all the items subject matter of appeal for the years from 1998 to 2000, and the years from 2004 to 2010, and quash the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah regarding these items ruling that zakat is calculated as per the zakat payer's declarations for those years, according to the grounds stated in this decision.
2. Dismiss ZATCA's appeal regarding the item (Loans from Partners) to cover losses of affiliated companies for the years 2001 and 2002, and uphold the decision of the First



Department for Determination of Income Tax Violations and Disputes in Jeddah, according to grounds stated in this decision.

3. Accept the zakat payer's appeal regarding the item (Remunerations and Incentives for the Years 2001 to 2003) and quash the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
4. Accept the zakat payer's appeal regarding the item (Technical Remuneration, Board Remuneration and Dividends for the Years 2001 to 2003) and quash the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
5. As for the item (Investments for the Years 2001 to 2003):
 - A. Dismiss the zakat payer's appeal regarding foreign investment for the years 2001 to 2003, and uphold the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
 - B. Accept the zakat payer's appeal regarding Investment in Government Bonds for the years 2001 to 2003, and quash the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-367)
Delivered in Case No. (Z-62868-2021)

Principle No. 376

The general rule is to deal with consolidated financial statements when ownership is (100%) and to cancel inter-company balances.

Principle No. 377

The Differences between the consolidated and standalone financial statements cannot in itself be a reason for rejecting the balances presented in the consolidated financial statements.

Facts:

The Department convened to consider the appeal submitted on 23/12/1442 AH, corresponding to 01/08/2021 AD by ZATCA against the decision of the First Appellate Department for Income Tax Violations and Disputes No. (IR-2021-126) delivered in Case No. (Z-1726-2018) related to the zakat tax assessment for the years from 2001 to 2005 AD, filed by the zakat payer against ZATCA. Since that decision was not accepted by the Appellant ZATCA, it submitted to the Department a statement of appeal including the following:

ZATCA objects to the decision of the Appellate Department claiming that the Department did not determine ZATCA's appeal, but rather determined the zakat payer's appeal, despite the fact that ZATCA has submitted its appeal by its letter No. (4/...) dated 01/01/1435 AH, especially since ZATCA, in its response to the zakat payer's appeal, pointed out to its appeal against the primary decision. Accordingly, and based on Articles 200 and 201 of the Law of Procedure Before Sharia Courts and based on Articles 49, 40 and 52 of the Tax Dispute and Violation Committee Procedures, ZATCA pleads with the Department to accept its appeal as per the claims stated in its statement of appeal submitted to this Department in respect of the appealed decision. therefore, ZATCA requests that its appeal be accepted and the subject of the appeal submitted by it against the primary decision be decided for the grounds stated above.

On Thursday, 27/01/1444 AH, corresponding to 25/08/2022 AD, the Department examined ZATCA petition and reviewed Case file. It is established that judicial sentences may not be considered once they become final except in accordance with cases and controls mentioned in Article (200) of Law of Civil Procedures issued by Royal Decree No. (M/1) dated 22/01/1435 AH. The Department recognized that provisions of the aforementioned Article apply to the current case since the appealed decision did not adjudicate the matters requested by ZATCA Appeal filed before the Department on 01/11/1442 AH corresponding to 10/06/2021 AD, i.e., before closing pleadings on 04/11/1442 AH corresponding to 13/06/2021 AD. Therefore, the Department decided to accept ZATCA petition and open pleadings concerning ZATCA Appeal within ten (10) days from the scheduled date. The Department also requested both litigants to



present their submissions within the specified period. Accordingly, ZATCA submitted some documents.

On Wednesday, 18/02/1444 AH, corresponding to 14/09/2022 AD, after reviewing Appeal notes and replies thereto and examining documents and papers attached to Case file, the Department decided that the Case was ready for adjudication and issuance of a decision. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Upon reviewing Case documents and petition list submitted by ZATCA, the Department found that conditions for considering petition have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the petition was accepted in form since it was submitted by a person with legal capacity and within the period prescribed by law.

On merit, the Department had made it clear that the ZATCA assessment for the period (2001-2004 AD) was performed after the expiry of the period prescribed by law for making amendments to Taxpayer declaration, which is five years from the deadline for submitting the Taxpayer declaration for each year. It is worth noting that these rules are established to maintain transaction stability and prevent instability of Taxpayer positions in case of absence of a timeframe that ensures maintaining their financial positions not jeopardized. Since this matter does not result in releasing Taxpayer from his legal obligation if he is already concerned with fulfilling such obligation, but rather represents a procedural issue with relation to ZATCA right to reopen assessments after the expiry of the period prescribed by law; therefore, the Department concluded that the procedure taken by ZATCA for making amendments was invalid. Accordingly, the Department decided to cancel ZATCA assessment for the period (2001-2004 AD) and reverse the decision taken by First Primary Committee for Zakat and Tax in Riyadh with regard to its decision in this regard. Taxpayer argued that this Department issued the decision No. (IR-2021-126) dated 22/06/2021 AD, and the Appeal was filed to consider the same years for which the Department decided to cancel ZATCA assessment due to expiry of the period prescribed by law to make amendments to Taxpayer declaration. The Department was satisfied that its decision No. (IR-2021-126) dated 22/06/2021 AD was related to Taxpayer Appeal to the same primary decision for which ZATCA filed its Appeal concerning the same years. Therefore, the Department decided to correct that decision by canceling First Appellate Department Decision No. (IR-2021-126) dated 22/06/2021 AD with regard to the period (2001-2004 AD).

With regard to ZATCA Appeal regarding the Item (Withholding Tax for the year 2005 AD), ZATCA Appeal was filed to challenge the decision taken by the Primary Committee regarding this Item, as it claimed that it has imposed withholding tax on the amounts paid to non-resident companies in accordance with Article (68) of Tax Law. After reviewing Appeal Brief and examining documents contained in Case file, it turned out that the dispute between both litigants has happened as a result of imposing a (15%) withholding tax on installations, while Taxpayer believed that only a (5%) withholding tax should have been imposed because such installations were technical works. Upon reviewing Case file side by side with all defenses and documents contained therein, it became clear that all statements mentioned in ZATCA Appeal Brief were the same statements presented earlier to the Primary Committee, which in turn reviewed the contracts submitted by Taxpayer and illustrating works performed by the three companies and proving that the provided services were technical. Upon reviewing such contracts, it turned out that Taxpayer claims were true and valid, and the decision taken by the Primary Committee was also valid, as it was clear that the services provided by companies were supervising, performing, and completing installation works and providing equipment insurance. After examining Case file, since the Primary Committee has covered all Appeal aspects, and since the Department did not observe any matters that require correction or commentary on the decision wording with regard to this Item, in light of the grounds mentioned in the Appeal Brief in this regard. The Department decided that these



arguments should not affect the appealed decision, therefore, and therefore, decided to dismiss ZATCA Appeal and uphold the Primary Committee decision taken in this regard.

Concerning ZATCA Appeal regarding the Item (Owner Current Account Balance for the year 2005 AD), ZATCA Appeal was filed to challenge the decision taken by the Primary Committee with relation to this Item. ZATCA claimed that its dispute with Taxpayer happened as a result of non-conformity of balances included in individual financial statements with balances included in consolidated financial statements. After reviewing Appeal Brief, it turned out that ZATCA assessment was performed based on individual financial statements, while it is established that consolidated financial statements shall be considered in case of (100%) ownership, which require removing some intercompany balances. Therefore, the difference between balances of consolidated financial statements and individual financial statements does not constitute a reason for rejecting balances presented in consolidated financial statements. The Primary Committee concluded that Taxpayer declaration was consistent with consolidated financial statements, and ZATCA failed to provide any notes or statement proving the difference between Taxpayer declaration and ZATCA assessment with regard to this Item. Accordingly, since ZATCA failed to provide any evidence that could be relied upon in its Case, the Department decided to reject ZATCA Appeal and sustain the Primary Committee decision reached in this regard.

As for ZATCA Appeal filed with regard to the Item (Accounts Payable for the year 2005), the Item (Long-Term Loans for the year 2005), and the Item (Bank Credit Balances for the year 2005), ZATCA filed its Appeal to challenge the Primary Committee decision regarding these Items. ZATCA claimed that the Primary Committee did not clarify the basis or method adopted to conclude these balances added to the Zakat base, so that ZATCA could review and verify the same based on the Primary Committee opinion. Upon reviewing Appeal Brief and examining Case file, since the Department has considered the same Items when hearing Taxpayer Appeal and decided to amend the Primary Committee decision to reflect the validity of imposing Zakat on the mentioned Items upon completing one year as acknowledged by Taxpayer in his Appeal Brief presented to the Department, and since ZATCA failed to submit any documents supporting its statements regarding these Items and requiring correction or commentary, the Department decided to dismiss ZATCA Appeal and amend the Primary Committee decision to confirm the validity of imposing Zakat on the mentioned Items upon completing one year as acknowledged by Taxpayer in his Appeal Brief presented to the Department.

As for ZATCA Appeal filed with regard to the Item (Spare Parts Suppliers and Fixed Assets for the year 2005 AD), ZATCA filed its Appeal to challenge the Primary Committee decision regarding this Item. ZATCA claimed that this Item covered amounts due to suppliers for financing the purchase of fixed assets and spare parts. These amounts were added to the zakat base after deducting the value of corresponding spare parts and fixed assets in accordance with Fatwa No. (22665). Upon reviewing Appeal Brief and examining Case file, it turned out that the dispute between both litigants was raised as a result of the amounts added to the Zakat base for the account of spare parts suppliers and fixed assets. The Department reviewed Case file, the defenses of litigants contained therein, and the statement submitted by Taxpayer, which included a comparison of the loans that completed one year and added to the Zakat base side by side with the increase in fixed assets. The Department also reviewed the Primary Committee decision, which included external funding sources added to the Zakat base, completing one year, and covering the value of fixed assets and the like. ZATCA did not provide any link between the disputed Item and a specific discounted Item in the Zakat base and did not provide any reply to Taxpayer claim that there were debit balances represented by advance payments of the same suppliers whose balances were added to the Zakat base by ZATCA. The Department was satisfied that the Primary Committee decision was correct and that the grounds adopted to reach such decision were sufficient to support the same. Accordingly, the Department decided to reject ZATCA Appeal and endorse the Primary Committee decision in this regard.



Concerning ZATCA Appeal filed with regard to the Item (Establishment Expenses for the year 2005 AD), ZATCA filed its Appeal to challenge the Primary Committee decision regarding this Item. ZATCA claimed that it deducted the establishment expenses and the like in accordance with the individual accounts of Al Watania Poultry, Al Watania Agricultural, Properties, Al Watania Restaurants, Headquarters, and Al Watania Transport, which should have been consistent with consolidated financial statements. After reviewing Appeal Brief and examining Case file, it turned out that ZATCA assessment was performed based on individual financial statements, while it is established that consolidated financial statements shall be considered in case of (100%) ownership, which require removing some intercompany balances. Therefore, the difference between the balances of consolidated financial statements and individual financial statements does not constitute a reason for rejecting the balances presented in consolidated financial statements. The Primary Committee concluded that Taxpayer declaration was consistent with the consolidated financial statements, and ZATCA failed to provide any note or statement proving the basis for difference between Taxpayer declaration and ZATCA assessment with regard to this Item. Accordingly, since ZATCA failed to provide any evidence that could be relied upon in its Case, the Department decided to reject ZATCA Appeal and sustain the Primary Committee decision reached in this regard.

With regard to ZATCA Appeal regarding the Item (Projects Under Implementation for the year 2005), ZATCA Appeal was filed to challenge the decision taken by the Primary Committee regarding this Item, as it claimed that it has included projects under implementation with relation to poultry activity among fixed assets that were deducted from the Zakat base. After reviewing Appeal Brief and examining Case file, the Department was satisfied that the Primary Committee accepted ZATCA opinion on the subject matter of the dispute concerning the amount of (SAR 234,202,217). Since the Department has become clear that ZATCA has no interest in this Appeal, in accordance with Article (177) of Law of Civil Procedures issued by Royal Decree No. (M/1) dated 22/01/1435 AH, the Department decided that the conditions of appeal were not satisfied and therefore disregarded the same.

As for ZATCA Appeal regarding the Item (Provisions for the year 2005), ZATCA appeal was filed to challenge the decision taken by the Primary Committee regarding this Item. ZATCA claimed that it has deducted the used balance from the opening balance of provisions, and the component was added during the year in accordance with ZATCA Publication No. (7/2058), and provisions were handled in accordance with individual financial statements for some activities and field inspection results related to poultry and factory activities. After reviewing Appeal Brief, it turned out that ZATCA assessment was performed based on individual financial statements, while it is established that consolidated financial statements shall be considered in case of (100%) ownership, which require removing some intercompany balances. Therefore, the difference between the balances of consolidated financial statements and individual financial statements does not constitute a reason for rejecting the balances presented in consolidated financial statements. The Primary Committee concluded that Taxpayer declaration was consistent with consolidated financial statements, and ZATCA failed to provide any notes or statement proving the difference between Taxpayer declaration and ZATCA assessment with regard to this Item. Accordingly, since ZATCA failed to provide any evidence that could be relied upon in its Case, the Department decided to reject ZATCA Appeal and sustain the Primary Committee decision reached in this regard.

Decision:

First: In form, accept the petition presented by applicant/ZATCA, against First Department for Determination of Income Tax Violations and Disputes Decision No. (IR-2021-126) issued in Case No. (Z-1726-2018) regarding Zakat and tax assessment for the period (2001-2005 AD).

Second: On Merits:



1. Cancel ZATCA assessment decision for the period (2001-2004 AD), and reverse the decision of First Primary Committee for Zakat and Tax in Riyadh and the decision of First Department for Determination of Income Tax Violations and Disputes with regard to their conclusions in this regard, in accordance with grounds and merits mentioned herein.
2. Reject ZATCA Appeal regarding the Item (Withholding Tax for the year 2005), and uphold the decision of the First Primary Committee for Zakat and Tax in Riyadh in accordance with grounds and merits mentioned herein.
3. Reject ZATCA Appeal regarding the Item (Owner Current Account Balance for the year 2005), and uphold the decision of First Primary Committee for Zakat and Tax in Riyadh in accordance with grounds and merits mentioned herein.
4. Reject ZATCA Appeal regarding the Item (Accounts Payable for the year 2005), and amend the decision of First Primary Committee for Zakat and Tax in Riyadh to reflect the validity of imposing zakat on Item components that completed one year, as acknowledged by Taxpayer in its Appeal Brief presented to the Department, in accordance with grounds and merits mentioned herein.
5. Reject ZATCA Appeal regarding the Item (Long-Term Loans for the year 2005), and amend the decision of First Primary Committee for Zakat and Tax in Riyadh to reflect the validity of imposing Zakat on Item components that completed one year, as acknowledged by Taxpayer in its Appeal Brief presented to the Department, in accordance with grounds and merits mentioned herein.
6. Reject ZATCA Appeal regarding the Item (Bank Credit Balances for the year 2005), and amend the decision of First Primary Committee for Zakat and Tax in Riyadh to reflect the validity of imposing zakat on Item components that completed one year, as acknowledged by Taxpayer in its Appeal Brief presented to the Department, in accordance with grounds and merits mentioned herein.
7. Reject ZATCA Appeal regarding the Item (Spare Parts Suppliers and Fixed Assets for the year 2005), and uphold the decision of First Primary Committee for Zakat and Tax in Riyadh in accordance with grounds and merits mentioned herein.
8. Reject ZATCA Appeal regarding the Item (Establishment Expenses for the year 2005), and uphold the decision of First Primary Committee for Zakat and Tax in Riyadh in accordance with grounds and merits mentioned herein.
9. Disregard ZATCA Appeal regarding the Item (Projects Under Implementation for the year 2005), and uphold the decision of First Primary Committee for Zakat and Tax in Riyadh in accordance with grounds and merits mentioned herein.
10. Reject ZATCA Appeal regarding the Item (Provisions for the year 2005), and uphold the decision of First Primary Committee for Zakat and Tax in Riyadh in accordance with grounds and merits mentioned herein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-2122)
Delivered in Case No. (Z-42176-2021)

Principle No. 378

Failure to present documents initially to ZATCA does not necessarily mean that such documents will be rejected when submitted to Determination Committees, as there are no regulatory provisions supporting rejection of documents not submitted to ZATCA.

Facts:

The Department convened to consider the Appeal filed on 17/03/2021 AD, by Mr....., holder of National ID No. (...), in his capacity as the appellant company attorney under POA No. (...), to challenge the First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-379) issued in Case No. (Z-2019-8850) with relation to Zakat assessment for the period (2013 - 2015) in the Case filed by Appellant against ZATCA, on which the Primary Department had taken the following decision:

Reject the objection raised by Plaintiff/ Company (TIN:), to decisions taken by Defendant/ZATCA with relation to Zakat assessments, subject matter of the Case.

Since the Decision was rejected by Taxpayer (..... Company), it submitted an Appeal Brief that could be summarized as follows:

Taxpayer raised an objection to the Primary Committee decision being appealed. With regard to the Items (Incentives and Bonuses - Rent Differences - Import Profits - Advances Paid by Customers - Investments in Joint Ventures - Directors Remuneration - Loans - Company Contribution to losses of An Associate Company - Accounts Payable - Related Parties - Lands), Taxpayer claimed that the Committee stated that the company failed to submit the required supporting documents to ZATCA. It is worth noting that ZATCA did not explicitly request the said documents during its revision, and the issued assessment also did not clarify the grounds for amendment so that the Company could have submitted the required supporting documents. Moreover, the documents were submitted to the Primary Committee upon exchanging notes and were also delivered to ZATCA through the Settlement Committee on 05/12/2019 AD. The Committee hastened to issue the appealed decision without considering any Zakat laws and regulations issued by legislator, and its decision was taken based on a jurisprudential rule that was irrelevant to the Case filed by the Company. The rule stipulated in the decision grounds provided that the negligent person shall incur loss, and when reviewing the definition of negligent person, it turned out that he is the delinquent, derelict, and careless person, and all those attributes did not apply to Company. Since the Company arguments were fundamental and resulted in changing the opinion concerning the Case, the decision taken without taking those arguments into consideration and ensuring their validity shall be deemed groundless and shall be canceled accordingly. Paragraphs (3) and (7) of Article (24) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2087) dated 01/08/1438 AH provide that: 3. The Committee Chairman shall notify both ZATCA and Taxpayer of the date scheduled by the Committee to hear



their justifications and arguments and to submit any related documents. 7. The Committee decision shall be consistent with the provisions of Islamic Sharia, this decision, and relevant regulations and instructions, in light of facts considered by the Committee and proved by supporting documents.” Accordingly, the Committee failed to exercise duties entrusted thereto in accordance with the abovementioned Article. Therefore, the decision shall be deemed groundless. Consequently, Taxpayer claimed reversal of the appealed decision taken by the Primary Committee based on the grounds stated above.

On Monday, 05/12/2022 AD, the First Department for Determination of Income Tax Violations and Disputes convened via video conference in accordance with the procedures for remote video litigation pursuant to Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH. After reviewing Appeal Brief, examining Case file, and deliberation according to law, since the Department did not find any reasons for attendance of both litigants, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Upon reviewing Case documents and Appeal Brief submitted by Taxpayer, the Department found that conditions of the Appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal request was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law. On merits, Taxpayer filed its Appeal with regard to the Items (Incentives and Bonuses - Rent Differences - Import Profits - Advances Paid by Customers - Investments in Joint Ventures - Directors Remuneration - Loans - Company Contribution to losses of An Associate Company - Accounts Payable - Related Parties - Lands), based on the Committee allegation that the Company did not provide the required supporting document to ZATCA. It is worth noting that ZATCA did not explicitly request those documents during its revision, and also the issued assessment did not clarify the grounds for amendment so that the company could have provided the requested supporting documents. In addition, the documents were submitted to the Primary Committee upon exchanging notes, and were also delivered to ZATCA through the Settlement Committee on 05/12/2019 AD. Article (23) of Tax Dispute and Violation Committee Procedures has also stated that: “All types of evidence not conflicting with the nature of the suit shall be admissible before the circuit, including valid recorded phone calls and digital evidence.” Also, Article (65) of Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH, provides that: "2- The court shall grant litigants sufficient time to review and respond to the documents when necessary." Based on the foregoing, and after reviewing the primary decision, it appears that the decision was not based on a legal basis, but rather on the jurisprudential the principle stating that: "The negligent party is more deserving of loss" Additionally, it became clear from the documents submitted by the Taxpayer that documents were submitted before ZATCA when requesting a settlement, and also that failure to submit the documents initially before ZATCA does not necessitate non-acceptance of the same when submitted before the Primary Department, as there is no legal provisions affirming that documents not submitted to ZATCA shall not be accepted. The argument that any document not submitted to ZATCA during the assessment cannot be accepted is inconsistent with the regulations governing appeals against decisions issued by administrative authorities. No provisions in the Law of Procedure before the Board of Grievances and its Implementing Regulations stipulate that the acceptance of an appeal is conditional upon the submission of supporting documents to the administrative authority. Given that ZATCA decision regarding the assessment is non-final and subject to appeal before the adjudication committees and the Appellate Committee, and considering that ZATCA decision has not become final, Taxpayer has the right to submit documents that reflect the actual situation at the time of the assessment to ensure the performance of the obligation in a fair and accurate manner, as long as the documents submitted by it have not been challenged by ZATCA. Additionally, the



submission of documents by Taxpayer is considered evidence supporting the validity of his return. If the Taxpayer does not submit them to ZATCA, ZATCA may modify the return based on what is established before it, and this does not prevent the Taxpayer from subsequently submitting evidence to support his return as long as ZATCA has not raised any issues regarding the validity of those documents. Therefore, we believe that the Primary Department has violated the regulations applicable to the dispute, concluding to accept the Taxpayer Appeal, cancel the primary decision, and return the case for a consideration on merits.

Decision:

First: Accept the Appeal filed by Taxpayer/ Company, CR. NO. (...), TIN No. (...), against the First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-379) issued in Case No. (Z-2019-8850) in connection with Zakat assessment for the period (2013-2015).

Second: On Merits:

Accept the Appeal filed by Taxpayer and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-2530)

Delivered in Case No. (ZIW-48072-2020)

Principle No. 379

Burden of Return Amendments is on Taxpayer.

Facts:

The Department convened to consider the Appeal filed on 20/04/2021 byCompany/Factory, CR No. (.....), TIN No. (.....), against the Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISR-2020-69) issued in Case No. (ZIW-4970-2019) in connection with Zakat assessment for the period (2005-2012), in the Case filed by Appellant against ZATCA, in which the Primary Department decision ruled as follows:

First: In form:

Accept the Case filed by Plaintiff,Company/Factory, CR No. (.....), against Defendant/ZATCA in form.

Second: On merits:

1. Dismiss the Case regarding the profit adjustment for 2011 regarding written-off accounts receivable and written-off customs duties.
2. Dismiss the Case regarding the provisions Item.
3. Dismiss the Case regarding the deduction of foreign partner's share of the loss resulting from adjustments to inventory and debtors' balances, which affected the retained earnings at the beginning of 2011.
4. Confirm the settlement of the dispute regarding the adjusted carried forward losses for the period (2009-2012).
5. Dismiss the Case regarding the current account of the Saudi debtor partner Item for the period (2005-2012).
6. Dismiss the Case regarding withholding tax for 2007, 2010, 2011, and 2012.
7. Dismiss the Case regarding the income tax and withholding tax fines for the period (2008-2012).

Since this decision was not accepted by the Taxpayer (.....Company/Factory), it submitted a statement of appeal that can be summed up as follows:

Taxpayer objects to appealed decision of Primary Department, and claims with regard to (written off receivables supported by documents), that expenses are actual expenses that have been recognized as revenue in years prior to year of their write-off, and that the company incurred such expenses in order to practice its economic activity, representing paid and recoverable customs duties under decision of the Ministry of Commerce exempting it from paying customs duties on some imported Items. Taxpayer has written off these amounts and recognized them as an expense during 2011. With respect to the Item (2009 Inventory Provision Difference), Taxpayer claims that he agrees with ZATCA



regarding treatment of provisions and that must be made pursuant to provisions of the Regulations. However, objection was related to a material error in the slow-moving inventory provision of 2009, and doubtful debt provision of 2011. Regarding the Item (previous year's amendments made in favor of foreign partner), Taxpayer alleges that the company demanded that foreign partner's share in amendments be taken into consideration and demands that foreign partner's share be deducted from loss resulting from amendments to balances of inventory and debtors affecting retained profits at the beginning of 2011, considering that it was subject to income tax in previous years. Income tax due in year of amendment must be reduced, since the Committee acknowledged that there was a material error in company's declarations and ignored correction procedure, as it ignored the same in its assessment. The Company then objected to that Item before ZATCA and then before Primary Department, since this is a deliberate disregard to correction procedure, because it is in the interest of the Company and without having made a legal argument by ZATCA and Primary Department. Furthermore, with regard to the Item (adjusted carried-forward losses), Taxpayer claims that dispute has not ended with respect to adjusted carried-forward losses for 2009 to 2012 and demands to consider them objectively. With regard to the Item (current account of the Saudi debtor partner), Taxpayer claims that current account owed to the Saudi partner was not deducted from zakat returns by mistake and that ZATCA did not rectify this mistake when preparing zakat assessment. In accordance with Article (4.II.5), the company shall be entitled to deduct receivables owed by Saudi companies fully owned by the Saudi partner from Zakat base and not exceeding its share of remaining profits at the end of fiscal year. He pointed out that the supporting documents were attached and argued with regard to information declarations of subsidiaries of Holding Company, that they do not apply to previous years until 2014, since ZATCA began requesting information declarations on the automated system applicable at ZATCA as of 2015. With regard to the Item (withholding tax for 2007, 2010, 2011, 2012), Taxpayer claims that the Company has paid all withholding taxes for professional and consulting services disclosed in Statement No. (6) in 2016, and indicated that supporting documents were attached. Therefore, Taxpayer claims to quash appealed decision of Primary Department for reasons stated above.

On Tuesday, 13/12/2022, the First Appellate Department for Income Tax Violations and Disputes convened via virtual meeting in accordance with the remote litigation procedures; based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH. After reviewing Appeal Brief, examining Case file, and deliberation according to law, since the Department did not find any reasons for attendance of both litigants, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Upon reviewing Case documents and Appeal Brief submitted by Taxpayer, the Department found that conditions the Appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal request was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law. On merits, Taxpayer filed an appeal regarding the Item (Losses carried forward for the period 2009-2012 AD), and also made an appeal regarding the Item (Bad debts). Taxpayer Appeal was based on the fact that such expenses are actual expenses recognized as revenues throughout the years preceding the write-off year. In accordance with Article (9.1) of Implementing Regulations of Income Tax Law with regard to expenses that may be deducted to determine taxable income, pursuant to Article (9.3) of Implementing Regulations of Income Tax Law with regard to expenses that may be deducted to determine taxable income, and based on all the above, the dispute is essentially and substantially a documentary dispute. After reviewing Case



file, it turned out that Taxpayer submitted all documents proving that bad debt has satisfied the deduction provisions mentioned in Article (9.3) of Implementing Regulations of Income Tax Law mentioned above. Taxpayer attached a certificate issued by its chartered accountant proving that the amount of (SAR 8,175,153), representing the debt of an external customer (a milk center in Morocco), and the customs duties with the amount of (SAR 6,109.136) were written off. Moreover, Taxpayer attached an internal memorandum stating that these debts were written off and signed by General Manager, also agreements concluded with the concerned milk center in Morocco, and supporting documents proving exemptions from customs duties, which confirmed the validity of Taxpayer point of view. Therefore, the Department decided to accept Taxpayer appeal and reverse the decision of Primary Department to deduct bad debts from the tax base.

Taxpayer Appeal regarding written-off customs duties stemmed from recognition of actual expenses as revenues throughout the years preceding the written-off year. In accordance with Article (9.1) of Implementing Regulations of Income Tax Law with regard to expenses that may be deducted to determine taxable income, and pursuant to Article (9.3) of Implementing Regulations of Income Tax Law with regard to expenses that may be deducted to determine taxable income, and based on all the above, the dispute was essentially and substantially a documentary dispute. After reviewing the case file, it turned out that Taxpayer submitted all documents proving that the bad debt has satisfied the deduction provisions mentioned in Article (9.3) of Implementing Regulations of Income Tax Law mentioned above. Taxpayer attached a certificate issued by its chartered accountant proving that the amount of (SAR 8,175,153), representing the debt of an external customer (a milk center in Morocco), and the customs duties with the amount of (SAR 6,109.136) were written off. Moreover, Taxpayer attached an internal memorandum stating that these debts were written off and signed by General Manager, agreements concluded with the concerned milk center in Morocco, and supporting documents proving exemptions from customs duties, which confirmed the validity of Taxpayer point of view. Therefore, the Department decided to accept Taxpayer Appeal and reverse the decision of Primary Department to deduct bad debts from the tax base.

With regard to Taxpayer Appeal concerning the Item (Difference in 2009 inventory provisions and difference in 2011 doubtful debt provisions), Taxpayer Appeal agreed with ZATCA concerning provisions handling, which shall be in accordance with Regulations provisions; however, the challenge was related to a material error in the provisions of 2009 slow-moving inventory and the provisions of 2011 doubtful debts. In accordance with Article (4.1.9) of the Implementing Regulations for the Collection of Zakat issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, and since zakat handling for provisions requires adding the provision at the beginning of the year after deducting the amount used during the year, Taxpayer acknowledged that ZATCA procedure performed pursuant to the assessment made by it, requiring amendment of the net income of the year through assessing the net movement on the provision during the fiscal year (formed - paid during the year) and adding the opening balance to zakat base as a balance that has completed a year, was unobjectionable. Taxpayer also demanded additional deductions, with the amount of (SAR 2,195,392) as the net movement of inventory provision for 2009 and (SAR 5,016,143) as the net movement of doubtful debt provision for 2011. When reviewing the audited financial statements of 2011 and 2009 AD and the zakat assessments of the disputed year, the net movement requested by Taxpayer was not clear. Taxpayer was also requested to submit the provision statement issued by the accounting system (an explanatory statement of provision movement that explains the opening balance, the balance formed during the year, the balance used during the year, and the closing balance), but he did not submit the same to date. ZATCA explained the method used for handling provisions by adding the balance formed during the year to the adjusted net profit as a non-deductible expense and adding the opening balance after deducting the balance used during the period to zakat base as a balance that has completed a year, which is the correct way for handling provisions. Taxpayer did not submit any documents that require any amendments or comments on the outcome concluded by the decision, subject



matter of the appeal, in light of all defenses submitted by Taxpayer, which collectively represent a repetition of all matters raised before the Primary Committee when discussing Taxpayer objection regarding this Item. Therefore, all presented defenses did not affect the Primary Committee decision regarding this Item.

With regard to Taxpayer Appeal made concerning the Item (the current account of the Saudi debtor partner), Taxpayer appealed that the current account of the Saudi debtor partner was not deducted from zakat declarations by mistake, and ZATCA failed to correct the same when preparing the zakat assessment. In accordance with Article (4.1.2) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, based on all the above, since the dispute was essentially and substantially a documentary dispute, and upon reviewing the Case file, it turned out that Taxpayer has submitted the supporting documents, including the consolidated zakat declaration and the consolidated financial statements of Company and its affiliated companies. This did not affect the Taxpayer argument that ZATCA did not correct the error when preparing zakat assessment, as the responsibility of declaration amendment shall be assumed by Taxpayer. Therefore, the receivables due from the companies owned (100%) by the Saudi partner (..... Investment Company) shall be handled for the purpose of calculating Zakat as a current receivable account for the Saudi partner, as..... Investment Company and its affiliated companies submit a consolidated zakat declaration and consolidated financial statements and are treated as a single financial liability in terms of zakat. Therefore, it is evident that the Saudi partner shall have the right to deduct receivables due from affiliated companies owned (100%) by it as the current receivable account of the Saudi Partner, provided that it shall not exceed its share of the retained earnings. Therefore, the Department decided to accept Taxpayer Appeal and reverse the Primary Committee decision with regard to this Item.

With regard to Taxpayer Appeal concerning the Item (Withholding Tax of 2007 AD and the Period 2010-2021 AD), Taxpayer Appeal was based on the fact that the Company paid all withholding taxes imposed on professional and consultation services disclosed subject to statement No. (6) in 2016. In accordance with Article (63.1) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (1535) dated 11/06/1425AH, based on all the above, since the dispute was essentially and substantially a documentary dispute, and upon reviewing the Case file, it turned out that Taxpayer submitted the supporting documents proving payment of withholding tax in accordance with the file named (Withholding Tax - Supporting Documents), in which Taxpayer attached invoices issued by ZATCA and related detailed statement, and documents proving payment using the payment form issued by Third Party (Bank). Accordingly, the Department decided to accept Taxpayer Appeal and reverse the Primary Department decision with regard to this Item.

Concerning Taxpayer Appeal with regard to (Income Tax and Withholding Tax Late Payment Fines for the Period 2008-2012 AD), Article (70) of Law of Civil Procedures issued by Royal Decree No. (M/1) dated 22/01/1435 AH provides that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect."

Article (70.1) of Implementing Regulations of Law of Civil Procedures issued by Ministerial Resolution No. (39933) dated 19/05/1435 AH provides that: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the above, and upon reviewing data provided by both litigants, the Department was satisfied that the dispute was settled when Taxpayer accepted ZATCA request based on the appeal statement provided on 21/04/2021 AD, which included: "We inform you that the dispute with relation to this Item was settled, as the Company has paid all tax differences based on the initiative made by ZATCA, which granted companies full



exemption from late payment fines if they paid the due taxes before the end of March 2021. Accordingly, full income and withholding taxes were paid based on such initiative.”

With regard to the remaining Items, subject matter of this Case, the Department was free to consider the challenged decision grounds without making any additions whenever it became satisfied that these grounds were sufficient and did not require any further addition, because supporting those grounds confirms that the Department did not find any decision-related objections that deserved a response that went beyond those grounds. Accordingly, since it is established that the decision, subject matter of this appeal, with regard to challenged Items was consistent with the valid reasons on which it was based and sufficient to support the ruling, as the Department issuing the decision has considered the dispute grounds and reached the conclusion mentioned in its warding, since such Department did not observe anything that deserved correction or comment in light of defenses provided thereto. Therefore, the Department decided to reject Taxpayer Appeal and affirmed the decision of the Primary Department considering the appeal in its conclusions with relation to the remaining Items of the Case, based on related grounds.

Decision:

First: In form:

Accept the Appeal filed by Taxpayer/ Company, CR No. (.....), TIN No. (.....), against the Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISR-2020-69) issued in Case No. (ZIW-4970-2019) with regard to tax assessment for the period (2005-2012 AD).

Second: On Merits:

1. Disregard the Item (Losses Carried Forward for the Period 2009 - 2012 AD).
2. Accept the Appeal filed by Taxpayer regarding the Item (Bad debts) and reverse the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned herein.
3. Accept the Appeal filed by Taxpayer regarding the Item (Written Off Customs Duties) and reverse the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned herein.
4. Amend the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh with regard to the Item (Difference in Inventory Provision for 2009 AD).
5. Amend the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh with regard to the Item (Difference in Doubtful Debt Provision for 2009 AD), in accordance with the grounds mentioned herein.
6. Accept the Appeal filed by Taxpayer regarding the Item (Current account of the Saudi debtor partner) and reverse the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.
7. Accept the Appeal filed by Taxpayer regarding the Item (withholding tax of 2007 and 2012 AD) and reverse the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.
8. Settle the dispute related to the Item (Income tax and withholding tax late payment fines for the period 2008-2012 AD).
9. Reject the Appeal filed by Taxpayer regarding the remaining Items in the Case and affirm the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned herein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2023-56184)
Delivered in Case No. (ZIW-56184-2021)

Principle No. (380)

Capital gains tax and withholding tax may not be considered a part from Taxpayer annual declaration.

Facts:

The Department convened to consider the Appeal filed on 23/06/2020 AD by Company against ZATCA with regard to the First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2021-446) issued in Case No. (ZIW-2020-14312) with relation to zakat tax assessment for the period (2006-2016 AD), noting that the Case was filed by Appellant against ZATCA, and the Primary Department decision included the following:

First: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to tax assessment for the period (2006-2011 AD), subject matter of the Case.

Second: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to bonus expenses for 2011 AD, subject matter of the Case.

Third: Reject the objection of Plaintiff/..... Company (TIN:) against Defendant/ZATCA decision with relation to the Item of (Adding Guarantee Provision) for 2011 AD, subject matter of the Case.

Fourth: Reject the objection of Plaintiff/..... Company (TIN:) against Defendant/ZATCA decision with relation to the loan Item for 2011 AD, subject matter of the Case.

Fifth: Reject the objection of Plaintiff/..... Company (TIN:) against Defendant/ZATCA decision with relation to the Item (Non-deduction of Development Properties) for 2011 AD, subject matter of the Case.

Sixth: Reject the objection of Plaintiff/..... Company (TIN:) against Defendant/ZATCA decision with relation to the Item (withholding taxes) of Company, subject matter of the Case.

Seventh: Reject the objection of Plaintiff/..... Company (TIN:) against Defendant/ZATCA decision with relation to the Item (withholding tax late payment fines), subject matter of the Case.

Eighth: Amend Defendant/ZATCA action taken against Plaintiff/..... Company (TIN:) with relation to amounts due to partner for 2011 AD, as mentioned in the grounds.



Ninth: Cancel all other Defendant/ZATCA decisions taken against Plaintiff/..... Company (TIN:) with relation to zakat and tax assessments, subject matter of the Case.

Both litigants did not accept this decision, and each of them submitted a statement of appeal that included the following, in summary:

With regard to the Appeal filed by Taxpayer against the Primary Department decision, it could be appealed with relation to (Termination of the five-Year Period Specified for Tax Assessment for the Period 2009-2011 AD), Taxpayer claimed that law provisions, specifically Article (65) of the Tax Law, have provided that assessment procedures shall be made within a period not exceeding five (5) years from the end of the period specified for submitting declarations in any way. The provisions are clear, leave no room for misinterpretation, and achieve the legislator goal in terms of attempting to stabilize both Taxpayer and ZATCA situations with a limited period, which is applicable to the years of dispute. Concerning the Item (Non-approval of Bonus Expenses), Taxpayer claimed that such expenses are actual expenses incurred by the Company and were removed from its liability before completing one year, and related supporting documents were provided. Also, such expenses are related to the Company, not its partners, as the Company purchased a portion of its shares and distributed the same to its employees as part of the rewards and incentives program for senior management employees to motivate them to pursue their career in the Company. This Item is also supported by financial statements audited by a chartered accountant; therefore, it must be deducted from the zakat base. As for the Item (Withholding Tax on The Capital Increase from Retained Earnings), Taxpayer claimed that the capital increase from retained earnings during 2009 AD with the amount of (SAR 30 million) was a proposed capital increase as indicated in the audited financial statements, and the actual capital was not amended in the AOA and commercial register until 2011, after restructuring completion, which included the following new partners: and Company, which are companies residing within the Kingdom, are the ones who decided to increase in 2011.

Moreover, the tax was charged on the full amount of the proposed increase, while the share of the non-Saudi partner represents (48.34%), assuming that the Kuwaiti partner is subject to tax. As for the claim that restructuring takes the form of liquidation, the company has not been liquidated and is still practicing its activity, and such restructuring merely is an internal restructuring imposed due to the nature of activity, which resulted in the exit of the Kuwaiti partner from the company in exchange for his ownership of a share in Holding Company. Accordingly, the increase process actually took place in the company in 2011, not 2009, wherein the Kuwaiti partner was not a partner in the company, which disprove the existence of a profit distribution to the Kuwaiti partner in 2009. As for item (withholding tax on amounts owed to multiple parties), Taxpayer claims that ZATCA made an assessment of charged instead of the amounts paid, as accounting accrual principle stipulates that the expenses are charged according to the year that related thereof. In addition, there is no provision that states the imposition of a withholding tax on amounts charged to accounts, as the tax is due when a resident party pays an amount earned from a source of income within the Kingdom to a non-resident party, regardless of the date the related expense is recorded in accounts. Moreover, these amounts belong to companies residing in Gulf states, therefore, they are treated as residents of the Kingdom. As for item (addition of the guarantee provision), Taxpayer claims that it is actual expenses due as confirmed liabilities and not an allowance, which are paid later subject to the availability of cash or the due date, hence, they are an actual financial burden and not likely to occur. In addition, in matters pertaining to Zakat, the factual circumstances hold greater weight than formalities or legalities. As for item (addition of loans), Taxpayer claims that that it does not aware of the source of difference added by ZATCA, as activity of Islamic Murabaha Loans derived from the audited financial statements of 2011 and set forth in the statement of appeal shows that the amount of loans completed a full year is (SAR 257,714,220). As for item (addition of amounts owed to the partner), Taxpayer claims that balance was generated during the year and a did not completed a full year, hence, it should not be subject



to Zakat. As for the Primary Department's decision that the part used in operational costs is not subject to Zakat, and subjected part is the one that financed the settled asset based on account activity that proves it was generated during the year, i.e., did not completed a full year, as affirmed by company's financial statements of 2011, as statement of cash flows shows that the net cash from operating activities amounted to (SAR 293,354,146), and the addition of property and equipment amounted to (SAR 1,445,751). As for item (non-deduction of property for development), Taxpayer claims that the item must be deducted from the Base as it is a deductible expense. As for item (late payment fine), Taxpayer objects to the imposition of a late payment fine on tax difference resulting from items that are currently under appeal. In addition, ZATCA did not calculate the tax differences until after a period of time and the lapse of the legally specified period of five (5) years to amend the Assessment of 2009 to 2011, as the company could have avoided late payment fines if ZATCA had informed the company immediately after submitting Returns. Moreover, the dispute in question is an actual technical dispute that does not require the imposition of a fine. Therefore, Taxpayer requests to reverse the Primary Department's Decision of items in question for the stated grounds.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

As for ZATCA's appeal against the Primary Department's decision, which includes Zakat Assessment of 2006 to 2010, ZATCA clarifies that Returns submitted by Taxpayer included incorrect information that entitles ZATCA to repeat or make the Assessment based on Paragraph (8) of Article (21) of Implementing Regulations for Zakat Collection of 1438 AH, in accordance with the grounds stated in ZATCA's Reply submitted before the Primary Department. As for item (addition of amounts owed to the partner), ZATCA clarifies that the Primary Department's decision regarding the same is in violation of Paragraph (2) of Section (First) of Article (4) of Implementing Regulations for Zakat Collection. As for item (capital gains tax and concealment fines), ZATCA clarifies that capital gains in question occurred in 2011 and 2013, and the applicable provision at that time is Paragraph (E) of Article (16) of Implementing Regulations of Income Tax Law. ZATCA also clarifies that Ministerial Resolution No. (1776) dated 19/03/2014 AD which the Primary Department concluded to its decision was after the occurrence of capital gains, which means that the Primary Department's implementation of that decision for this item is a clear violation of the established principle, which is the non-retroactivity of laws. As for item (late payment fine), ZATCA clarifies that its procedure was in compliance with Paragraph (B) of Article (77) of the Income Tax Law, and that the information provided by Taxpayer regarding submitting Returns did not include the market value, with which the amounts were not compared according to Paragraph (7/b) Article (16) of Implementing Regulations of Income Tax Law. ZATCA requests, regarding this item, to abolish the Primary Department's decision that includes abolishment of ZATCA's decision regarding late payment fine for capital gains tax for years in question. Therefore, ZATCA adheres to the validity of its procedure and requests to accept its appeal and reverse the Primary Department's decision of items in question for the stated grounds. On Sunday 09/10/2022 AD, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video conference in accordance with the procedures for remote video litigation based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Upon reviewing the appeal filed by both parties, and by examining the contents of the case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant



laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On Merits: As for Taxpayer's appeal regarding the item (prescription for Tax Assessment of 2006 to 2011), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that Assessment and its amendment shall be within five (5) years and shall not exceed such period, whatever the case may be; and whereas Paragraph (A) and (B) of Article (65) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: "A. The Department may, with a reasoned notification, make or amend a tax assessment within five years of the deadline specified for filing the tax declaration for the taxable year, or at any time, upon the written consent of the Taxpayer. B. The Department may make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year if a Taxpayer does not file its tax declaration, or it is found that the declaration is incomplete or incorrect with the intent of tax evasion." Based on the foregoing, and with reference to the above Article, the Department found that the Tax Assessment is made within five (5) years from the end of the period specified for submitting the Tax Return, and ZATCA is entitled to exceed that period up to ten (10) years in specific cases or upon Taxpayer's written permission; and since it is established that ZATCA has been informed of this process and the tax due was paid and declared in Company's Annual Return, along with changes in partners' equity that took place, which entails that Assessment period is five (5) years, as considering the capital gains tax and the withholding tax separately from Company's Annual Return is incorrect. Moreover, by extrapolating the Law and its Implementing Regulations, it becomes clear that all procedures carried out, whether by Taxpayer or ZATCA, are subject to a specific period, in order to achieve stability of transactions and not leaving Taxpayers' positions anxious without determining a specific period that shows Taxpayers that their financial position will not be destabilized. Accordingly, the withholding tax and the capital gains tax are subject to legal provisions related to tax prescription. In addition, stating otherwise is not consistent with principles of justice and the resulting impact on Taxpayers' businesses and their financial and legal positions, which does not prejudice ZATCA's Reply submitted before the Primary Department regarding the validity of its procedure from a tax perspective, and that the capital gains tax on the sale was charged based on ZATCA obtaining new data and information that the company and its chartered accountant failed to provide upon the occurrence of the sale and exit process based on Article (65/B) of Income Tax Law, as section "Second" of ZATCA's appeal concluded to invalidity of ZATCA's procedure to require the company to pay capital gains based on Ministerial Resolution No. (1776) dated 18/05/1435 AH. In addition, by reviewing the decision in question, it is clear that it did not address Taxpayer's request to abolish the Assessment of withholding tax due to the expiration of the regulatory period to make the Assessment. Moreover, ZATCA's Reply did not clarify its opinion regarding the state of prescription on the withholding tax and the reasons for dismissal of Taxpayer's objection. Accordingly, the Department satisfies to accept Taxpayer's objection and reverse the appealed decision on this item.

As for Taxpayer's appeal regarding the item (withholding tax on capital increase of 2009), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that the increase in capital is proposed as indicated in the audited financial statements, where capital was not amended in the Articles of Association and Commercial Registration until after the year in question of this item; and whereas Paragraph (1) of Article (63) of Implementing Regulations of Income Tax Law stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: 5% as dividends"; and whereas Paragraph (6/b) of the same Article also stipulates: "(6) Dividends means any distribution by a resident company to a non-resident shareholder, and any profits transferred by a permanent establishment to related parties. The following shall be taken into consideration: (b) Partial or full liquidation of a company is deemed to be dividends in excess of the paid capital"; and whereas the increase in the capital by transferring the retained profits to the



capital does not, in fact, represent an actual or legal dividends, which makes it not subject to withholding tax, and that the capitalization of profits is not considered a set-off between accounts and does not entail a cash flow outside the Kingdom. In addition, during 2009 as stated in the audited financial statements for year 2010, Note No. (12) related to the capital stipulates: "On December 31, 2009, the partners decided to increase the capital of the company from (SAR 90,000,000) to (SAR 210,000,000) by transferring an amount of (SAR 30,000,000) from the retained profits and (SAR 90,000,000) from the partners' current account, while the legal procedures related to proving the increase in the capital have not yet been initiated". Moreover, the foreign partner, on whom the appealed decision was based, has left the company in 2011, while the item appealed against relates to 2009. Accordingly, the Department satisfies to amend the appealed decision by imposing a withholding tax for the year of exit 2011 as the incident establishing the imposition of the withholding tax, provided that it is imposed on the share of the non-Saudi partner of the increase in capital by (48.34%).

As for Taxpayer's appeal regarding the item (addition of amounts owed to the partner of 2011), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that balance was generated during the year and a did not completed a full year, hence, it should not be subject to Zakat; and whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "Zakat Base consists of all Taxpayer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) Sources that remained as cash and completed a full year. (b) Sources used to finance technical purposes. (c) Sources used in trade offers and completed a full year.". Based on the foregoing, the creditor partner's current account is one of the sources of funding that is added to the Zakat Base when completed a full year, or its financing is deducted from Zakat Base. Upon reviewing the case file, the Department found that through Note No. (5) contained in the audited financial statements of 2011 on "balances of the relevant authorities and transactions" that the transactions that took place with the partner during the year represent payments on partner's behalf, a transfer from (to) property for development, rental expenses, and a purchase of an investment in securities available for sale. Accordingly, it is clear that the amounts owed to the above partner are the result of transactions that took place during the year, hence, did not complete a full year. Moreover, these amounts did not finance assets settled from Zakat Base, as the deduction of property for development from Zakat Base of 2011 was rejected in accordance with Section (Five) of the appealed decision. Therefore, the Department satisfies to accept Taxpayer's objection and reverse the appealed decision on this item.

As for Taxpayer's appeal in regards of the (late payment fine) item, which includes objection to Primary Department's decision regarding the same, as Taxpayer claims that due to the existence of an actual technical dispute, late payment fine should not be imposed until the completion of objection procedures; and Whereas Paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article (76) of this Law and in Paragraph (b) of this Article, a Taxpayer shall pay a delay fine of (1%) for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on the foregoing, and since the delay penalty is imposed in relation to the tax due and payable on the due date, and since the fine resulting from the delay in paying the withholding tax on the increase in capital from retained earnings is related to a technical dispute and a difference in viewpoints between the Taxpayer and ZATCA, the Department concludes to amend the decision of the Primary Department to impose the fine starting from the date the Taxpayer was notified of the withholding tax assessment until the date of payment. As for the penalties related to the withholding tax on amounts due to multiple entities, since the Taxpayer did not provide evidence supporting their viewpoint on this matter, and there is a recognized technical dispute



concerning it, it is decided to uphold the adjudication decision regarding those fines arising from the withholding tax on amounts due to multiple entities and to charge them from the due date. As for the appeal of the Taxpayer and ZATCA on the rest of the items in question, The Department shall reflect on the subject of dispute, and after reviewing Taxpayer's appeal and ZATCA's appeal, and where this Department has determined validity of the conclusion of decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, and that the reasons on which its decision was based are sufficient to support that decision, and where the Department did not notice what calls for correction and comment before this Department, which ends with this Department rejecting Taxpayer's appeal and rejecting ZATCA's appeal and supporting the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh on outcome of the rest of the items in question, based on its reasons.

Decision:

First: Accept, in form, appeal from Taxpayer/ ... Company, with Commercial Register No. (...) And the appeal submitted by ZATCA, against decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2021-446) issued in Case No. (ZIW-2020-14232) related to tax zakat assessment for the years 2006 to 2016 AD.

Second: On Merits:

1. Accept Taxpayer's appeal regarding the item of (Statute of Limitations for Tax Assessments for the Years 2006 to 2011), and the annul decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and grounds stated in this decision.
2. Accept Taxpayer's appeal regarding the item (Withholding Tax on the Increase in Capital for the Year 2009), and amend decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and grounds stated in this decision.
3. Accept Taxpayer's appeal regarding the item of (Addition of Amounts Due to the Partner for 2011), and annul decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and grounds stated in this decision.
4. Accept Taxpayer's appeal regarding the item of (Delay fine), and amend decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and grounds stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2023-64209)
Delivered in Case No. (ZI-
64209-2021)

Principle No. (381)

The standard approach is to trust the audited financial statements and their details unless ZATCA presents evidence warranting deviation therefrom.

Facts:

For considering the appeal filed on 10/08/2021 AD by Company against and ZATCA, based on decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2020-529) issued in Case No. (ZI-2019-8653) related to zakat tax assessment for the years from 2010 to 2014, in the case filed by the Appellant against ZATCA, in which its decision was as follows:

First: Annul decision of Defendant/ ZATCA against Plaintiff/ Company. (TIN.....), related to zakat and tax assessment for the years from 2010 to 2012, the subject of the case.

Second: Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of imports with excess charges for the year 2014, which is the subject of the case.

Third: Proof of the end of the dispute of Plaintiff/ Company (TIN) with Defendant/ZATCA, related to the item of banks due and other current liabilities for the years 2013 and 2014, subject of the case, by Defendant's acceptance of Plaintiff's requests in this regard.

Fourth: Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of imports with advance payments for the year 2014, which is the subject of the case.

Fifth: Proof of the end of the dispute of Plaintiff/ Company (TIN) with Defendant/ZATCA, related to the item of dues to the partner for the years 2013 and 2014, subject of the case, by Defendant's acceptance of Plaintiff's requests in this regard.

Sixth: Annul decision of Defendant/ ZATCA against Plaintiff/ Company. (TIN.....), related to the item of accumulated losses for the years 2013 and 2014 for the zakat assessment in question.

Seventh: Annul decision of Defendant/ ZATCA against Plaintiff/ Company. (TIN.....), related to the item of accumulated losses for the years 2013 and 2014 for the tax assessment in question.

Eighth: Proof of the end of the dispute of Plaintiff/ Company (TIN) with Defendant/ZATCA, related to the item concerning the utilized portion of the End-of-Service Benefit provision for the years 2013 and 2014, which is the subject of the case, by Defendant's acceptance of Plaintiff's requests in this regard.

Ninth. Reject objection of Plaintiff/ Company (TIN) On decision of Defendant/ZATCA, related to the item concerning the utilized portion of doubtful debts provision and the inventory provision for the years 2013 and 2014, subject of the case.



Tenth: Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of gratuities for the year 2013, subject of the case.

Eleventh: Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of depreciation differences for the years 2013 and 2014, subject of the case.

Twelfth: Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of fixed assets for the year 2013, subject of the case.

Thirteenth: Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN.....), related to fines for the years from 2010 to 2012, subject of the case.

Fourteenth: Amend decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN.....), related to the fines for the years 2013 and 2014, subject of the case, as indicated in the reasons.

Both litigants did not accept this decision, and each of them submitted a statement of appeal that includes the following, in summary:

Regarding Taxpayer's appeal against decision of the Primary Department, the appeal concerns the item (gratuities for the year 2013); the Taxpayer asserts that this expense was genuinely incurred by the Appellant Company to generate taxable income and zakat. It is backed by the financial statements audited by a certified accountant, and the Appellant seeks to deduct this expense from the adjusted net profit for the year 2013. Regarding the item of (Depreciation differences for the years 2013 and 2014); the Taxpayer is appealing decision of the Primary Department. The Taxpayer contends that depreciation statements were submitted during the adjudication stage, and they were prepared in accordance with Article (17) of the Income Tax Law. The Taxpayer also argues that ZATCA, when calculating depreciation, incorrectly classified both furniture and equipment under the third group in the depreciation table (as they were grouped together in the property and equipment note in the financial statements). However, these items were separately declared in Taxpayer's filings (furniture under the fifth group and equipment under the third group in the depreciation table) for the years 2013 and 2014. This misclassification led to discrepancies between ZATCA's calculation and Taxpayer's calculation. Regarding the item of (imports with excess charges for the year 2014), the Taxpayer asserts that the discrepancies arose because the company mistakenly included a portion of internal purchases within the external purchases in its declaration. The Taxpayer maintains accuracy of its financial transactions and requests that external purchases be approved as recorded in company's books and accepted accordingly. Regarding the item of (Advance payments for the year 2014), the Taxpayer argues that these amounts are customer advances, not loans, and therefore shall not be subject to zakat. Since they are less than a year old, they are considered current liabilities and did not fund any capital additions. The Taxpayer also provided a statement detailing the movement of advance payments account. Regarding the item of (use of the provision for doubtful debts for 2014), the Taxpayer is appealing the decision of the Primary Department. The Taxpayer argues that the use of this provision is backed by the financial statements audited by a chartered accountant and requests that the utilized amount be deducted from the provision for doubtful debts for 2014.

ZATCA also did not accept the decision and subsequently filed an appeal against the contested decision, summarizing their objections as follows:

Regarding ZATCA's appeal against decision of the Primary Department, their appeal centers on the matter of (expiration of the statutory period for zakat and tax assessments). ZATCA argues that its decision was in accordance with Article (21) of the Executive Regulations for the Collection of Zakat and Article 65 of the Income Tax Law. ZATCA conducted its zakat and tax assessments for the years 2010 to 2012 and found that the declarations submitted by Taxpayer were incorrect and contained false information, as outlined in ZATCA's reply memorandum, which details the items ZATCA adjusted and the reasons for adjustments. This serves as material evidence that Taxpayer's declarations included inaccurate information, granting ZATCA the right to conduct or modify the assessment based on the aforementioned legal provisions. Therefore, Department's statement that there is no evidence of inaccuracies in the declaration that would permit the



modification of the assessment after five years cannot be upheld, especially since the Department, in its decision under appeal, supported ZATCA's adjustments for the same items for the years 2013 to 2014. Regarding the item of (accumulated losses for the years 2013 and 2014 from Zakat base); ZATCA insists that calculation of the accumulated losses shall be based on Zakat assessments for the years 2013 and 2014, as Zakat assessments canceled for the years 2010 to 2012 have not yet been finalized by a definitive decision. Regarding the item of (accumulated losses for the years 2013 and 2014 from the tax base), ZATCA demands that calculation of the carried-forward losses be in accordance with tax assessments for the years 2013 and 2014, as the tax assessments that were canceled for the years 2010 to 2012 have not yet been finalized by a definitive decision. Regarding the item (delay fines), ZATCA requests reversal of Primary Department's decision.

On Saturday, dated: 03/06/2023 AD, the First Appellate Department for Income Tax Violations and Disputes held its session, with presence of its members whose names are recorded in the minutes, through virtual communication in accordance with the remote litigation procedures; based on what was stated in item number: (2) of Article (15) Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH; After reviewing the two appeals, the memoranda submitted, the papers and documents contained in the case file, after deliberation, and since the case is ready for adjudication in its current state, the Department decides to close the pleading and reserve the case for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted by Taxpayer and ZATCA, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On merits, regarding Taxpayer's appeal concerning the item of (Gratuities for the year 2013), Taxpayer's appeal revolves around objecting to the decision made by the Primary Department on this item. The Taxpayer claims that these are actual expenses incurred by the appellant company to generate taxable income and zakat, supported by the audited financial statements by the certified accountant. The Appellant requests that these expenses be deducted from the adjusted net profit for the year 2013, based on Article (12) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, which pertains to expenses related to income generation, stating that: "All regular and necessary expenses of earning taxable income, paid or accrued, and incurred during the taxable year are deductible in determining the tax base, with the exception of outlays of a capital nature and other nondeductible expenses according to Article 13 of this Law and other provisions of this Chapter." as outlined in Paragraph (1) of Article (9) of the Implementing Regulations of the Income Tax Law, issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, which includes: "Deductible expenses in determining taxable income are as follows: 1. All ordinary and necessary expenses to achieve taxable income, whether paid or due, provided that the following controls are in place: a) The expense must be an actual one, supported by documentary evidence or other proof that allows the Authority to verify its accuracy. (b) That it must be linked to the achievement of taxable income. (c) It must be related to the tax year. (d) It must not be of a capital nature". Based on the above, expenses are considered deductible if they are proven to be actual and supported by proper documentation. The default is to rely on the audited financial statements and their contents unless ZATCA presents evidence that justifies a deviation. Since ZATCA did not provide any such evidence, the Department deems Taxpayer's appeal on this item acceptable.

As for the appeal of the Taxpayer and ZATCA on the rest of the items in question, Whereas the Department is not obligated to consider reasons for the appealed decision or add to them when it determines that these reasons are sufficient and require no new justification. By affirming those reasons, it confirms that the appeals against the decision did not present any new arguments



warranting further response beyond what was already provided. It has been established that the decision in question, regarding the disputed items under appeal, aligns with the justified reasons on which it was based and is sufficient to support its ruling. The issuing department thoroughly examined the disputed matter and reached the conclusion reflected in decision's operative part. Since this department found no grounds for correction or further comment based on the arguments presented, it concludes that Taxpayer's appeal should be dismissed, as well as ZATCA's appeal, thereby upholding the decision of the Primary Department in its entirety, supported by the reasons provided.

With regard to ZATCA's appeal regarding the item (delay fines), it demands annulment of Primary Department's, based on Paragraph (1). As per Paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, stating that: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a Taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on Paragraph (1) of Article (68) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: (b) Delay in payment of due tax as per the Department's assessment". Based on the foregoing, and whereas decision of the Appellate Department ended in rejecting ZATCA's appeal on all items and endorsing the decision of the Primary Department, which entails amending decision of the Primary Department, as imposition of the fine is a consequence of the disputed items.

Decision:

First: Accept, in form, appeal from the Taxpayer/..... Company, Commercial Register No. (.....), TIN (.....), and the appeal submitted by ZATCA, against decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, No. (IFR-2020-529), issued in case number (ZI-2019-8653), related to zakat and tax assessment for the years 2010 to 2014.

Second: On Merits:

1. Reject ZATCA's appeal and confirm decision of Primary Department regarding expiry of the statutory period of Zakat and tax assessment from 2010 to 2012.
2. Reject ZATCA's appeal and confirm Primary Department's decision regarding the item of (accumulated losses from Zakat base for the years 2013 and 2014).
3. Reject ZATCA's appeal and support decision of Primary Department regarding the item of (accumulated losses from tax base for the years 2013 and 2014).
4. Accept Taxpayer's appeal and cancel decision of the Primary Department regarding the item of (Gratuities for the year 2013).
5. Reject Taxpayer's appeal and support decision of the Primary Department regarding the item of (Imports with Excess Charges for the year 2014).
6. Reject Taxpayer's appeal and affirm Primary Department's decision regarding the item of (Advance Payments for the year 2014).
7. Reject Taxpayer's appeal and uphold Primary Department's decision regarding the item of (used from the provision for doubtful debts for 2014).
8. Amend decision of the Primary Department regarding the appeal on the item of (delay fine).

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No. (VA-2022-742)
Issued in Appeal No. (V-48016-2021)

Principle No. (382)

Departments for Adjudicating Zakat, Tax, and Customs Disputes may review Taxpayer's objection to ZATCA's assessment if ZATCA's decision on the objection is issued before the Department issues its own decision on the matter.

Facts:

Since this decision was not accepted by the Appellant, she submitted an appeal to the Appellate Department, including her objection to Primary Department's decision under appeal, which ruled that the case was inadmissible on procedural grounds for being filed prematurely. She argued that Appellee's decision to impose the fine was incorrect and concluded by requesting that the appeal be accepted.

On Wednesday 09/03/1444 AH, corresponding to 05/10/2022 AD, First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Primary Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds:

Whereas, by reviewing case documents and appeal statement submitted, the Department found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, after the Appellate Department reviewed case documents and examined the contents, including all submitted evidence and documents, and after considering the memoranda and responses presented by both parties, it became clear to the Appellate Department that the decision issued by the Primary Department ruled Appellant's case inadmissible for being filed prematurely. The basis for Primary Department's decision was that Appellant had submitted the objection to the General Secretariat of Zakat, Tax, and Customs Committees before the Appellee had issued a decision on the Appellant's objection. However, based on the information and documents presented in the case, it was established that the Appellee had responded before the Primary Department by rejecting Appellant's objection, which constitutes a refusal of the objection filed by the Appellant within the statutory period. As a result, the Appellate Department concludes to accept the appeal and annul Primary Department's decision.



Decision:

First: Accept Appeal of/ ... National ID No.: in form to be submitted within the period specified by law.

Second: Accept Appeal of/ ... National ID No. (.....), cancel decision of the Second Department to Adjudicate Value Added Tax violations and disputes in Riyadh No. (VSR-2021-942), and return the case to the Department for consideration in regards of merits.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Value Added and Excise Tax Violations and Disputes.

Decision No. (VA-2023-91551)
Issued in Appeal No. (E-91551-2022)

Principle No. (383)

Fines are essentially a penalty resulting from the breach of laws and regulations. If the purpose behind imposing them is not fulfilled, they cannot be enforced.

Facts:

To consider the appeal filed on 19/01/2022, by ... National ID No. (...) in his capacity as owner of Establishment, Commercial Register No. (...) on decision of First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh No. (ER-2021-110) in the case filed by Appellant against Appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

- Reject the case in form.

Since the Appellant did not accept this decision, he submitted an appeal to the Appellate Department, outlining his objection to Primary Department's decision under appeal. The decision had ruled the case inadmissible on procedural grounds, stating that the two violations were recorded after he had transferred ownership of the commercial register to another merchant. The Appellant concluded by requesting that the appeal be accepted and the Primary Department's decision be overturned.

The First Appellate Department for Value Added Tax and Excise Tax Violations and Disputes held its session to review the submitted appeal via visual communication, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which states: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Primary Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds:

Whereas, by reviewing case documents and appeal statement submitted, the Department found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, after the Appellate Department reviewed case documents and examined the evidence and records, and after considering the memoranda and responses submitted by both parties, it became clear to the Appellate Department that the decision issued by Primary Department ruled the case inadmissible on procedural grounds. The Appellant objected to Primary Department's



decision, arguing that the fine was issued after ownership of the commercial register had been transferred. The Appellant provided a statement from the Ministry of Commerce confirming transfer of commercial register ownership. Since fines are, in essence, a penalty arising from violation of laws and regulations, and given that the administrative decision issued by Appellee failed to meet its purpose as the fine was not imposed on commercial register's owner, the Appellate Department concludes to accept the submitted appeal and annul Primary Department's decision.

Decision:

First: Accept Appeal of/... National ID No. (.....), holding ... Commercial Register No. (...) in form to be submitted within the period specified by law.

Second: Accept Appeal of/....., and annul decision of the First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh, under No. (ER-2021-110), with the case remanded to the Department for substantive consideration.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2119)
Issued in Appeal No. (ZIW-68357-2021)

Principle No. (384)

Fines are nullified when their basis is voided, as the subsidiary follows the principle. The start date for calculating fines depends on the nature of dispute between the Taxpayer and ZATCA. If the dispute is technical, fines shall begin to accrue as of the date of final decision on the matter. Otherwise, they are calculated based on the statutory due date.

Facts:

To consider the appeal submitted on 01/09/2020 by/..... Company, TIN (...), and the appeal submitted on 02/09/2021 by ZATCA, against decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, under No. (IFR-2021-808), issued in case No. (ZIW-2020-14232), related to zakat and tax assessment for the years 2006 to 2016, in the case filed by the Appellant against ZATCA, Primary Department's decision was as follows:

1. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN), related to zakat and tax assessment for the years from 2010 to 2012, subject of the case.
2. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to tax assessment for the years from 2006 to 2011, subject of the case.
3. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) relating to non-adjustment of the net profit with the depreciation difference for the year 2010, subject of the case.
4. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to non-approval of bonus expenses for the years 2012 and 2013, subject of the case.
5. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to warranty provision for the year 2013, subject of the case.
6. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of addition of zakat provision for the year 2011, subject of the case.
7. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of addition of warranty provision for the years 2012 and 2013, subject of the case.
8. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of addition of Islamic Murabaha for the year 2012, subject of the case.



9. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to addition of liabilities to related parties for the years 2012 and 2013, subject of the case.
10. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to addition of liabilities to related parties for the year 2010, subject of the case.
11. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the material error in addition of liabilities to related parties for the year 2013, subject of the case.
12. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of addition of shareholder liabilities for the year 2013, subject of the case.
13. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the item of adding capital increase for the year 2011, subject of the case.
14. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the non-deduction of investments for 2010, subject of the case.
15. Confirm resolution of the dispute involving Plaintiff/ Company (TIN) With Defendant/ZATCA, regarding deduction of investment in..... Company and Company and Company For the year 2013, by accepting Defendant's requests in this regard.
16. Reject objection of Plaintiff/ Company (TIN) on the decision of Defendant/ZATCA, regarding deduction of investment in..... Jadwa Fund for real estate development and the Qurtuba Fund from Zakat base for the years 2012 and 2013, subject of the case.
17. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Relating to deduction of 50% of the land of Qairawan Project (1) for the year 2013, subject of the case.
18. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item (Other Development Properties) for the years 2012 and 2013, subject of the case.
19. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to not deducting advance payments to suppliers for the years 2012 and 2013, subject of the case.
20. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the item of capital gains taxes and concealment fines in question.
21. Confirm resolution of the dispute involving Plaintiff/ Company (TIN) With Defendant/ZATCA, related to the withholding tax item for December 2011, subject of the case amounted to (SAR 1,776,568) one million seven hundred and seventy-six thousand five hundred and sixty-eight riyals, as well as related fines, by Plaintiff's acceptance of Defendant's action in this regard.
22. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the item of withholding taxes on capital increase the year 2011 and related fines to the case in question.

Both litigants did not accept this decision, and each of them submitted a statement of appeal that includes the following, in summary:

Regarding Taxpayer's appeal against decision of the Primary Department, the appeal concerns the item of (expiration of the five-year statutory period for tax assessment for the years 2006 to 2011). The Taxpayer argues that tax liability falls on the seller as the taxable entity since the law required the seller to notify ZATCA of any capital transactions, which has been already done. Additionally, the Taxpayer asserts that the withholding tax was reported when due and paid to ZATCA within



the statutory deadlines. Therefore, there is no case of submitting an incomplete tax return. The difference in views between the Taxpayer and ZATCA regarding calculation of capital gains and withholding tax does not constitute evidence of tax evasion or concealment of information that would warrant reassessment. Regarding the item of (non-approval of bonus expenses for the years 2012 and 2013), the Taxpayer claims that the unapproved bonuses represent actual, documented expenses necessary for generating income, as they are disbursed according to the general financial policy and are approved annually by the Board of Directors. Thus, they are eligible for deduction under the law. Regarding the item of (addition of a warranty provision for the year 2013), the Taxpayer argues that these are actual, due expenses classified as confirmed liabilities, not provisions, and are paid later when cash flow permits or the due date arrives. Regarding the item of (addition of a warranty provision for the years 2012 and 2013 in the amount of SAR 9,000,000), the Taxpayer contends that this item represents due expenses and, therefore, shall not be subject to zakat as it does not fall under the category of provisions. Regarding the item of (addition of zakat provision for the year 2011), the Taxpayer asserts that it represents confirmed, non-contingent liabilities. Regarding the item of (addition of Islamic Murabaha for the year 2012), the Taxpayer argues that the full lunar year has not passed on Murabaha. Regarding the item of (addition of shareholder liabilities for the year 2013), the Taxpayer claims that the full lunar year has not passed on the amount, and it was not used to finance any capital expenditure or assets that are deductible from the base. Regarding the item of (non-deduction of investments in Jadwa Fund ... for real estate development and Manazel Qurtuba Fund from zakat base for the years 2012 and 2013), the Taxpayer argues that these are long-term investments intended for holding, and that classifying them as "available-for-sale investments" in the financial statements is an accounting term that does not change the nature of investments as long-term. Therefore, they shall be deducted from zakat base. Regarding the item of (non-deduction of development properties amounting to SAR 783,161,117 and SAR 875,844,371 for the years 2012 and 2013, respectively), the Taxpayer claims that transferring amounts to cost of sales relates to assets or properties prepared for sale and classified as current assets. Regarding the item of (non-deduction of advance payments to suppliers for the years 2012 and 2013), the Taxpayer argues that the nature of payments was not considered, specifically whether they were related to assets deducted from zakat base. Therefore, the advance payments, having been made in cash, shall be treated similarly to the assets related to those payments. Accordingly, the Taxpayer requests annulment of Primary Department's decision regarding contested items for the aforementioned reasons.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

Regarding ZATCA's appeal against Primary Department's decision, ZATCA's argument concerning (zakat assessment for the years 2006 to 2010 AD) is that proving inaccuracy of the declaration only justifies ZATCA's right to amend the declarations. These declarations were revised with Clauses that cannot be overlooked due to incorrect preparation. Concerning the adjustment of net profit for depreciation in 2010, ZATCA maintains its right to accept this Clause and return it for further review to address its perspective. As for (addition of amounts due from related parties for the years 2010, 2012, and 2013 AD), ZATCA notes that Department did not provide details on how the amounts for 2012 and 2013 were accurately determined or whether the analytical statement applied to the year under appeal. The statement lacked certification from a licensed accountant, and the daily entries needed to verify accuracy of the statement were missing. Regarding (the amounts due from related parties for 2010, ZATCA emphasizes its right to accept the Clause and return it for further review. For (the claimed material error in adding amounts due from related parties for 2013), ZATCA argues that Department did not specify the document that supported the error or whether it was certified by a licensed accountant. On the issue of (capital increase for 2011 amounting to (SAR 90,000,000), ZATCA explains that the Taxpayer reported on 11/09/1437 AH that these funds resulted from restructuring and formation of company Entries were made from/ shareholders' accounts to/ the capital account for a total of



SAR 90 million to complete nominal value of the authorized capital. Upon discussion, the Taxpayer provided a written response outlining the results of restructuring. Regarding (deductions for investments in 2010) ZATCA states that all lands) categorized under development in the non-current assets section of the balance sheet—whether undeveloped or developed—were purchased for the purpose of development and eventual sale. For (the deduction of 50% of the land for Al Qirawan (1) project in 2013), ZATCA notes that the Taxpayer did not provide any supporting documents for this deduction. Since projects under development are intended for sale once completed and Taxpayer's activities include investment and real estate development, these projects are classified as inventory rather than fixed assets. The Taxpayer submitted an analytical statement explaining the use of each land parcel, including villas, rental markets, and rental apartments. Although the land was not sold within the specified period, company's intent was to sell it, not to hold it. Therefore, this land shall not be deducted from zakat base. Regarding (capital gains taxes and concealment penalties), ZATCA's decision was based on Ministerial Decision No. (1776) of 1435 AH, which applies to Taxpayer's case. This decision is effective as of its issuance date and enforceable to all assessments from that date that have not yet become final. For (withholding taxes on capital increase in 2011), ZATCA argues that the substance of transaction shall be considered over its form. An increase in capital generally requires cash financing from outside the Kingdom. Using profits instead of distributing them and then providing external financing is viewed as an internal adjustment rather than an actual distribution. Additionally, the Kuwaiti partner sold his entire share in 2012 and 2013, thereby benefiting from the profits transferred to capital upon the sale of his share. Therefore, ZATCA maintains validity and correctness of its procedures and requests annulment of Department's decision on the Clauses under appeal for the reasons stated above.

On Wednesday, dated: 29/11/2022 AD, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video communication in accordance with the procedures of remote visual litigation; Based on what is stated in Clause No.: Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Upon reviewing the appeal filed by both parties, and by examining the contents of the case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.



Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On merits, and where it is regarding Taxpayer's appeal on the item of (adding Islamic Murabaha for the year 2012), and whereas Taxpayer's appeal lies in the lack of convergence on Murabaha. Whereas Paragraph (First/5) of Article (4) of the Executive Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "Zakat base consists of all Taxpayer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. (c) Items used in trade and has passed a full lunar year". Accordingly, loans shall be included in Zakat base whenever a full lunar year is passed. A review of the submitted documents showed that the audited financial statements for 2012 were provided. Upon examination, it was found that the full lunar year did not pass for the opening balance at the start of the period. Therefore, the Department accepted Taxpayer's appeal and reversed Primary Department's decision on this matter.

With regard to Taxpayer's appeal on (addition due to shareholders in 2013), the appeal concerns the failure to transfer the amount and lack of financing for the properties or assets deducted from the base. Whereas Paragraph (First/5) of Article (4) of the Executive Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "Zakat base consists of all Taxpayer's funds subject to Zakat, including: Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by the Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. (c) Items used in trade and has passed a full lunar year". Accordingly, loans shall be included in Zakat base whenever a full lunar year is passed. Upon reviewing the submitted documents, it was found that the audited financial statements for the year 2013 showed, through Note No. (5) related to balances and transactions with related parties, that there were amounts due to shareholders at the end of the period amounting to (SAR 58,910,153), while at the beginning of the period it was (zero). Therefore, the lunar year has not passed on the loan, leading the Department to conclude that Taxpayer's appeal is accepted and the decision of the Department is overturned on this matter.

Regarding Taxpayer's appeal concerning the item of "non-deduction of advance payments to suppliers for the years (2012 and 2013)," Taxpayer's appeal centers on the fact that the nature of payments was not considered, specifically whether they were related to assets deducted from zakat base. Therefore, since the advance payments were made in cash, they shall be treated as assets related to those payments. Whereas Paragraph (Second/1) of Article (4) of the Executive Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "The following items shall be deducted from the zakat base: 1- Fixed assets including the following: The net value of fixed assets (acquired assets), any payments for the purchase of fixed assets, and the value of spare parts not intended for sale, provided that these assets are owned by the Taxpayer—unless there is a legal impediment to transferring ownership—and that they are used in the activity." Whereas Paragraph (3) of Article (20) of the Executive Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "The burden of proving validity of the items mentioned in Taxpayer's Zakat declaration and any other data shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove validity of the items mentioned in his declaration, the Authority may not approve the item whose validity is not proven by the Taxpayer or make a discretionary link according to Authority's point of view in light of the circumstances and facts related to the case



and the information available thereto". Paragraph (1) of Article (5) of the Executive Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: (a) That it is an actual expense supported by documentary evidence or other indications that enable the authority to verify its accuracy, even if it relates to previous years." (b) Be related to the activity and not related to personal expenses or other activities. (c) It is not of a capital nature, and in the event that an expense of a capital nature is included in the expenses, it shall be adjusted as a result of the activity and includes the fixed assets and shall be consumed in accordance with the statutory ratios." Accordingly, and after reviewing case file, it is clear that the dispute in this item is a documentary dispute, and by reference to the documents attached to case file, it is clear that Plaintiff did not provide proof that payments made to the suppliers are related to the assets owned for the purpose of acquired assets to be accepted for deduction from Zakat base, and therefore we see support for ZATCA's action and reject Plaintiff's objection in this item. Based on the foregoing, the amounts paid in advance shall be deducted in the event that they are proven to be correct and related to the activity, as an expense that may be deducted, and by reviewing case file, the following shall be submitted: - An advance payment guarantee letter for Qurtuba Houses Project dated 15/12/2012 AD, submitted by..... Company, stating: "We shall pay immediately upon your written request and regardless of any objection from our side or any other party, this amount or any amounts you demand payment of, provided that the total does not exceed the aforementioned amount of (SAR 5,335,847)". Additionally, a check issued to (.....) Company for the amount of (SAR 5,335,847) dated 12/12/2012 AD, and a check for (SAR 420,243) paid to Company regarding Manazel Qurtuba Project dated 4/3/2013 AD." - "A system extract shows that advance payments totaled (SAR 118,743,880) for 2012 and (SAR 213,209,455) for 2013. Given this information, and according to the system-generated statement, the Department has decided to approve deduction of (SAR 118,743,880) for 2012 and (SAR 213,209,455) for 2013." As for the appeal of the Taxpayer and ZATCA on the rest of the items in question, Whereas the Department is not obligated to consider reasons for the appealed decision or add to them when it determines that these reasons are sufficient and require no new justification. By affirming those reasons, it confirms that the appeals against the decision did not present any new arguments warranting further response beyond what was already provided. It has been established that the decision in question, regarding the disputed items under appeal, aligns with the justified reasons on which it was based and is sufficient to support its ruling. The issuing department thoroughly examined the disputed matter and reached the conclusion reflected in decision's operative part. Since this department found no grounds for correction or further comment based on the arguments presented, it concludes that Taxpayer's appeal should be dismissed, as well as ZATCA's appeal, thereby upholding the decision of the Primary Department in its entirety, supported by the reasons provided.

Decision:

First: Accept, in form, Appeal of Taxpayer/ ... Company, with Commercial Register No. (...) And the appeal submitted by ZATCA, against decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2021-808) issued in Case No. (ZIW-2020-14232) related to tax zakat assessment for the years 2006 to 2016 AD.

Second: On Merits:

1. Accepting Taxpayer's appeal regarding the item of (adding Islamic Murabaha for the year 2012 AD), and overturning decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and justifications mentioned in this decision.
2. Accepting Taxpayer's appeal regarding the item of (addition of dues to shareholders in 2013), and overturning decision of the First Department for Determination of Income Tax Violations



and Disputes in Riyadh, in accordance with the reasons and justifications mentioned in this decision.

3. Accepting Taxpayer's appeal regarding the item of (failure to deduct advance payments to suppliers for the years 2012 and 2013 AD), and amending the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, according to the reasons and justifications mentioned in this decision
4. Rejecting Taxpayer's appeal and ZATCA's appeal regarding the remaining items under dispute, and upholding decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and justifications provided in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No. (VA-2022-763)
Issued in Appeal No. (V-84172-2021)

Principle No. (385)

Judicial costs shall not be due in the event that the dispute between the two parties is about an ambiguous right, and no aspect of arbitrariness has been proven by the use by either party to the dispute of its legally stipulated right.

Facts:

This is to consider the appeal filed on 28/11/2021AD, by ..., National ID No. (...), in his capacity as representative for the appellant company under power of attorney No. (...), against decision of the First Department to adjudicate Value Added Tax violations and disputes Riyadh No. (VR-2021-560) in the case filed by the appellant against the appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

- Accept the case in form.

Second: On merits:

- Reject case of Plaintiff..., Commercial Register No. (...), and Commercial Register No. (...), by canceling ZATCA's decision regarding revaluation for the month of June 2018, imposing value added tax in the amount of (SAR 187,704.90), and a fine for error in declaration in the amount of (SAR 93,852.45), as well as a fine for late payment in the amount of (SAR 262,786.86).

- Rejection case of Plaintiff, Commercial Register No. (...), and Commercial Register No. (...), obliging ZATCA to pay judicial costs.

Whereas the appellant did not accept this decision, it submitted an appeal to the Appellate Department, expressing its objection to Adjudication Committee's decision to reject its case. The appeal included a request to overturn the decision made by the appellee (ZATCA) concerning revaluation of June 2018 and the associated fines. The appellant company argued that it had mistakenly submitted a commercial invoice and later provided the correct tax invoice, concluding with a request to accept the appeal and annul Committee's decision.

On Wednesday 09/03/1444 AH, corresponding to 05/10/2022 AD, First Appellate Department for Value Added and Excise Tax Violations and Disputesheld a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of Appeals Chamber may be held via modern technological means provided by General Secretariat." Case file, including memoranda and documents, and Appeals Chamber decision subject of appeal have been reviewed. After discussion and deliberation, Chamber decided to adjourn session and issue decision.

Grounds:



Upon reviewing case documents and the submitted appeal list, the Department determined that the conditions for hearing the appeal have been properly met in accordance with the relevant laws, regulations, and decisions. This confirms that appeal request is procedurally acceptable, as it was submitted by an authorized party and within the legally prescribed timeframe.

On merits, upon reviewing appeal documents and examining contents of the case, including all relevant documents and evidence, and after considering the memoranda and responses submitted by both parties, and since the appellant is challenging decision of the Department to dismiss its claim regarding revaluation of June 2018 and imposition of a penalty for incorrect reporting and late payment. Appellant's objection specifically concerns the issue of purchases subject to a (5%) tax rate. The dispute centers on appellant's objection to Department's decision, which upheld decision of the appellee to exclude a portion of the purchases, as the appellant company had initially submitted the commercial invoice in error and later provided the correct tax invoice. The final assessment notice indicated that the reason for excluding the disputed amount was a violation of Paragraph (5) of Article (53) of the VAT Implementing Regulations. According to the evidence and documents presented in the case, there are tax invoices bearing the name "Branch of (.....) Company" and a tax registration in the Kingdom No.(...). Appellee argued that branch's final accounts did not match the invoices. However, the appellant clarified that the branch was registered for the purpose of fulfilling tax obligations, while the actual supply was made by the parent company, and therefore the transactions were recorded in the parent company's books rather than those of the branch. The appellant holds documentary evidence (tax invoice No. 80013) that proves the tax was borne and specifies the tax amount, establishing its right to a deduction based on Paragraph (1) of Article (48) of the Unified Agreement for VAT of the Gulf Cooperation Council (GCC) States and Paragraph (7) of Article (49) of the VAT Implementing Regulations. Consequently, the Appellate Department concludes by accepting the appeal and overturning Department's decision.

Regarding the penalty for incorrect reporting and the fine for late payment, as well as appellant's request to cancel those penalties that resulted from the final assessment notice for the tax period in question, since the aforementioned matter has led to the overturning of Department's decision under appeal, and given that the penalties resulted from that decision, any related issues will follow the same ruling. Consequently, the Appellate Department concludes by accepting the appeal and overturning Department's decision regarding the penalties under appeal.

With regard to judicial costs, since the dispute between the parties in this case revolves around an ambiguous right, and as the Appellate Department found no evidence of any misuse or abuse by the appellant in exercising its right as stipulated in the VAT Law, the Appellate Department concludes by rejecting the appeal on this matter.

Decision:

First: Accept Appeal of/ ..., with Commercial Register No. (...) in form to be submitted within the period specified by law.

Second: Accept Appeal of/ ..., with Commercial Register No. (...) Related to exclusion of the disputed amount under item "Taxable purchases at the basic rate (5%)", and annul decision of the First Department to adjudicate Value Added Tax violations and disputes in Riyadh No. (VR-2021-560), and cancel decision of the appellee.

Third: Accept Appeal of/ ..., with Commercial Register No. (...) Regarding the fine for incorrect reporting and the late payment fine, and annulment of decision of the First Department for Value Added Tax Violations and Disputes in Riyadh, under No. (VR-2021-560), is hereby overturned, and decision of the appellee is annulled.

Fourth: Reject Appeal from/ ..., with Commercial Register No. (...) Related to "Judicial Costs", and confirm decision of the First Department to adjudicate Value Added Tax violations and disputes in Riyadh No. (VR-2021-560).



May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No. (VA-2023-122)
Issued in Appeal No. (V-73386-2021)

Principle No. (386)

If it is found that there is a material error in the reasons for the decision issued by the Adjudication Committee, the Appellate Department may return the case to the issuing Department.

Facts:

This is to consider the appeal submitted on 30/09/2021 by the appellant/ Zakat, Tax, and Customs Authority, against decision of the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, No. (VTR-2021-687), in the case filed by the appellee against the appellant.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: Accept the case of Plaintiff/ ..., holding National ID No. (.....) In his capacity as owner of Establishment office, Commercial Register No. (.....) In form.

Second: Accept the case of Plaintiff/ ..., holding National ID No. (.....) In his capacity as owner of Establishment office, Commercial Register No. (.....), regarding the second quarter of 2018 declaration, Defendant's decision is to be amended so that the sales subject to the standard rate amount to (SAR 840,149).

Third: Amending the two fines of error in the declaration and delay in payment according to what was stated in the second item.

Fourth: All other requests shall be denied.

Since the appellant did not accept this decision, it submitted a statement of appeal to the Appellate Department, objecting to Department's decision to accept Plaintiff's claim and cancel its decision regarding the final evaluation for the second quarter of 2018 and the associated fines. The appellant challenges the decision of the Primary Department, arguing that it was based on an error in reasoning, as the amounts referenced in the Department's decision pertain to the third quarter of 2018 and are not relevant to the period in question (the second quarter of 2018). The appeal concludes with a request to accept the appeal and overturn the Primary Department's decision.

First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of Appellate may be held via modern technological means provided by the General Secretariat." Case file, including memoranda and documents, and Appellate Department's decision subject of appeal have been reviewed. After discussion and deliberation, the Department decided to adjourn the session and issue decision.

Grounds:



Whereas, by reviewing case documents and appeal statement submitted, the Department found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, upon reviewing case documents, examining the evidence and records, and considering the memoranda and responses submitted by both parties, the Appellate Department found that the decision issued by the Primary Department ruled in favor of Plaintiff by accepting the claim and overturning Appellant's decision regarding the final evaluation for the second quarter of 2018, as well as the fine for incorrect reporting and the fine for late payment, and also regarding the item of local sales subject to the standard tax rate. The Appellant objected to Primary Department's decision, arguing that the reasoning behind the issued decision pertained to amounts related to the third quarter of 2018, whereas the dispute concerns the second quarter of 2018. The Appellant pointed out that the taxable sales amount according to the evaluation was (SAR 1,092,117), but this amount actually represents the adjustment value according to the final evaluation notice for the third quarter of 2018 and is not related to the final evaluation for the second quarter of 2018, which is the tax period in question. According to the data and documents submitted in the case, it was established that the Appellee initially objected to the final evaluation for the second quarter of 2018 as a result of the Appellant's (ZATCA's) adjustment to the local sales subject to the standard tax rate due to undisclosed sales in the tax declaration for the second quarter of 2018. The Appellant adjusted the local sales subject to the standard tax rate to (SAR 1,433,526) according to the final evaluation for the second quarter of 2018. However, Primary Department's decision stated that "the amount of taxable sales according to Defendant's evaluation was (SAR 1,092,117)." Therefore, the Appellate Department identified a material error in reasoning of the issued decision, as the reasoning pertained to revenues related to the third quarter of 2018, while the dispute concerns the second quarter of 2018. Additionally, the decision's ruling stated an amendment to ZATCA's decision regarding the second quarter of 2018, amounting to (SAR 840,149), which differs from the reasons provided in the decision. Consequently, the Appellate Department concludes by accepting the appeal and remanding the case to the issuing Department for reconsideration. Regarding objection to the fines for incorrect reporting and late payment, and the Appellant's request to impose those fines that resulted from the final assessment notice for the tax period in question, since the above-mentioned issue led to acceptance of the appeal and the referral of the matter back to the issuing Department, and as the fines resulted from that decision, any related issues shall follow the same ruling. Consequently, the Appellate Department concludes by deciding to accept the appeal.

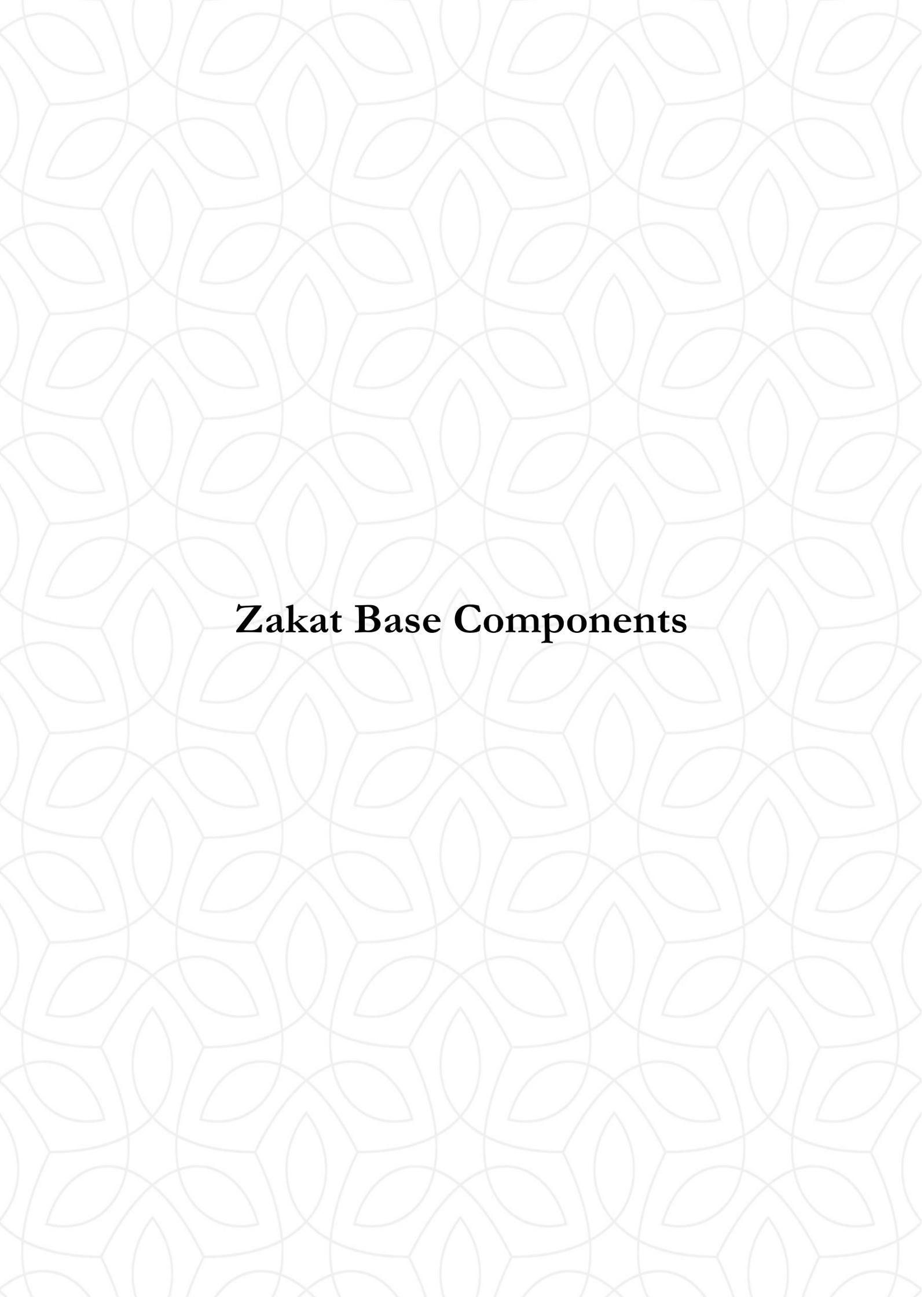
Decision:

First: Accept appeal of ZATCA in form to be submitted within the period specified by law.

Second: Accept the appeal of ZATCA regarding local sales subject to tax in the basic ratio, and return the case to the Third Department to adjudicate Value Added Tax violations and disputes in Riyadh to consider the case as explained in the reasons.

Third: Accept the appeal concerning the two items related to the fine for incorrect reporting and the fine for late payment, and remit the case to the Third Department for Value Added Tax Violations and Disputes in Riyadh for further consideration, as detailed in the reasoning.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

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Zakat Base Components



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-262)
Issued in Appeal No. (ZI-21519-
2020)

Principle No. 387

Bonds are fundamentally debt instruments, and like all other forms of debt, they are subject to Zakat assessment.

Facts:

The Department convened to consider the appeal filed on 30/11/1441 AH, corresponding to 20/07/2020 AD by ..., National ID No., in his capacity as the attorney for the appellant company under POA No., and the appeal filed on 02/12/1441 AH, corresponding to 22/07/2020 AD against Decision No. (IZJ-2020-50) delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah in case No. (Z-94-2018) in connection with the zakat assessment for the years from 1998 to 2010 filed by the appellant against ZATCA. The appealed decision ruled as follows:

First: In form:

Accept the case filed by PlaintiffCompany, C.R. No. in form for being filed within the time limit prescribed by law.

Second: On merits:

1. Accept Plaintiff's objection and cancel Defendant's decision regarding the Contributions item (loans from partners) for covering the losses of affiliated companies for the following years 1998-2000-2001-2002).
2. Resolution of dispute related to the Affiliates Expenses item for the years from 1998 to 2003 where Defendant has accepted Plaintiff's argument regarding this item.
3. Dismiss Plaintiff's objection regarding the Remunerations and Incentives item for the years from 1998 to 2007.
4. Resolution of dispute regarding the Car Loan Amortization item for the years from 1998 to 2000, where Defendant has accepted Plaintiff's argument regarding this item.
5. Dismiss Plaintiff's objection regarding the item of Technical Remunerations, Board Remunerations and Dividends distributed for the years from 1998 to 2010.
6. Regarding the item of investments for the years 1998 to 2010: 1. Dismiss Plaintiff's objection regarding the item of Foreign Investment inCompany for the years from 1998 to 2010. 2. Accept Plaintiff's objection and cancel Defendant's decision regarding the item of Foreign Investment inCompany for the years 2009 and 2010. 3. Dismiss Plaintiff's objection regarding the Stock Portfolio item for the years from 1998 to 2006. 4. Accept Plaintiff's objection and cancel Defendant's decision regarding the Investments in Stock Portfolio item for the years from 2007 to 2010. 5. Dismiss Plaintiff's objection regarding Attorney's Fees item. 6. Dismiss Plaintiff's objection regarding the government Bonds item for the years 1998 to 2006. 7. Dismiss Plaintiff's objection regarding the Supporting (Additional) Financing item in affiliates.



7. Accept Plaintiff's objection and cancel Defendant's decision regarding the Creditor Partner's Current Account item for the years 2007 and 2008.
8. Accept Plaintiff's objection and cancel Defendant's decision regarding the Debtor Partner's Current Account item for the year 2009.
9. Modify Defendant's decision regarding the Loan Balance item for the year 2006 adding the loan amounting to SAR 160,409,540.
10. Accept Plaintiff's objection and cancel Defendant's decision regarding the technical fees of Company for 1999 AD
11. Accept Plaintiff's objection and cancel Defendant's decision regarding the Fixed Assets and Depreciation Differences Item for the years from 2006 to 2009.
12. Dismiss Plaintiff's objection regarding the other items that were not allowed to be deducted for the years from 2004 to 2009.
13. Settlement of dispute related to the item of the Provision to Set Off the Recovered Investment Value for the years 2009 and 2010, where Defendant has accepted Plaintiff's argument. regarding this item.
14. Dismiss Plaintiff's objection regarding the claim related to Allocations for the Years 2006 to 2010.
15. Cancel Defendant's decision regarding the Leaves item for the year 2004, and dismiss Plaintiff's objection regarding the Travel Tickets item for the year 2004.

Dissatisfied with that decision, both parties filed a statement of appeal including the following claims.

The Taxpayer's appeal against the primary department's decision is summarized as follows: With regard to the item (Remunerations and Incentives for the years from 1998 to 2007), the Taxpayer claims that these expenses have been incurred during the normal course of business and they were necessary and thus they were paid and were not retained by the company for twelve months. With regard to the item (Technical Remunerations, Board Remunerations and Dividends for the years from 1998 to 2010), the Taxpayer claims that the technical fees obtained from Company Ltd. (TIN No.: ...) were subject to zakat and tax in the affiliate company, and for the purpose of justice, this income should not be subject to zakat in the same year in which ... Regarding Zakat, and with respect to the board of directors' fees, the Taxpayer has requested a deduction to avoid double taxation in Zakat, as these fees were already subject to Zakat in the subsidiary companies. Concerning distributed profits, subjecting them to Zakat has resulted in double taxation, as they were taxed once on the current year's profits and again on the profits of the companies invested in. Regarding the item of (investments), the Taxpayer requests acceptance of deducting investments in the stock portfolio for all years from 2005 to 2010, as the administration's intention was to retain the investments for the long term to increase capital rather than for short-term profit. The Taxpayer also asserts that government bonds shall be deducted from Zakat base, as these funds were invested outside the company and did not remain within the company for twelve months. Concerning the item of "other items not allowed to be deducted for the years 2004 to 2009 - expenses related to donations and general administrative expenses - hospitality expenses," the Taxpayer argues that these expenses shall be deducted as they are ordinary and necessary business expenses. Regarding the item of "provisions for the years 2004 to 2009," the Taxpayer claims to be unaware of the basis on which ZATCA did not allow or demanded differences in provisions. As for the item "travel tickets for 2004," the Taxpayer argues that the nature of travel tickets is that they are due and not provisions, in addition to the fact that the due costs do not remain in the company for twelve months. Therefore, the Taxpayer requests the annulment of Primary Department's decision on the items under appeal for the reasons mentioned above.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

ZATCA challenged the decision regarding the item (Contributions (loans from partners) for covering the losses of affiliated companies for the years 2000, 2001 and 2002), indicating that the



coverage of losses that the Taxpayer states were provided as loans to affiliated companies were not subject to zakat in the affiliated companies in the taxable year, and were also added to the company's accounts. Therefore, ZATCA did not accept that they are deducted from the zakat assessment being nondeductible expenses. Moreover, the conversion of that item by the Taxpayer to loans and contributions to the affiliated companies does not change the nature of the item, which was confirmed by the primary department (as an expense that should be recognized in the income statement). If the Taxpayer's claim that the item is loans and advances to affiliated companies is proven, then the amount that should be deducted from the Taxpayer's zakat assessment is within the limits of contribution to the capital of the affiliated companies. Regarding the item (Investments), ZATCA clarified that the department accepted the documents submitted by the Taxpayer, while the same documents were requested during the inspection and objection stage, but yet had not been provided. As for Investments in Stock Portfolio, ZATCA indicated that the dispute is not limited to supporting documents, as ZATCA did not accept to deduct those investments because they appear in the financial statements as Available-for-sale Traded Investments, which proves that the investments are traded and their purpose is speculation. As for the item (Partner Creditor's Current Account for the years 2007 and 2008), Partner Debtor's Current Account for the year 2009), Loans for the year 2006), and Technical Fees forCompany for the year 1999), ZATCA stated that the primary department accepted the documents submitted by the Taxpayer, while the same documents were requested during the inspection and objection stage, but yet had not been provided. As for the item (Fixed Assets and Depreciation Differences for the Years from 2006 to 2009), ZATCA clarifies that it applied Circular No. (2574/9) of 14/05/1426 AH, which required that the procedural provisions and accounting rules included in the Tax Law be applied to zakat payers to standardize the treatment including the calculation of depreciation included in Article (17) of the Income Tax Law. Accordingly, the depreciation schedule was prepared and the depreciation differences were adjusted for the net book profit and the fixed assets were deducted from the zakat assessment. With regard to the item (Leaves for the year 2004), ZATCA stated that it treated that item as a provision, where the produced part was added to the taxable year's profits and the used part was deducted as well. Accordingly, the accounts of leave pay item were modified because it is payable to the employees for their annual leaves. Therefore, ZATCA maintains that its procedure valid and sound, and requests that the primary decision be reversed for the stated grounds.

On Thursday, 17/11/1443 AH, corresponding to 16/06/2022 AD, the Department decided to hold an electronic hearing for a period of 10 days. ZATCA submitted a response memorandum, summarizing its position by confirming correctness and validity of its actions. ZATCA noted that the issues raised by the Taxpayer do not differ from those previously addressed, to which ZATCA had already responded. Regarding the item of "Contributions to Cover Losses of Subsidiary Companies," ZATCA indicated that it has already appealed this matter and referred to its appeal memorandum to avoid repetition. Concerning the item of "Bonuses and Incentives," ZATCA added these to the Zakat base based on Paragraph (1) of Article (5) of Zakat Collection Regulations issued in 1438 AH and Paragraph (2) of Article (6) of the same regulations. For the item of "Technical Fees, Board of Directors' Fees, and Dividend Distributions," ZATCA determined that these expenses are not legally deductible according to its letter No. (5097/10) of 1423 AH, and based on Paragraph (3) of Article (20) of Zakat Collection Regulations, Taxpayer's objection was rejected. Regarding the item of "Investments," for foreign investments, ZATCA referenced Paragraph (4-b) of Clause (Second) of Article (4) of the Zakat Collection Regulations issued in 1438 AH. Concerning the stock portfolio, ZATCA has already appealed this matter and referred to its appeal memorandum to avoid repetition. Regarding government bonds, they are treated as loans, not investments, based on Paragraph (4-c) of Clause (Second) of Article (4) of Zakat Collection Regulations. For loans and advances granted to subsidiary companies, they are treated as loans, not investments, based on several fatwas, including Fatwa No. (18497) of 1408 AH and Fatwa No. (3077/2) of 1426 AH. Regarding attorney's fees, ZATCA determined that these



expenses do not have a capital nature and cannot be treated as fixed assets for deduction from the Zakat base. Additionally, ZATCA does not object to charging the accounts with the expenses related to each year, in accordance with the principle of matching revenues with expenses. For the items of "Partners' Current Accounts," "Partners' Loans," and "Technical Fees - Company". (Fixed Assets and Depreciation Differences), ZATCA stated that it has appealed against these items in its statement of appeal deposited with this Department, to which it refers in avoidance of repetition. As for the item (other items that were not allowed to be deducted - donations - hospitality - general administrative expenses - other expenses and losses in managing services), ZATCA has added these items to the zakat assessment base based on Article 5.1 of the Implementing Regulations of the Collection of Zakat issued in 1438 AH and Article 6.2 of the same regulation. As for the item (loss from sale of an investment), ZATCA found that this item is about buying and sale of shared traded in the local market, and since ZATCA has rejected investments in securities because they are tradable and speculative shares, and therefore are considered trade investments (trade assets) which are subject to zakat. As for the item (Claims against Provisions), ZATCA has added the balance to the adjusted profit based on Article 4.9 of the Implementing Regulations of the Collection of Zakat and Article 6.6 of the same regulations. As for the item (Travel Tickets and Accrued Leaves), ZATCA stated that it has appealed against these items and refers to its statement of appeal in avoidance of repetition. ZATCA also requested that no new documents are accepted from the zakat payer that were not submitted during the inspection and objection stages, and also requested that the Department do not accept any new documents based on Article (186) of the Law of Procedure Before Sharia Courts, and in conclusion of its reply, it reaffirmed that it maintains the validity and soundness of its procedure and requests that the zakat payer's appeal be dismissed and that the primary decision be upheld for the stated grounds. The zakat payer also submitted a replication moving thereby to uphold the primary decision and dismiss ZATCA's appeal for the items it challenged.

On Sunday 25/12/1443 AH corresponding to 24/07/2022 AD, the Department, having considered the Parties' submissions, case file and documents, it established that the case was ready for adjudication and accordingly, it decided to close the pleadings and set the case for adjudication.

Grounds:

Having reviewed the case papers and statements of appeal submitted by the Appellant and ZATCA, the Department found that the two appeals are accepted in form as per the relevant laws, regulations and decisions, being filed within the period prescribed by law and by persons with capacities.

Moving to the merits of appeals, the Department held that ZATCA's assessments for the years 1998 to 2000 and for the years 2004 to 2010 were after the lapse of the period stipulated by the law for amending to the zakat payer's declaration, which is five years from the end of the period set for submitting zakat declaration. Since these rules were issued in order to maintain stability of transactions and protect zakat payers' financial positions by specifying a specific period to ensure stability of their financial positions, this matter however does not result in the zakat payer being discharged from the sharia obligation if he actually bears that obligation. Rather, it is a procedural issue related to ZATCA's right to make the zakat assessment for the zakat payer after the lapse of the period stipulated by the law, and accordingly the Department determines that ZATCA's decision to make those amendments is invalid, and consequently accept the zakat calculation as submitted in the zakat payer's declarations. Therefore, the Department concludes to dismiss ZATCA's and the zakat payer's appeals regarding the items related to these years, and quash the primary decision as to the conclusions it had in this regard.

Regarding ZATCA's appeal concerning the item "Contributions (loans and advances from partners)" for covering the losses of associate companies for the years 2001 and 2002," the appeal is based on the Department's acceptance of Taxpayer's objection to this item. ZATCA argues that coverage of these losses was not subject to Zakat in the subsidiaries during the year the losses were



covered and was recorded in the company's accounts, so it was not deducted as it does not qualify as a deductible expense. On the other hand, the Taxpayer requests that ZATCA's appeal be dismissed and that Department's decision be upheld. Having considered ZATCA's appeal and examined the case file, it was found that the zakat payer's contribution to covering the losses of affiliates, whether that coverage was to fulfill the provisions of the Companies Law or was optional coverage, is considered a type of investment in those companies that should be deducted from zakat payer's zakat base. According to the financial statements, the Department established that the tax payer has covered losses of the affiliated companies, and it thus concludes to dismiss ZATCA's appeal and uphold the primary decision in this part.

As for the zakat payer's appeal regarding the item (Remunerations and Incentives for the Years 2001 to 2003), the zakat payer objected to the primary decision having upheld ZATCA's decision to not deduct this item from the zakat base. The tax payer claimed that these expenses must be deducted because they are documented and necessary for the income-generating activity to take place, while ZATCA argued that it adheres to the validity and soundness of its decision and requested that the zakat payer's appeal be dismissed and the Primary Department's decision be upheld. Having considered tax payer's appeal and examined the case file, it was established that all regular and necessary expenses required for running the tax payer's activity, whether paid or payable, may be deducted if they are actual expenses substantiated by supporting documents or other evidence that enables ZATCA to verify them. Since the general rule for imposing zakat is that one year passes with the funds subject of zakat are held in the possession of the zakat payer, and since it is established that the funds in issue were taken out from the zakat payer's account and spent on those the employees incentives and benefits, and the spending of these funds had never been disputed, and since ZATCA's statements as to the legality of those benefits and that they should comply with the provisions of labor law are irrelevant when calculating the zakat transaction and to whether to include these amounts into the zakat base of the zakat payer or not. Rather, those provisions are intended for another purpose, namely to safeguard the employees' rights. Accordingly, the Department concludes to consider the entire amounts as an expense that may be deducted when making the zakat assessment contrary to what was decided in the primary decision. Therefore, the Department decides to accept the zakat payer's appeal and quash the primary decision in this respect.

As for the zakat payer's appeal against the item (Technical Remunerations, Board Remunerations and Dividends for the Years 2001 to 2003), the zakat payer challenges the primary decision as it upholds ZATCA's decision to not deduct this item from the zakat base, claiming that this item should be deducted to avoid double taxation that is forbidden by Sharia, while ZATCA argued that it maintains the validity and soundness of its procedure and requests that the zakat payer's appeal be dismissed and that the primary decision be upheld in this respect. Having considered the zakat payer's appeal, and examined the case file, it was established that ZATCA refused to deduct the amounts in dispute merely on grounds that the tax payer had not submitted copies of the amended zakat assessments for the affiliates for the years in question, and since the zakat assessments amended based on the appeal decisions are decisions issued by ZATCA, and it has full access to them, this does not constitute a justification for ZATCA to reject the zakat payer's declaration on the basis of the failure to submit those assessments, especially since they relate to a legal entity separate from the zakat payer, and since the Department's demand that the zakat payer submits supporting documents for the disputed amounts is unreasonable given that ZATCA did not base its decision on the zakat payer's failure to submit documents supporting the disputed amounts. Accordingly, the Department concludes to accept the zakat payer's appeal and overturn the primary decision in this connection.

As for the zakat payer's appeal against the item (Investments for the Years 2001 to 2003), the zakat payer objects to the primary decision having accepted ZATCA's decision to not deduct this item from the zakat base, claiming that this item should be deducted since those investments are possession assets but not yet possessed for a year by the Taxpayer to be subject to zakat. ZATCA



on its part maintains the validity and soundness of its decision and requests that zakat payer's appeal be dismissed and the primary decision be upheld. Having considered the zakat payer's appeal, and examined the case file, the Department concluded that the investments in dispute for the years in dispute that this Department accepted to decide upon consist of foreign investment in the Egyptian company named..... and investments in government bonds, and since zakat payer did not submit the audited financial statements of the foreign company certified by a chartered accountant in the country of investment, the Department hereby dismiss the zakat payer's appeal regarding this investment. As for the investment in government bonds for the years 2001 to 2003, and having reviewed the zakat payer's appeal, and examined the case file, it was found that the bonds are considered in principle debt instruments that are subject to the same rules as all other types of debts as to zakat assessment. The Ministerial Resolution No. (32/925) dated 25/05/1409 AH instructed to exempt bonds held in possession from zakat. That resolution however is related to the procedural aspect, which is the collection by ZATCA of zakat, and is not related to the discharge of zakat payer from zakat obligation, accordingly, the Department concludes to accept the zakat payer's appeal and that ZATCA may not collect zakat on those bonds for the years in dispute.

Decision:

First: Accept in form the appeal submitted by the zakat payer,Company, C.R. No., TIN No. ... and the appeal submitted by ZATCA, against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah, bearing number (IZJ-2020-50), issued in Case No. (Z-94-2018) in relation to the zakat assessment for the years from 1998 to 2010 AD.

Second: On Merits:

1. Dismiss ZATCA's and the zakat payer's appeal regarding all the items subject matter of appeal for the years from 1998 to 2000, and the years from 2004 to 2010, and quash the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah regarding these items ruling that zakat is calculated as per the zakat payer's declarations for those years, according to the grounds stated in this decision.
2. Dismiss ZATCA's appeal regarding the item (Loans from Partners) to cover losses of affiliated companies for the years 2001 and 2002, and uphold the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to grounds stated in this decision.
3. Accept the zakat payer's appeal regarding the item (Remunerations and Incentives for the Years 2001 to 2003) and quash the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
4. Accept the zakat payer's appeal regarding the item (Technical Remuneration, Board Remuneration and Dividends for the Years 2001 to 2003) and quash the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
5. As for the item (Investments for the Years 2001 to 2003):
 - a. Dismiss the zakat payer's appeal regarding foreign investment for the years 2001 to 2003, and uphold the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
 - b. Accept the zakat payer's appeal regarding Investment in Government Bonds for the years 2001 to 2003, and quash the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-253)
Issued in Appeal No. (Z-24082-
2020)

Principle No. 388

Audited financial statements are presumed to be accurate and reliable, and they constitute material evidence in proving zakat base components unless proven otherwise.

Facts:

The Department convened to consider the appeal filed on 20/01/1442 AH, corresponding to 07/09/2020 AD by ..., ... National ID No.(...) in his capacity as Owner of the Appellant Enterprise against the First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No.(IFR-2020-49) issued in Case No. (Z-10323-2019), in connection with Zakat assessment for the period (1435-1438 AH), in the Case filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

First: Dismiss the objection of Plaintiff/Commercial Enterprise..... TIN No. (.....) against Defendant's (ZATCA's) Decision, regarding the reassessment of Zakat for 1435 AH.

Second: Dismiss the objection of Plaintiff/Commercial Enterprise..... TIN No. (.....) against Defendant's (ZATCA's) Decision, regarding the reassessment of Zakat for 1436 AH.

Third: Dismiss the objection of Plaintiff/Commercial Enterprise..... TIN No. (.....) against Defendant's (ZATCA's) Decision, regarding the reassessment of Zakat for 1437 AH.

Fourth: Dismiss the objection of Plaintiff/Commercial Enterprise..... TIN No. (.....) against Defendant's (ZATCA's) Decision, regarding the reassessment of Zakat for 1438 AH.

Since this decision was not accepted by Taxpayer (..... Commercial Enterprise), Taxpayer filed a statement of appeal that included the following summary:

Taxpayer objects to the Primary Department's decision subject matter of the challenge, claiming that the reasons for the adjustments made by ZATCA and the addition of related parties' balances were not mentioned. Additionally, the Taxpayer asserts that the full operating expenses of the enterprise, all of which are related to the calculation of Zakat for the period (1435-1438 AH) based on the accounts (financial statements), were not deducted. The Taxpayer requests that it be reassessed based on the submitted tax returns, as the financial statements used for the assessment did not include many items that should have been deducted from zakat base and were inflated to obtain financing for the enterprise's activities. Accordingly, the Taxpayer requests to quash the primary decision due to the aforementioned reasons.

The Department decided to open the pleading, ZATCA submitted a Reply on 07/03/1443 AH corresponding to 13/10/2021 AD, which includes its response to Taxpayer's appeal. In this Reply, ZATCA reaffirming its previous argument presented before the Primary Department. ZATCA further asserted that its decision is in accordance with the provisions of the law and regulations. Moreover, ZATCA emphasized that the financial statements were prepared by an accredited chartered accountant appointed by the Taxpayer. ZATCA also clarified in its adjustment letters



that it relied on the found financial statements for its adjustments and explicitly stated the Taxpayer's right to appeal. Therefore, ZATCA maintains that its procedures were correct and sound, and it requests dismissal of the Taxpayer's appeal and that the primary decision be upheld based on the aforementioned reasons.

On Sunday, 21/10/1443 AH, corresponding to 22/05/2022 AD, the Department decided to hold an electronic session for a period of 10 days. The period elapsed without any additional submissions from either party to the appeal.

On Thursday 22/12/1443 AH, corresponding to 21/07/2022 AD, and by reviewing memorandums and statements of appeal, and by examining papers and documents contained in the case file, the Department decided that the case is ready for adjudication and issuance of decision on its subject. Accordingly, the Department decided to close the pleading and schedule the case for adjudication.

Grounds:

Upon reviewing Case documents and Appeal Brief submitted by Taxpayer, the Department found that conditions the Appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal request was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law. On merits, The Taxpayer's appeal centers on challenging the Primary Department's affirmation of ZATCA's action to recalculate zakat base. The Taxpayer claims that the financial statements were prepared solely to obtain financing and do not accurately reflect the reality of their financial position. Conversely, ZATCA maintains that its procedures were correct and sound, and it requests that the Taxpayer's appeal be dismissed and the primary decision be upheld. Having considered the Taxpayer's appeal, and examined the case file, and given that audited financial statements are presumed to be accurate and reliable, and they constitute material evidence in proving zakat base components unless proven otherwise, the Taxpayer's argument that these statements do not reflect their true financial position is not sufficient to undermine this presumption. This is because financial statements themselves constitute an acknowledgment by the Taxpayer of their financial position and the results of their activities for that year. Furthermore, the existence of an unmodified audit opinion on these financial statements serves as additional evidence of the reliability of the information contained therein. ZATCA's reliance on these financial statements to assess the Taxpayer within the legal period allowed for such assessments is considered a sound and fair procedure. The Taxpayer's argument that ZATCA's assessment was unjustified is unfounded, as the Department's review of the disputed assessment revealed that ZATCA had relied on the financial statements for the years subject matter of the assessment, which is sufficient reason to reassess the Taxpayer. Consequently, this Department has decided to dismiss the Taxpayer's appeal and uphold the primary decision.

Decision:

First: Accept in form the Appeal filed by the Taxpayer/ ... Commercial Enterprise..., CR. NO. (...), TIN No. (...) against the First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-49) issued in Case No. (Z-10323-2019), in connection with Zakat assessment for the period (1435-1438 AH).

Second: On Merits:

Dismiss the appeal filed by Taxpayer and affirm the Decision taken by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-2160)
Issued in Appeal No. (Z-78529-
2021)

Principle No. 389

Loans provided by partners are added to the taxable base in excess of their investment percentage.

Facts:

The Department convened to consider the Appeal filed on 20/10/2021 By....., by....., National ID No. (...), in his capacity as Appellant Company' Attorney under POA No. (...), against the First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1119) issued in Case No. (Z-13826-2020) in connection with Zakat assessment for 2017 and 2018, in the Case filed by the Taxpayer against ZATCA. The appealed decision ruled as follows:

First: Dismiss the objection of Plaintiff Real Estate Developer, (CR. No. ...), regarding the item (Real estate investments for development purposes).

Second: Dismiss the objection of Plaintiff Real Estate Developer, (CR. No. ...), regarding the item (Projects under construction).

Third: Dismiss the objection of Plaintiff Real Estate Developer, (CR. No. ...), regarding the item (Retained earnings).

Fourth: Dismiss the objection of Plaintiff ... Real Estate Developer, (CR. No. ...), regarding the item (Additional financial support from partners).

Since this decision was not accepted by the Taxpayer (..... ... Real Estate Developer), it submitted a statement of appeal that can be summed up as follows:

Taxpayer objects to the Primary Department's decision subject matter of the challenge, claiming that with regard to the item (Real estate investments for development purposes), these are not investments for trading. The Company's activity consists of general contracting, construction, repair, demolition, renovation of buildings, work on main roads, streets, bridges, tunnels, and sewage systems. The nature of the real estate investments was for development purposes as they consist of (10) blocks of shares in Company, which is a Saudi joint-stock company. The objective was to develop the land, introduce infrastructure, divide the land into blocks, and then construct residential and commercial projects and complexes. However, due to a market downturn, a decision was made to sell. The investments were acquired in 2013, and since then, there have been no purchases but only sales due to circumstances beyond the Company's control. A portion was sold to settle a Company debt, and there was a partner exit on 02/07/2016. The reduction in investments in 2017 aligns with the exiting partner's share of 10.21% of the total agreed-upon assets for distribution upon exit. Moreover, the real estate investments were classified as long-term assets in the financial statements. Therefore, they should not be added to zakat base, as they are not considered investments for trading. Regarding the item (Projects under



construction), the projects under construction relate to the costs incurred for the engineering management project, which is located in rented buildings and is expected to be completed in 2019. It also relates to costs incurred for preparing studies for specific projects to determine the optimal utilization of real estate investments for development purposes. Furthermore, assuming that the value of the assets is not allowed to be calculated, in this case, these costs will be written off in the accounts and charged as expenses, resulting in a decrease in retained earnings and an increase in accumulated losses. Therefore, whether considered as assets or written off, it will have the same impact on zakat base in dispute. Regarding the item (Additional financial support from partners), the main partner (... Holding Company) provided additional financial support to the Company to finance future expansion plans. This support was used for investments related to the Company's investment and operational activities without any intention to formally record the increase in the regulatory capital. Therefore, the funding was classified under the heading "additional financial support". Additionally, these amounts are not subject to any interest rates and there is no intention to withdraw the support. According to Article (4.a) the balance due to the partner has been settled. Moreover, not settling this balance would result in double taxation as zakat has already been paid on it in zakat declaration of ... Holding Company ... Regarding the item (Retained earnings), the amount due from the partner (..... Holding Company), which owns 95% of the Company's capital, was settled against the opening balance of retained earnings added to zakat base for 2018. The difference of (SAR 1,103,197) was subjected to zakat. Therefore, the debit balance should be deducted from the opening balance of retained earnings. Based on these reasons, the Taxpayer requests that the primary decision subject matter of the challenge be quashed.

On Monday 05/12/2022, the First Appellate Department for Income Tax Violations and Disputes convened via virtual communication in accordance with the remote litigation procedures; based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH. After reviewing Appeal Brief, examining Case file, and deliberation according to law, since the Department did not find any reasons for attendance of both litigants, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Upon reviewing Case documents and Appeal Brief submitted by Taxpayer, the Department found that conditions the Appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal request was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law. On merits, regarding the Taxpayer's appeal on the item (Projects under construction), the Taxpayer's appeal is based on the argument that the projects under construction relate to the costs incurred for the engineering management project, which is located in rented buildings and is expected to be completed in 2019. Article (Five.1/a) of the Implementing Regulations for the Collection of Zakat, issued by Ministry of Finance Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "Expenses ordinary and necessary for an entity to engage in business activity, whether paid or due, shall be deducted to determine the net result of the activity, subject to meeting the following criteria: A. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years.", Article (Four.2/1) of the Implementing Regulations for the Collection of Zakat, issued by Ministerial Decree No. (2082) dated 01/06/1438 AH. stipulates: "The following shall be deducted from zakat base: 2- The Taxpayer's capital construction projects under implementation that are constructed for the purpose of use in the activity and not for the purpose of sale". Based on the foregoing, the appealed "projects under construction" are shown to represent the costs incurred for the engineering management project, which is located in rented buildings as detailed in the financial statements and the accompanying detailed schedule. Therefore, there is no connection between them and the real estate investments for development purposes item. ZATCA has not provided any evidence to support its argument.



As a result, the Department concludes by accepting the Taxpayer's appeal and quashing the primary decision regarding this item.

Regarding the Taxpayer's appeal on the item (Additional financial support from partners), the Taxpayer's appeal is based on the argument that the main partner (..... Holding Company) provided additional financial support to the Company to finance future expansion plans. This support was used for investments related to the Company's investment and operational activities without any intention to formally record the increase in the regulatory capital. Therefore, the funding was classified under the item "additional financial support". Article (Four.1) of the Implementing Regulations for the Collection of Zakat, issued by Ministry of Finance Decision No. (2082) dated 01/06/1438 AH, stipulates: "The Zakat base shall consist of the Zakat Payer's assessable funds, including: ... 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdraft accounts owed by Taxpayer as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. C. The portion used for trading assets and for which a full year has passed". Based on the foregoing, the loans provided by the partners are added to the zakat base beyond the investment ratio. Given that the loan is provided by the partner (..... Holding Company) which owns 95% of the Appellant Company, we propose deducting 95% of the provided loan and adding only 5% of the loan to zakat base. As a result, the Department concludes by accepting the Taxpayer's appeal and amending the primary decision of regarding this item.

Regarding the remaining items subject matter of the Case, the Department cannot be faulted for adopting the reasons for the appealed decision without adding to them, as long as it has determined that those reasons are sufficient without the need to introduce anything new. By affirming the decision based on these reasons, it is clear that the Department did not find any of the objections raised against the decision to be worthy of a reply beyond what was included in those reasons. Bearing the foregoing in mind, and since it is established that the appealed decision regarding the dispute over the disputed items was in accordance with the sound reasons on which it was based and sufficient to support its judgment, as the issuing Department examined the source of the dispute and concluded with regard to it the result it reached in its judgment, and since this Department has not observed anything that warrants a correction or comment regarding it in light of the defenses raised before it, this Department therefore concludes by dismissing the Taxpayer's appeal and upholding the primary decision regarding the result it reached in the remaining items of the Case based on its reasons.

Decision:

First: Accept in form the Appeal filed by the Taxpayer/ ... Real Estate Developer, CR. No. (...), TIN No. (...), against the First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1119) issued in Case No. (Z-13826-2020) in connection with Zakat assessment for 2017 and 2018.

Second: On Merits:

1. Accept the Appeal filed by Taxpayer regarding the item (Projects under construction) and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned therein.
2. Accept the Appeal filed by Taxpayer regarding the item (Additional financial support from partners) and amend the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned therein.
3. Dismiss the Appeal filed by Taxpayer regarding the remaining items in the Case and affirm the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned therein.



This decision shall be deemed final and enforceable in accordance with Articles (47) and (48) of Tax Dispute and Violation Committee Procedures.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2023-50958)
Issued in Appeal No. (ZI-
50958-2021)

Principle No. 390

Related party liability shall be considered a source of financing and shall be handled as equity in terms of zakat calculation.

Facts:

To consider appeal filed on 18/05/2021 AD by ZATCA and appeal filed on 19/05/2021 AD by ... Company, C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2021-194) delivered in Case No. (ZI-5205-2020) related to zakat assessment for 2013 in Case filed by Taxpayer against ZATCA. Primary Department's decision states:

First: In form:

Accept Case of Plaintiff (... Company for Oil and Gas Services LTD (C.R. No. ...) in form.

Second: On merits:

1. Resolution of dispute regarding Other Expense item.
2. Resolution of dispute regarding Realized Exchange Rate Loss item.
3. Cancel Defendant's procedures regarding Realized Exchange Rate Loss item.
4. Cancel Defendant's decision regarding Late Payment Fine item.
5. Dismiss Plaintiff's objection regarding Related Party Liability item.
6. Dismiss Plaintiff's objection regarding Trade Payables item.

Dissatisfied with that decision, both parties filed a statement of appeal including the following claims:

Regarding Taxpayer's appeal filed against Primary Department's decision regarding (Related Party Liabilities of SAR 24,562,009 for 2013), Taxpayer claims that there are not amounts that completed a full year in Related Party Liability. In addition, Taxpayer states that the opening and closing balances of provided movement matches the amounts stated in Note No. (7) to the audited financial statements. Accordingly, Taxpayer requests deducting amount added by ZATCA since it does not meet conditions stipulated by Clause (5) of Paragraph (1) Article (4) of the Implementing Regulations for the Collection of Zakat that shall be met, so that the amount is added to zakat base. Regarding (Trade Payables of SAR 3,302,265 for 2013) item, Taxpayer claims that there are not amounts that completed a full year. In addition, Taxpayer states that the opening and closing balances of provided movement matches the amounts stated in Note No. (7) to the audited financial statements. Thereupon, Taxpayer requests overturning Primary Department's decision items subject matter of appeal for the above-mentioned reasons.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

With regard to ZATCA appeal against Primary Department's decision, its appeal involves (Unrealized Exchange Rate Losses for 2013). ZATCA states that exchange rate losses/gains in the



amount of SAR 74,162 have been handled in accordance with Article (12) of the Implementing Regulations of Income Tax Law. In addition, ZATCA states that the Department failed to notice that Taxpayer had accepted this item, as noted by the same Department in reasoning for its decision in the second item. How can the Department cancel ZATCA decision when Taxpayer had clearly and explicitly accepted this item? This indicates that its decision is flawed. In addition, the Department mentioned in its reasoning that Taxpayer provided supporting documents and that it turns out that Taxpayer had already added the unrealized losses to the adjusted net profit. However, the Department did not specify in its decision which documents it reviewed in detail. Regarding (Late Payment Fine) item, ZATCA states that it has appealed against the Unrealized Exchange Rate Loss item. Therefore, ZATCA requests overturning Department's amendment and upholding ZATCA decision regarding the item subject matter of appeal. Accordingly, ZATCA insists on the validity and accuracy of its procedure and requests overturning Primary Department's decision regarding the items subject matter of appeal for the above-mentioned reasons.

Having presented statement of appeal to ZATCA, it submitted a memorandum that included its adherence to validity of its procedure, and requested the Department to dismiss Taxpayer's appeal and uphold Primary Department's decision regarding items subject matter of Taxpayer's appeal. On Wednesday, dated: 01/03/2023 AD, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video communication in accordance with the procedures of remote visual litigation; Based on what is stated in Clause No.: 15.2 of Tax Dispute and Violation Committee Procedures issued by Royal Order No. 26040 dated 21/04/21 AH. Having reviewed the appeal filed by both parties to the Case, and examined contents of Case file, the Department found that the Case is ripe for adjudication. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Upon reviewing Case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On Merits: As for Taxpayer's appeal regarding (Related Party Liabilities of SAR 24,562,009 for 2013) item, Taxpayer's appeal involves objection to Primary Department's decision regarding this item, as Taxpayer claims that there are not amounts that completed a full year in Related Party Liabilities. Whereas Paragraph (First/5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: "The Zakat base shall consist of the Zakat Payer's assessable funds, including: ... 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdraft accounts owed by Taxpayer as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. C. The portion used for trading assets and for which a full year has passed. In addition, Paragraph (3) of Article (20) thereof states: "The burden of proving validity of the items mentioned in Taxpayer's Zakat declaration and any other data shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove validity of the items mentioned in his declaration, ZATCA may not approve the item whose validity is not proven by the Taxpayer or make an estimated assessment according to its discretion in light of the circumstances and facts related to the case and the information available thereto". Based on the foregoing, related party liabilities shall be considered a source of financing and handled as equity in terms of zakat calculation. Accordingly, the amount that completed a full year shall be added to zakat base. Having taken cognizance of Case file and documents included therein, it turns out that Taxpayer had submitted the audited financial statements of 2013, in addition to the detailed movement of account subject matter of consideration. Having compared amounts set out in the detailed movement of financial statements, it turns out that they match



Note No. (7). Having tracked amounts set out in the detailed movement for each account separately, it turns out that the amount that completed a full year is SAR 40,418 in contrary to Taxpayer's claim that there are not amounts that completed a full year. Therefore, the Department amends Primary Department's decision, by adding only amounts that completed a full year as stated in this item.

Regarding Taxpayer's appeal in terms of (Trade Payables of SAR 3,302,265 for 2013) item, Taxpayer's appeal involves objection to Primary Department's decision regarding this item, since Taxpayer claims that there are not amounts that completed a full year in trade payables. Whereas Paragraph (First/5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: "Zakat base consists of all Taxpayer's funds subject to Zakat, including: ... 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdraft accounts owed by Taxpayer as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. C. The portion used for trading assets and for which a full year has passed. In addition, Paragraph (3) of Article (20) thereof states: "The burden of proving validity of the items mentioned in Taxpayer's Zakat declaration and any other data shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove validity of the items mentioned in his declaration, ZATCA may not approve the item whose validity is not proven by the Taxpayer or make an estimated assessment according to its discretion in light of the circumstances and facts related to the case and the information available thereto". As such, trade payables shall be considered one of zakat base components, provided that such trade payables complete a full year or are used in financing assets deducted from zakat base. Having taken cognizance of Case file and documents included therein, it turns out that Taxpayer had submitted the audited financial statements of 2013, in addition to the detailed movement of account subject matter of consideration. Having compared amounts set out in the detailed movement of financial statements, it turns out that they match Note No. (7). Having tracked amounts set out in the detailed movement for each account separately, it turns out that the amount that completed a full year for 2013 is 59,200 in contrary to Taxpayer's claim that there are not amounts that completed a full year. Therefore, the Department amends Primary Department's decision, by adding only amounts that completed a full year as stated in this item.

Regarding ZATCA appeal in terms of (Unrealized Exchange Rate Losses for 2013) item, ZATCA appeal involves objection to Primary Department's decision regarding this item, as ZATCA claims that: Having reviewed the appealed decision rendered by Primary Department, and having taken cognizance of Case file and statements included therein, it turns out that Taxpayer's objection included Unrealized Exchange Rate Losses of SAR 74,162 item and Unrealized Exchange Rate Losses of SAR 34,571 item. In addition, it turns out that Taxpayer has waived the item of Unrealized Exchange Rate Losses of SAR 74,162, as Taxpayer stated "Approving this item in order to limit objection to crucial items ...". Regarding Unrealized Exchange Rate Losses of SAR 34,571 item, it turns out that the Department canceled ZATCA procedures due to the established fact that the amount was added to adjusted net profit. Having reviewed Taxpayer's answer to the statement of appeal submitted by ZATCA, in which Taxpayer declared that the amount (SAR 34,571) that outlines Unrealized Exchange Rate Losses is a part of Unrealized Exchange Rate Losses amounting to SAR 74,162. Therefore, how can Taxpayer waive the right to the entire amount and then object to a portion of it? Having reviewing ZATCA assessment dated 05/12/2018 AD, it turns out that ZATCA only added SAR 74,162 and did not add SAR 74,162 and then added SAR 34,571. Furthermore, having reviewed zakat declaration /tax return, specifically Statement No. (14), it turns out that the amount of SAR 34,571 is indeed part of the amount SAR 74,162, as disclosed by Taxpayer in the return. Accordingly, this Department finds that Primary Department's decision was incorrect, as it acknowledged the resolution of dispute for a certain amount but then canceled ZATCA procedure for a portion of that amount. Since Taxpayer acknowledged that the amount of SAR 34,571 accepted by the Company is indeed



included within the amount of SAR 74,162. Therefore, the Department accepts ZATCA appeal and overturns Primary Department's decision regarding this item.

Regarding ZATCA appeal in terms of (Late Payment Fine) item, ZATCA appeal involves objection to Primary Department's decision regarding this item, as ZATCA claims filing an appeal regarding Unrealized Exchange Rate Loss item. Therefore, the Department cancels the amendment made by Primary Department and upholds ZATCA appeal regarding the item subject matter of appeal. Whereas Paragraph (a) of Article 77 of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a Taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". In addition, Paragraph (3) of Article (67) of the Implementing Regulations of Income Tax Law stipulates: "Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment." Based on the foregoing, since the late payment fine is charged from the due date for return filing and payment of tax due under applying provisions of the Law and amendments made by ZATCA. Since the decision concluded, in (Unrealized Exchange Rate Losses for 2013) item, to accept ZATCA appeal. Accordingly, this Department concludes to validity of ZATCA procedure by imposing late payment fine as of the due date. Therefore, the Department accepts ZATCA appeal and overturns Primary Department's decision regarding this item.

Decision:

First: Accept appeal filed by Taxpayer (... Company for Oil and Gas), C.R. No. (...), TIN (...), in form, and ZATCA appeal against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2021-194) rendered in Case No. (ZI-5205-2020) related to zakat and tax assessment for 2013.

Second: On Merits:

1. Amend First Department for Determination of Income Tax Violations and Disputes in Dammam decision regarding (Related Party Liabilities of SAR 24,562,009 for 2013) for the grounds and reasons stated herein.
2. Amend First Department for Determination of Income Tax Violations and Disputes in Dammam decision regarding (Trade Payables of SAR 3,302,265 for 2013) for the grounds and reasons stated herein.
3. Accept ZATCA appeal regarding (Unrealized Exchange Rate Losses for 2013), and overturn First Department for Determination of Income Tax Violations and Disputes in Dammam decision for the grounds and reasons stated herein.
4. Accept ZATCA appeal regarding (Late Payment Fine) item and overturn First Department for Determination of Income Tax Violations and Disputes in Dammam decision for the grounds and reasons stated herein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-1154)
Issued in Appeal No. (Z-27756-2020)

Principle No. (391)

Dividends announced for distribution to shareholders shall not be added to zakat base of the companies in which Taxpayer has investments if they are deposited in a special account that the Company is not allowed to use.

Facts:

The Department convened to consider the Appeal filed on 22/10/2022 AD by ..., holder of National ID No. (...) on behalf of Appellant Company under POA No. (...) against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-162) rendered in Case No. (ZW-9382-2019) related to zakat assessment for years from 2003 to 2010 in Case filed by Appellant against ZATCA. Primary Department's decision states:

In Form:

- Accept Case filed by Plaintiff (... Company), C.R. No. (...), in form.

On Merits:

1. Dismiss Plaintiff's objection regarding Losses of Affiliates item.
2. Dismiss Plaintiff's objection regarding "Approving Investments as Deduction from Zakat Base after Deducting Provision for Price Decline for 2009 and 2010" item.
3. Regarding Shareholder Current Account (clerical error) item:
 - a. Dismiss Plaintiff's objection regarding (Other Investments not Approved as Deduction from Zakat Base for the Year Ended on 31/03/2004 AD) item.
 - b. Accept Plaintiff's objection regarding (Shareholder Current Account for Zakat Assessment for the Year Ended on 31/03/2006 AD of SAR 40,874,000) item.
4. Dismiss Plaintiff's objection regarding (Other Investments not Approved as Deduction from Zakat Base for the Year Ended on 31/03/2004 AD) item.
5. Dismiss Plaintiff's objection regarding the item of approving all items of adjusted return for the two years ended in 2006 and 2007.
6. Dismiss Plaintiff's objection regarding (Non-deduction of Investments for the Year Ended on 31/12/2007 AD) item.
7. Dismiss Plaintiff's objection regarding (Loans Added to Zakat Base for 2004 and 2008) item.
8. Dismiss Plaintiff's objection regarding (Withholding Tax) item.
9. Dismiss Plaintiff's objection regarding the item of dividends from companies registered in the Saudi Exchange that were not approved for deduction from zakat base.
10. Dismiss Plaintiff's objection regarding Import Revenue item.
11. Accept Plaintiff's objection regarding Zakat Return for the Period from 01/04/2007 AD to 31/12/2007 AD) item.



Since Taxpayer (..... Company) dissatisfied with this decision; therefore, Taxpayer submitted a statement of appeal summarized as follows:

Taxpayer objects to the decision of Appeal Committee subject matter of appeal, claiming that regarding (Assessment after Lapse of Statutory Period of Five Years) item, Taxpayer had previously invoked the five-year statute of limitation on disputed zakat variances for the period from April 01, 2003 AD to December 31, 2009 AD under additional objection memorandum before Primary Department. This was based on extinguishment of ZATCA right to amend the returns after lapse of statutory period specified in Paragraph (10) of Article (21) of the Implementing Regulations for the Collection of Zakat. However, Primary Department disregarded its right regarding the application of that Article, and its decision did not mention its request, either by acceptance or rejection. Regarding (Losses of Subsidiaries from March 31, 2004 AD to March 31, 2006 AD) item, Taxpayer claims that the item outlines financial support for losses of one of the companies in which Taxpayer has investments, which is ... Company for Marketing. In addition, the investing company applies cost method, not equity method, as established in the financial statements. Assuming Primary Department's reliance on Paragraph (12) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat is correct, the basic condition is passage of a full year, which was not met in this case, as this financial support had not completed a full year. Regarding (Provision for Investment Impairment for 2009 and 2010) item, Taxpayer claims that all investments are approved, and there are no unapproved investments to separate the impairment provision and allocate it between approved and unapproved investments. Deducting those investments without the related provision balance and adjusting profit with its component and including the carried-forward amount in zakat base would result in double taxation. Regarding (Partners' Current Account (clerical error)) item, Taxpayer claims that the dispute between Taxpayer and ZATCA is merely a clerical error, as the decision on considering objection issued by ZATCA explicitly stated acceptance of Company's stance in this regard. However, the challenged amounts were not adjusted in the same objection consideration decision, despite Taxpayer's stance being accepted by ZATCA. Regarding (Other Investments for the Year Ended on March 31, 2004 AD, as well as Clerical Error in Investments in Subsidiaries and Associates for the Same Year) item, Taxpayer claims that these investments are for acquisition purposes and were approved by ZATCA in previous and subsequent years. In addition, Taxpayer mentioned a clerical error amounting to SAR 500,000 related to the investment in Company, stating that investments in subsidiaries and associates should have been deducted in an amount of SAR 77,963,000 according to the financial statements instead of SAR 77,463,000. Regarding (Approving all Items of Adjusted Return for the Years Ended on 31/03/2006 AD and 31/03/2007 AD, with a Request to Approve all Investments in Subsidiaries and Associates) item, Taxpayer claims objecting to ZATCA failure to make zakat assessment for the fiscal year ended on 31/03/2006 AD based on the comparative figures in the financial statements for the fiscal year ended on 31/03/2007 AD. Regarding (Investments not Deducted from Zakat Base for the Year Ended on 31/12/2007 AD) item, Taxpayer claims that these investments outline investments in subsidiaries and associates registered in the Kingdom, as well as other investments, which outline long-term investments in companies listed on the Saudi Exchange that were previously deducted by ZATCA from zakat base in previous and subsequent years. Regarding (Loans Added to Zakat Base for 2004 and 2008) item, Taxpayer claims that the core dispute between Taxpayer and ZATCA involves the accuracy of determining amounts subject to zakat due to a clerical error in ZATCA decision, as ZATCA erred when determining balances of loans for 2004 and 2008. In addition, the loan subject to zakat for the year ended on 31/03/2004 AD was SAR 66,300,000, not SAR 115,100,000, and for the year ended on 31/12/2008 AD was SAR 3,200,000 instead of SAR 42,300,000 according to movements of provided loans. Regarding (Withholding Tax) item, Taxpayer claims that the Company paid part of the due amount and paid withholding tax related thereto, while the remaining amount was canceled in 2011. Moreover, ZATCA imposed withholding tax on amounts previously paid to ZATCA, which constitutes double taxation in their



procedure. Moreover, Taxpayer requests correcting this error and canceling withholding taxes and the related fines. Regarding (Dividend Income from Companies Listed on Saudi Exchange not Deducted from Zakat Base) item, Taxpayer claims that dividend income for the years from 2007 to 2010 has no effect on zakat base, whether it was paid for the year in which the profits were (realized) or from the opening balance of retained earnings, and it should not be subject to zakat in the year it is recorded as receivable income. Regarding (Import Profits) item, Taxpayer claims that these differences must be subject to examination and audit, as imported purchases include the item (goods in transit), which means that the Company has imported purchases and they are handled according to FOB method. In addition, ZATCA assumption that there are no imported purchases is unfounded. Therefore, Taxpayer requests overturning Primary Department's decision being challenged for the above-mentioned grounds.

On Tuesday, 04/10/2022 AD, the First Appellate Department for Income Tax Violations and Disputes convened via virtual communication in accordance with remote litigation procedures; based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH. Having taken cognizance of appeal and documents included in Case file, and after legal deliberation, since the Department did not find any reasons for appearance of both parties to the appeal, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Having taken cognizance of Case documents and statement of appeal submitted by Taxpayer, the Department found that conditions for appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, appeal request is accepted in form for being submitted by a party having capacity and within the time-limit.

On Merits: As for Taxpayer's appeal regarding (Investments not Deducted from Zakat Base for the Year Ended on 31/12/2007 AD) item, Taxpayer's appeal involves the fact that the item outlines investments in subsidiaries and other investments that ZATCA had previously deducted from zakat base in previous and subsequent years. Paragraph (4.A) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in establishments within the Kingdom, in partnership with others, if these investments are subject to zakat collection under these Regulations, then if the investment in those establishments is not subject to zakat collection, it should not be deducted from zakat base". Based on the foregoing, and since two essential conditions must be met for investments to be considered as acquisition assets and be deductible from zakat base: the documented intention of the authorized person indicating the purpose of investment, and the lack of sale transactions during the year on those investments. Having taken cognizance of Notes (5, 6, 7) to the financial statements, it turns out that the investments outline investments in subsidiaries and associates registered in the Kingdom, as well as investments in properties, which are lands, and other available-for-sale investments, which consist of investments in listed and unlisted companies on the Saudi Exchange. Having reviewed balance of investment in securities, it was found that there were not sale transactions during the year in question, and the impact of the change is due to reevaluation of investments at fair value on the date of financial statements as required by the accounting standard. The change in balance was not due to trading transactions. In addition, ZATCA did not provide evidence to support its stance that these investments should be considered as trading assets rather than acquisition assets. Therefore, the Department accepts Taxpayer's appeal and overturns Primary Department's decision regarding this item.

Regarding Taxpayer's appeal regarding (Loans Added to Zakat Base for 2004 and 2008) item, Taxpayer's appeal involves objecting to Primary Department's decision regarding this item. Taxpayer claims that there was a clerical error in ZATCA assessment that is inconsistent with the actual movement of provided loans. Fatwa No. (22665) dated 15/04/1424 AH states: "The funds borrowed by the company from investment funds or other sources fall into one of the following



cases: 1. If a full year passes on all or part of the borrowed amount before it is spent, zakat shall be due on the portion for which the year has passed. 2. If all or part of the borrowed amount is used to finance fixed assets, no zakat shall be due on the portion used for that purpose. 3. If the borrowed amount is used to finance the company's ongoing business activities, which are considered trading assets, zakat shall be due based on what it has been turned into, and it is to be assessed at the yearend". Paragraph (5) of Clause (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 10/06/1438 AH states: "First: Zakat Base consists of all Taxpayer's funds subject to Zakat, including: 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdraft accounts owed by Taxpayer as follows: A. The portion that remains as cash and has completed a full year. B. The portion used to finance acquisition assets. C. The portion used for trading assets and for which a full year has passed". As such, it turns out that financing sources, such as creditors and loans owed by Taxpayer, shall be added to zakat base for the portion that remains as cash and has completed a full year, the portion used to finance acquisition assets and the portion used in trading assets and for which a full year has passed. Since the loans subject matter of appeal are bank loans, Taxpayer has provided in Exhibit (10) statements showing balances, including opening balances, additions during the year and total repayments. This confirms Taxpayer's claim to include balances that have completed a year amounting to SAR 66,300,000 for the year ended on 31/03/2004 AD and SAR 3,200,000 for the year ended on 31/12/2008 AD. In addition, ZATCA did not provide information or data to refute the accuracy of Taxpayer's declaration. The principal rule is that Taxpayer's declaration is accurate unless otherwise is proven. Since ZATCA did not handle Taxpayer as above-mentioned, nor did it provide evidence that the amounts were used to finance Company's activity or to purchase fixed assets. Therefore, the Department accepts Taxpayer's appeal and overturns Primary Department's decision regarding this item.

Regarding Taxpayer's appeal in terms of (Withholding Tax) item, the appeal involves Taxpayer's objection to Primary Department's decision regarding this item. Taxpayer claims that ZATCA imposed withholding tax on amounts that had already been paid. Having taken cognizance of Case file and documents submitted by Taxpayer, it turns out that Taxpayer paid to: 1. Switzerland: Consulting and professional fees amounting to SAR 40,156.75 according to the attached forms, checks and collection orders. 2. Paid in UK (Britain): Consulting and professional fees and other expenses amounting to SAR 2,826.15 according to the attached forms, checks and collection orders. Therefore, the Department amends Primary Department's decision, by deducting amounts paid to non-resident entities for the period from 01/04/2004 AD to 31/12/2010 AD and the withholding tax paid as above-mentioned.

As for Taxpayer's appeal regarding (Dividend Income from Companies Listed on the Saudi Exchange not Deducted from Profit subject to Zakat) item, Taxpayer's appeal involves objection to Primary Department's decision regarding this item. Taxpayer claims that the dividend income for the years from 2007 to 2010 has no effect on zakat base, whether it was paid from the year in which these profits were generated or from the opening balance of retained earnings. Therefore, such dividends should not be subject to zakat in the year in which they are recognized as receivable income. Since the dividends announced for distribution to shareholders are not added to zakat base of the companies in which Taxpayer has investments if they are deposited in a special account that the Company is not allowed to use. Having reviewed Financial Statements (Note No. 4) regarding debtors and amounts paid in advance, it turns out that they include "dividends receivable" amounting to SAR 6,014,000. Having taken cognizance of Case file and documents provided by Taxpayer, it turns out that detailed information was provided about the dividend amounts paid and dates of payment for each of the companies in which Taxpayer has investments included in Taxpayer's income for 2010. This information was included in (Excel) file and supported by the resolutions of boards of the companies in which Taxpayer has investments recommending cash dividends for 2010. It was elaborated that Company's share of dividends due



for distribution amounted to SAR 5,813,007, while Company's share of cash dividends distributed in the same year was SAR 1,738,993.50. As such, since investments in companies in the Kingdom are not subject to zakat at the investing company, as they are subject to zakat at the level of the company in which Taxpayer has investments to avoid double taxation, and since it was established that the cash dividends deposited in bank amounted to SAR 1,738,993.50 for 2010, this Department concludes that Taxpayer is entitled to deduct these due dividends from its zakat base to avoid double taxation, amounting to SAR 5,813,007, and amend Primary Department's decision accordingly.

Regarding Taxpayer's appeal in terms of (Statute of Limitation) item, Article 186 of the Law of Civil Procedures issued by Royal Decree No. (M/1) dated 22/01/1435H states: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion". As such, and since it was found that the five-year statute of limitation item was neither discussed by Primary Department nor presented before it, nor was it among the contested items when the dispute was reviewed by ZATCA, it is determined that this shall be considered a new petition. Therefore, the Department dismisses Taxpayer's appeal regarding this item.

With regard to the remaining items subject matter of this Case, the Department was free to consider the challenged decision grounds without making any additions whenever it became satisfied that these grounds were sufficient and did not require any further addition, because supporting those grounds confirms that the Department did not find any decision-related objections that deserved a response that went beyond those grounds. Accordingly, since it is established that the decision, subject matter of this appeal, with regard to challenged items was consistent with valid reasons on which it was based and sufficient to support the ruling, as the department rendering decision has considered the dispute grounds and reached the conclusion mentioned in its wording, since such Department did not observe anything that deserved correction or comment in light of defenses provided thereto. Therefore, the Department dismisses Taxpayer's appeal and upholds Primary Department's decision regarding the remaining items of subject matter of the Case based on related grounds.

Decision:

First: Accept Appeal in form filed by Taxpayer (... Company), C.R. No. (...), TIN (...), against the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2020-162) issued in Case No. (ZW-9382-2019) related to zakat assessment for the years from 2003 to 2010.

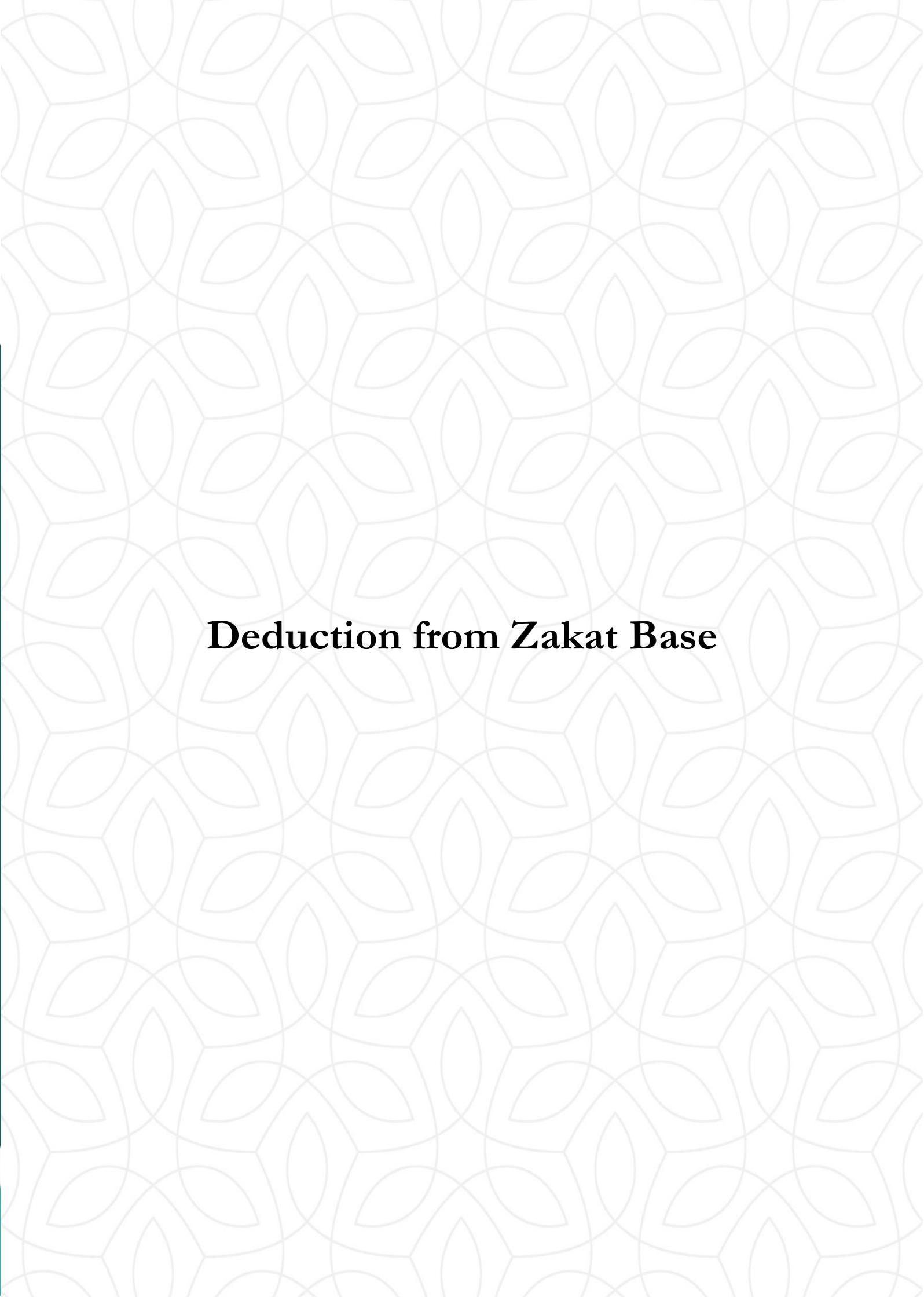
Second: On Merits:

1. Accept Taxpayer's Appeal regarding (Investments not Deducted from Zakat Base for the Year Ended on 31/12/2007 AD) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.
2. Accept Taxpayer's Appeal regarding (Loans Added to Zakat Base for 2004 and 2008) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.
3. Accept Taxpayer's Appeal regarding (Withholding Tax) item and amend the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.
4. Accept Taxpayer's Appeal regarding (Dividend Income) item and amend the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.
5. Dismiss Taxpayer's Appeal regarding (Statute of Limitation) item according to the grounds and reasons stated herein.



6. Dismiss Taxpayer's Appeal regarding the remaining items subject matter of the Case and uphold decision the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Deduction from Zakat Base



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2023-78437)
Delivered in Appeal No. (Z-
2021-78437)

Principle No. 392

Research & development expenses shall be considered deductible expenses as long as they are supported by documents.

Facts:

The Department convened to consider the Appeal filed on 20/10/2021 filed by ..., holder of National ID No. (...) on behalf of Appellant Company under POA No. (...) against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1118) rendered in Case No. (Z-7362-2019) related to zakat assessment for 2017 in Case filed by Appellant against ZATCA. Primary Department's decision states:

1. Dismiss objection of Plaintiff, ... Company for Auto Wholesale, (C.R. No. ...) regarding the item of donations to ... Charity.
2. Dismiss objection of Plaintiff, ... Company for Auto Wholesale, (C.R. No. ...) regarding the item of research & development expenses.
3. Dismiss objection of Plaintiff, ... Company for Auto Wholesale, (C.R. No. ...) regarding the item of related parties.
4. Dismiss objection of Plaintiff, ... Company for Auto Wholesale, (C.R. No. ...) regarding the item of advances from customers.
5. Dismiss objection of Plaintiff, ... Company for Auto Wholesale, (C.R. No. ...) regarding the item of provisions.

Since Taxpayer (... Company for Auto Wholesale) dissatisfied with this decision; therefore, Taxpayer submitted a statement of appeal summarized as follows:

Taxpayer objects to Primary Department's decision subject matter of appeal. Regarding (Donations to ... Charity for 2017) item, Taxpayer claims that ... is a charity registered in Charity Register at the Ministry of Human Resources and Social Development under No. (...) for ... under Ministerial Resolution No. (82256). Therefore, Taxpayer requests deducting such donations in accordance with Paragraph (4) of Article (5) of the Implementing Regulations for the Collection of Zakat. Regarding (Research & Development Expenses for 2017) item, Taxpayer claims that research & development expenses are related to Company's activity, as the Company paid SAR 7,350,053 as research & development expenses to its distributors in order to develop sale centers in accordance with Company's standards, and these expenses were recorded in Company's books. Regarding (Related Parties for 2017) item, Taxpayer claims that the mentioned balance outlines amount due from commercial transactions primarily with ... Company LTD, as shown in Note No. (10) to the financial statements. On the other hand, the added amount had not completed a full year, as the opening balance was SAR 318,850,314 and total debit transactions during the year amounted to SAR 22,210,814,549. Regarding (Advances from Customers for 2017) item, Taxpayer claims that the balance of advances from customers was closed during the year, with an opening



balance of SAR 411,374,065 and debit transactions amounting to SAR 8,158,234,308. The existing balance at the year-end resulted from commercial transactions carried out during the year; therefore, it had not completed a full year. Regarding (Provisions for 2017) item, Taxpayer claims that ZATCA added the following provisions (Provision for end-of-service award, provision for additional bonuses, provision for doubtful debts and provision for zakat) after adjusting them for actuarial gains/losses and amounts transferred to the Company from some companies of (... Group) during the year. Regarding the provision of employees' end-of-service award, the year-end balance that ZATCA added to zakat base includes an end-of-service provision transferred to the Company from some companies of the group amounting to SAR 4,341,302. This amount was already subject to zakat within zakat base of ... Company from which it was transferred. Regarding the provision for additional bonuses, the same company, (... Company for Import and Distribution) transferred an amount of SAR 2,967,597, which was subject to zakat within its zakat base. Regarding the provision for doubtful debts, ... Company transferred an amount of SAR 331,922, which was also subject to zakat within its zakat base. Regarding zakat provision, ZATCA added a zakat provision of SAR 8,638, but Taxpayer argues that this amount outlines a portion of the net book profit that was already added to zakat base, thus reading this provision has resulted in double taxation of the mentioned amount. On the other hand, zakat paid during the year amounted to SAR 1,651,362, which exceeds the opening balance of SAR 1,660,000. Accordingly, there is no carried-over balance. Thereupon, Taxpayer requests overturning Primary Department's decision subject matter of appeal based on the aforementioned grounds.

On Tuesday, 14/03/2023, the First Appellate Department for Income Tax Violations and Disputes convened via virtual communication in accordance with the remote litigation procedures; based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having taken cognizance of the appeal, documents included in Case file, and after legal deliberation, since the Department did not find any reasons for appearance of both parties to the appeal, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Upon reviewing Case documents and Appeal Brief submitted by Taxpayer, the Department found that conditions for Appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal is accepted in form for being submitted by a party having capacity and within the prescribed time-limit.

On merits: With regard to Taxpayer's appeal regarding (Donations to ... Charity for 2017) item, Taxpayer's appeal involves objection to Primary Department's decision regarding this item. Taxpayer claims that ... Charity is a charitable entity registered in Charity Register at the Ministry of Human Resources and Social Development under No. (59) of 1429 AH. Article (4.5) of the Implementing Regulations for the Collection of Zakat states: "Donations shall be considered deductible expenses as long as supporting documents are provided, and their legitimacy is verified." Therefore, donations cannot be deducted from Taxpayer's zakat base merely because they have left Taxpayer's possession. It is necessary to prove the legitimacy of donation and ensure that it was made to organizations authorized by the relevant authorities to perform charitable activities. Simply mentioning donations in Taxpayer's financial statements is not sufficient to justify their deduction from zakat base. Since ZATCA approved the deduction of SAR 346,000 from Taxpayer's zakat base according to its supplementary memorandum, and Taxpayer attached a transfer receipt in Case file with an unknown source, which cannot be relied upon to justify the deduction from zakat base, the Department concludes that the dispute regarding the amount of SAR 346,000 has been resolved, and dismisses deduction of the remaining amount from Taxpayer's zakat base.

As for Taxpayer's appeal regarding (Research & Development Expenses for 2017) item, Taxpayer's appeal involves objecting to Primary Department's decision regarding this item. Taxpayer claims



that research & development expenses are related to Company's activity, since the Company has paid SAR 7,350,053 as research and development expenses to its distributors in order to develop sales centers in accordance with Company's standards. As such, and since research & development expenses are considered deductible expenses as long as they are supported by documents, and since Taxpayer did not provide evidence to substantiate these expenses. Therefore, the Department dismisses Taxpayer's appeal and upholds Primary Department's decision.

As for Taxpayer's appeal regarding the remaining items subject matter of the Case, the Department finds no fault in Primary Department's reliance on the reasons stated in appealed decision without further additions, as long as it determines that such reasons are sufficient and no new considerations need to be introduced. By upholding decision and reasons provided, it turns out that the Department found no merit in the objections raised against the decision that warranted a response beyond what was already included. Given that the appealed decision regarding the items in question was based on sound and sufficient reasoning, and since the issuing Department thoroughly examined the core of the dispute and arrived at the conclusion stated in its verdict, and considering that this Department did not observe any issues requiring correction or further response in view of raised defenses, this Department rejects Taxpayer's appeal and upholds Primary Department's decision subject matter of appeal, supported by its reasons, regarding the remaining items in question.

In view of the foregoing, and in light of stated reasons, the Department unanimously decided as follows:

Decision:

First: Accept Appeal in form filed by Taxpayer (... Company for Auto Wholesale), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1118) rendered in Case No. (Z-7362-2019) related to zakat assessment for 2017.

Second: On Merits:

Regarding (Donations to ... Charity for 2017) item:

Uphold resolution of the dispute regarding the amount of SAR 346,000 from Taxpayer's zakat base according to the grounds and reasons stated herein.

Dismiss Taxpayer's Appeal regarding the remaining amount from Taxpayer's zakat base and uphold decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds and reasons stated herein.

Dismiss Taxpayer's Appeal regarding the remaining items subject matter of the Case and uphold decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds and reasons stated herein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-1154)
Issued in Appeal No. (Z-27756-
2020)

Principle No. (393)

Two primary conditions shall be met in order to consider investments as acquisition assets and be deducted from zakat base, namely: The documented intention of the authorized person indicating the purpose of investment, and the lack of sale transactions during the year on those investments.

Facts:

The Department convened to consider Appeal filed on 22/10/2022 AD by ..., holder of National ID No. (...), on behalf of Appellant Company under POA No. (...) against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-162) rendered in Case No. (ZW-9382-2019) related to zakat assessment for years from 2003 to 2010 in Case filed by Appellant against ZATCA. Primary Department's decision states:

In form:

- Accept the Case of Plaintiff (... Company) C.R. No. (...), in form.

On Merits:

1. Dismiss Plaintiff's objection regarding Losses of Affiliates item.
2. Dismiss Plaintiff's objection regarding "Approving Investments as Deduction from Zakat Base after Deducting Provision for Price Decline for 2009 and 2010" item.
3. Regarding Shareholder Current Account (clerical error) item:
 - a. Dismiss Plaintiff's objection regarding (Other Investments not Approved as Deduction from Zakat Base for the Year Ended on 31/03/2004 AD) item.
 - b. Accept Plaintiff's objection regarding (Shareholder Current Account for Zakat Assessment for the Year Ended on 31/03/2006 AD of SAR 40,874,000) item.
4. Dismiss Plaintiff's objection regarding (Other Investments not Approved as Deduction from Zakat Base for the Year Ended on 31/03/2004 AD) item.
5. Dismiss Plaintiff's objection regarding (Approving all Items of Adjusted Return for the two years ended in 2006 and 2007) item.
6. Dismiss Plaintiff's objection regarding (Non-deduction of Investments for the Year Ended on 31/12/2007 AD) item.
7. Dismiss Plaintiff's objection regarding (Loans Added to Zakat Base for 2004 and 2008) item.
8. Dismiss Plaintiff's objection regarding (Withholding Tax) item.
9. Dismiss Plaintiff's objection regarding (Dividends from Companies Registered in the Saudi Exchange not Approved for Deduction from Zakat Base) item.
10. Dismiss Plaintiff's objection regarding (Import Revenue) item.



11. Accept Plaintiff's objection regarding (Zakat Declaration for the Period from 01/04/2007 AD to 31/12/2007 AD) item.

Since Taxpayer (..... Company) dissatisfied with this decision; therefore, Taxpayer submitted a statement of appeal summarized as follows:

Taxpayer objects to the decision of Appeal Committee being subject matter of appeal, claiming that regarding (Assessment after Lapse of Statutory Period of Five Years) item, Taxpayer had previously invoked the five-year statute of limitation on disputed zakat differences for the period from April 01, 2003 AD to December 31, 2009 AD under additional objection memorandum before Primary Department. This was based on extinguishment of ZATCA right to amend the returns after lapse of statutory period specified in Paragraph (10) of Article (21) of the Implementing Regulations for the Collection of Zakat. However, the Primary Department disregarded its right regarding the application of that Article, and its decision did not mention its request, either by acceptance or rejection. Regarding (Losses of Subsidiaries from March 31, 2004 AD to March 31, 2006 AD) item, Taxpayer claims that the item outlines financial support for losses of one of the companies in which Taxpayer has investments, which is ... Company for Marketing. In addition, the investing company applies cost method, not equity method, as established in the financial statements. Assuming Primary Department's reliance on Paragraph (12) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat is correct, the basic condition is passage of a full year, which was not met in this case, as this financial support had not completed a full year. Regarding (Provision for Investment Impairment for the Years 2009 and 2010) item, Taxpayer claims that all investments are approved, and there are no unapproved investments to separate the impairment provision and allocate it between approved and unapproved investments. Deducting those investments without the related provision balance and adjusting profit with its component and including the carried-forward amount in zakat base would result in double taxation. Regarding (Partners' Current Account (clerical error)) item, Taxpayer claims that the dispute between Taxpayer and ZATCA is merely a clerical error, as the decision on considering objection issued by ZATCA explicitly stated acceptance of Company's stance in this regard. However, the challenged amounts were not adjusted in the same objection consideration decision, despite Taxpayer's stance being accepted by ZATCA. Regarding (Other Investments for the Year Ended on March 31, 2004 AD, as well as Clerical Error in Investments in Subsidiaries and Associates for the Same Year) item, Taxpayer claims that these investments are for acquisition purposes and were approved by ZATCA in previous and subsequent years. In addition, Taxpayer mentioned a clerical error amounting to SAR 500,000 related to the investment in Company, stating that investments in subsidiaries and associates should have been deducted in an amount of SAR 77,963,000 according to the financial statements instead of SAR 77,463,000. Regarding (Approving all Items of Adjusted Return for the Years Ended on 31/03/2006 AD and 31/03/2007 AD, with a request to approve all investments in subsidiaries and associates) item, Taxpayer claims objecting to ZATCA failure to conduct zakat assessment for the fiscal year ended on 31/03/2006 AD based on the comparative figures in the financial statements for the fiscal year ended on 31/03/2007 AD. Regarding (Investments not Deducted from Zakat Base for the Year Ended on 31/12/2007 AD) item, Taxpayer claims that these investments outline investments in subsidiaries and associates registered in the Kingdom, as well as other investments, which outline long-term investments in companies listed on the Saudi Exchange that were previously deducted by ZATCA from zakat base in previous and subsequent years. Regarding (Loans Added to Zakat Base for 2004 and 2008) item, Taxpayer claims that the core dispute between Taxpayer and ZATCA involves the accuracy of determining amounts subject to zakat due to a clerical error in ZATCA decision, as ZATCA erred when determining balances of loans for 2004 and 2008. In addition, the loan subject to zakat for the year ended on 31/03/2004 AD was SAR 66,300,000, not SAR 115,100,000, and for the year ended on 31/12/2008 AD was SAR 3,200,000 instead of SAR 42,300,000 according to movements of provided loans. Regarding (Withholding Tax) item, Taxpayer claims that the Company paid part of the due amount and paid withholding tax related



thereto, while the remaining amount was canceled in 2011. Moreover, ZATCA imposed withholding tax on amounts previously paid to ZATCA, which constitutes double taxation in their procedure. Moreover, Taxpayer requests correcting this error and canceling withholding taxes and the related fines. Regarding (Dividend Income from Companies Listed on Saudi Exchange not Deducted from Zakat Base) item, Taxpayer claims that dividend income for the years from 2007 to 2010 has no effect on zakat base, whether it was paid for the year in which the profits were (realized) or from the retained earnings, and it should not be subject to zakat in the year it is recorded as receivable income. Regarding (Import Profits) item, Taxpayer claims that these differences must be subject to examination and audit, as imported purchases include the item (goods in transit), which means that the Company has imported purchases and they are handled according to FOB method. In addition, ZATCA assumption that there are no imported purchases is unfounded. Therefore, Taxpayer requests overturning Primary Department's decision being challenged for the above-mentioned grounds.

On Tuesday, 04/10/2022, the First Appellate Department for Income Tax Violations and Disputes convened via virtual communication in accordance with the remote litigation procedures; based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH. Having taken cognizance of the appeal, documents included in Case file, and after legal deliberation, since the Department did not find any reasons for appearance of both parties to the appeal, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Having taken cognizance of Case documents and statement of appeal submitted by Taxpayer, the Department found that conditions for appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, appeal request is accepted in form for being submitted by a party having capacity and within the time-limit.

On Merits: As for Taxpayer's appeal regarding (Investments not Deducted from Zakat Base for the Year Ended on 31/12/2007 AD) item, Taxpayer's appeal involves the fact that the item outlines investments in subsidiaries and other investments that ZATCA had previously deducted from zakat base in previous and subsequent years. Paragraph (4.A) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in establishments within the Kingdom, in partnership with others, if these investments are subject to zakat collection under these Regulations, then if the investment in those establishments is not subject to zakat collection, it should not be deducted from zakat base". Based on the foregoing, and since two essential conditions must be met for investments to be considered as acquisition assets and be deductible from zakat base: the documented intention of the authorized person indicating the purpose of investment, and the lack of sale transactions during the year on those investments. Having taken cognizance of Notes (5, 6, 7) to the financial statements, it turns out that the investments outline investments in subsidiaries and associates registered in the Kingdom, as well as investments in properties, which are lands, and other available-for-sale investments, which consist of investments in listed and unlisted companies on the Saudi Exchange. Having reviewed balance of investment in securities, it was found that there were not sale transactions during the year in question, and the impact of the change is due to reevaluation of investments at fair value on the date of financial statements as required by the accounting standard. The change in balance was not due to trading transactions. In addition, ZATCA did not provide evidence to support its stance that these investments should be considered as trading assets rather than acquisition assets. Therefore, the Department accepts Taxpayer's appeal and overturns Primary Department's decision regarding this item.

As for Taxpayer's appeal regarding (Loans Added to Zakat Base for 2004 and 2008) item, Taxpayer's appeal involves objecting to Primary Department's decision regarding this item. Taxpayer claims that there was a clerical error in ZATCA assessment that is inconsistent with the



actual movement of provided loans. Fatwa No. (22665) dated 15/04/1424 AH states: “The funds borrowed by the company from investment funds or other sources fall into one of the following cases: 1. If a full year passes on all or part of the borrowed amount before it is spent, zakat shall be due on the portion for which the year has passed. 2. If all or part of the borrowed amount is used to finance fixed assets, no zakat shall be due on the portion used for that purpose. 3. If the borrowed amount is used to finance the company’s ongoing business activities, which are considered trading assets, zakat shall be due based on what it has been turned into, and it is to be assessed at the yearend”. Paragraph (5) of Clause (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 10/06/1438 AH states: “First: Zakat Base consists of all Taxpayer’s funds subject to Zakat, including: 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdraft accounts owed by Taxpayer as follows: A. The portion that remains as cash and has completed a full year. B. The portion used to finance acquisition assets. C. The portion used for trading assets and for which a full year has passed”. As such, it turns out that financing sources, such as creditors and loans owed by Taxpayer, shall be added to zakat base for the portion that remains as cash and has completed a full year, the portion used to finance acquisition assets and the portion used in trading assets and for which a full year has passed. Since the loans subject matter of appeal are bank loans, Taxpayer has provided in Exhibit (10) statements showing balances, including opening balances, additions during the year and total repayments. This confirms Taxpayer’s claim to include balances that have completed a year amounting to SAR 66,300,000 for the year ended on 31/03/2004 AD and SAR 3,200,000 for the year ended on 31/12/2008 AD. In addition, ZATCA did not provide information or data to refute the accuracy of Taxpayer’s declaration. The principal rule is that Taxpayer’s declaration is accurate unless otherwise is proven. Since ZATCA did not handle Taxpayer as above-mentioned, nor did it provide evidence that the amounts were used to finance Company’s activity or to purchase fixed assets. Therefore, the Department accepts Taxpayer’s appeal and overturns Primary Department’s decision regarding this item.

Regarding Taxpayer’s appeal in terms of (Withholding Tax) item, the appeal involves Taxpayer’s objection to Primary Department’s decision regarding this item. Taxpayer claims that ZATCA imposed withholding tax on amounts that had already been paid. Having taken cognizance of Case file and documents submitted by Taxpayer, it turns out that Taxpayer paid to: 1. Switzerland: Consulting and professional fees amounting to SAR 40,156.75 according to the attached forms, checks and collection orders. 2. Paid in UK (Britain): Consulting and professional fees and other expenses amounting to SAR 2,826.15 according to the attached forms, checks and collection orders. Therefore, the Department amends Primary Department’s decision, by deducting amounts paid to non-resident entities for the period from 01/04/2004 AD to 31/12/2010 AD and the withholding tax paid as above-mentioned.

As for Taxpayer’s appeal regarding (Dividend Income from Companies Listed on the Saudi Exchange not Deducted from Profit subject to Zakat) item, Taxpayer’s appeal involves objection to Primary Department’s decision regarding this item. Taxpayer claims that the dividend income for the years from 2007 to 2010 has no effect on zakat base, whether it was paid from the year in which these profits were generated or from the opening balance of retained earnings. Therefore, such dividends should not be subject to zakat in the year in which they are recognized as receivable income. Since the dividends announced for distribution to shareholders are not added to zakat base of the companies in which Taxpayer has investments if they are deposited in a special account that the Company is not allowed to use. Having reviewed Financial Statements (Note No. 4) regarding debtors and amounts paid in advance, it turns out that they include "dividends receivable" amounting to SAR 6,014,000. Having taken cognizance of Case file and documents provided by Taxpayer, it turns out that detailed information was provided about the dividend amounts paid and dates of payment for each of the companies in which Taxpayer has investments included in Taxpayer’s income for 2010. This information was included in (Excel) file and



supported by the resolutions of boards of the companies in which Taxpayer has investments recommending cash dividends for 2010. It was elaborated that Company's share of dividends due for distribution amounted to SAR 5,813,007, while Company's share of cash dividends distributed in the same year was SAR 1,738,993.50. As such, since investments in companies in the Kingdom are not subject to zakat at the investing company, as they are subject to zakat at the level of the company in which Taxpayer has investments to avoid double taxation, and since it was established that the cash dividends deposited in bank amounted to SAR 1,738,993.50 for 2010, this Department concludes that Taxpayer is entitled to deduct these due dividends from its zakat base to avoid double taxation, amounting to SAR 5,813,007, and amend Primary Department's decision accordingly.

Regarding Taxpayer's appeal in terms of (Statute of Limitation) item, Article 186 of the Law of Civil Procedures issued by Royal Decree No. (M/1) dated 22/01/1435H states: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion". As such, and since it was found that the five-year statute of limitation item was neither discussed by Primary Department nor presented before it, nor was it among the contested items when the dispute was reviewed by ZATCA, it is determined that this shall be considered a new petition. Therefore, the Department dismisses Taxpayer's appeal regarding this item.

With regard to the remaining items subject matter of this Case, the Department was free to consider the challenged decision grounds without making any additions whenever it became satisfied that these grounds were sufficient and did not require any further addition, because supporting those grounds confirms that the Department did not find any decision-related objections that deserved a response that went beyond those grounds. Accordingly, since it is established that the decision, subject matter of this appeal, with regard to challenged items was consistent with valid reasons on which it was based and sufficient to support the ruling, as the department rendering decision has considered the dispute grounds and reached the conclusion mentioned in its wording, since such Department did not observe anything that deserved correction or comment in light of defenses provided thereto. Therefore, the Department dismisses Taxpayer's appeal and upholds Primary Department's decision regarding the remaining items of subject matter of the Case based on related grounds.

Decision:

First: Accept Appeal in form filed by Taxpayer (... Company), C.R. No. (...), TIN (...), against the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2020-162) issued in Case No. (ZW-9382-2019) related to zakat assessment for the years from 2003 to 2010.

Second: On Merits:

1. Accept Taxpayer's Appeal regarding (Investments not Deducted from Zakat Base for the Year Ended on 31/12/2007 AD) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.
2. Accept Taxpayer's Appeal regarding (Loans Added to Zakat Base for 2004 and 2008) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.
3. Accept Taxpayer's Appeal regarding (Withholding Tax) item and amend the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.
4. Accept Taxpayer's Appeal regarding (Dividend Income) item and amend the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.



5. Dismiss Taxpayer's Appeal regarding (Statute of Limitation) item according to the grounds and reasons stated herein.
6. Dismiss Taxpayer's Appeal regarding the remaining items subject matter of the Case and uphold decision the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated herein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-511)
Issued in Appeal No. (Z-82478-2021)

Principle No. (394)

Establishing addition of corresponding credit results in deducting deferred rental assets within retained earnings.

Facts:

To consider Appeal dated 16/11/2021 AD filed by ..., holder of National ID No. (...), on behalf of Appellant Company under POA No. (...) and Appeal dated 16/11/2021 AD filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1317) rendered in Case No. (Z-32898-2020) related to zakat assessment for years from 2013 to 2018, in Case filed by Appellant against ZATCA. Primary Department's decision states:

First: Accept objection of Plaintiff (... Company), C.R. No. (...), regarding (Statutory Period for Zakat Assessment for 2013 and 2014) item.

Second: Accept objection of Plaintiff (... Company), C.R. No. (...), regarding (Investment in Lands) item.

Third: Dismiss objection of Plaintiff (... Company), C.R. No. (...), regarding (Dividends) item.

Fourth: Dismiss objection of Plaintiff (... Company), C.R. No. (...), regarding (Deferred Rental Assets) item.

Since both parties dissatisfied with this decision; therefore, either party submitted a statement of appeal summarized as follows:

With regard to Taxpayer's appeal against Primary Department's decision, his appeal with respect to (Dividends) item centers on that Taxpayer submitted supporting documents required to accept claim for deduction of dividends. In addition, Taxpayer attached shareholders' decision to distribute dividends of years in question, together with statement of bank account to verify withdrawals of shareholders during these years, in contrary to Primary Department's conclusion. Furthermore, Taxpayer attached an analytical statement showing names of shareholders benefiting from dividends and settlement of bank transfers corresponding to shareholders' decisions to distribute dividends. Taxpayer also stated that shareholders withdrew their funds during the year, and total withdrawals made by shareholders are adjusted against profits declared by the Company which are clearly shown in attached bank statements. Regarding (Deferred Rental Assets) item, Taxpayer claims that deferred rental assets are in fact an accounting entry due to transition to IFRS and change in method of revenue recognition, and does not reflect actual cash amounts collected from rent or actual revenues in accordance with expected lease contracts, as the Company prepared its annual financial statements in accordance with IFRS for the first time on 31/12/2018 AD. The Company was required to record deferred rent assets as a result of difference between the value



of contract and deferred fixed installment revenues in financial statements. Opening balance of retained earnings as of 01/01/2018 AD was restated to reflect requirements of new standards, and an account was created for deferred rent assets, and accounting entry of opening balance of deferred rent assets. Since the corresponding set-off is reflected in opening balance of retained earnings that was added to zakat base, amount declared as (Deferred Rental Assets) was claimed as a deduction from zakat base. ZATCA procedure of not accepting deduction leads to double taxation of the same amount. Therefore, Taxpayer requests to overturn Primary Department's decision subject matter of appeal for the above reasons.

ZATCA dissatisfied with the decision; therefore, ZATCA filed an appeal against the contested decision under a statement of appeal summarized as follows:

Regarding ZATCA appeal against Primary Department's decision, the appeal mainly involves (Statutory Period for Zakat Assessment for 2013 and 2014) item. ZATCA states that the mere existence of adjustments to amounts included in Taxpayer's declaration (along with Taxpayer's consent to these adjustments without objection) indicates that incorrect information was provided regarding the amounts that should have been included in the declaration, which makes Taxpayer subject to Paragraph (8) of Article 21 of the Implementing Regulations for the Collection of Zakat. Furthermore, Department's conclusion that ZATCA did not provide a written letter from Taxpayer agreeing to the assessment or its amendment is unfounded, since the mere silence of Taxpayer on the issue or the absence of an objection to the items adjusted by ZATCA implies consent to such adjustment, and a written letter is not required. Regarding (Investment in Lands) item, ZATCA states that the reasoning of decision contradicts logic, as the Department stated in its decision that: (Value of investments presented in the financial statements indicates relative stability, which suggests that there was no active trading in the item subject matter of objection, leading to the conclusion that these investments are not intended for sale in their current state). This justification does not align with the figures set out in Taxpayer's audited financial statements and their clear implications. The movement of real estate investments as shown in the audited balance sheet, and the cash flow movement as reflected in the audited cash flow statement, clearly indicate that there were land sale transactions, as noted in the financial statement disclosures. These are evidence that cannot be ignored to establish Taxpayer's intent to trade. Moreover, it was observed that the Committee did not request any evidence from Taxpayer to confirm the intent behind the real estate investment, as is typically done in such cases, such as documented intent by Taxpayer before starting the investment or a thorough review of the movement in the item during the year and the reasons for that movement. Therefore, ZATCA insists on validity and correctness of its procedure and requests overturning Primary Department's decision regarding the items subject matter of appeal for the aforementioned reasons.

On Monday, 10/10/2022 AD, the First Appellate Department for Income Tax Violations and Disputes held a session, in presence of all its members, via video conference pursuant to remote litigation procedures in accordance with Article 15.2 of Tax Dispute and Violation Committee Procedures issued by Royal Order No. 26040 dated 21/04/1441 AH. Having reviewed appeal submitted by both parties to the Case, and having examined documents included in Case file. Since the Department found no grounds for presence of parties to the appeal. Therefore, the Department decided that the Case has become ripe for adjudication and deciding on its merits. Thereupon, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Having reviewed Case documents and statement of appeal submitted by Taxpayer and ZATCA, the Department found that the conditions for considering appeal met in form as stipulated by the relevant laws, regulations and decisions. Therefore, the two appeals are accepted in form for the fact of being filed by parties having capacities and within the prescribed time-limit.

On merits: Regarding Taxpayer's appeal in terms of (Dividends) item, Taxpayer's appeal involves objection to Primary Department's decision regarding this item, as Taxpayer claims that the



submitted supporting documents required for accepting claim to deduct dividends have been submitted. Paragraph (8) of Clause (First) of Article (4) the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Zakat base shall be consisted of all Taxpayer's funds subject to Zakat, including: 8. Balance of profits carried forward from previous years at the year-end". As such, since the dispute regarding this item is a documentary dispute, and having reviewed documents attached to Case file, it turns out that Taxpayer attached shareholders' decisions on distributing dividends and bank statements for years in question and an analytical statement of distributed dividends. Having considered bank statements, it turns out that there are amounts transferred to shareholder (... Company) amounting to SAR 19,7 million for 2015, SAR 600,000 for 2016 and SAR 25.3 million for 2018, taking into account that the amounts transferred on 31/12/2018 were not deducted due to completing a full year. Accordingly, the Department accepts Taxpayer's appeal and amend Primary Department's decision by deducting the above-mentioned amounts from zakat base for years in question set out in this item.

Regarding Taxpayer's appeal in terms of (Deferred Rental Assets) item, Taxpayer's appeal involves objection to Primary Department's decision regarding this item. Taxpayer claims that the deferred rental assets are an accounting entry due to transition to IFRS and change in revenue recognition and do not reflect actual cash amounts collected from rent. Having reviewed Note No. (20) to 2018 financial statements regarding application of IFRS prepared for the first time, it turns out that the opening balance for 2018 was adjusted and increased by the amount of deferred rental assets. Having reviewed 2018 zakat declaration, it is found that Taxpayer added the adjusted opening balance of retained earnings as a result of applying international standards, which entails deduction of deferred rental assets in order to demonstrate that the corresponding credit balance has been added to retained earnings. In addition, the financial statements show that the deferred rental assets are associated with operating leases and not finance leases, which indicates that reasoning of Primary Department's decision regarding this item is not valid, which concludes to dismiss Taxpayer's objection after characterizing it as receivables for finance leases. Therefore, the Department accepts Taxpayer's objection and overturns Primary Department's decision regarding this item.

Regarding ZATCA appeal in terms of remaining items subject matter of the Case, having taken cognizance of subject matter of dispute, having perused the appeal, and since the Department may persuade reasons for contested decision without addition whenever it considers that those reasons are sufficient. Through its support for the same with what those reasons contained; it is confirmed that it did not find in appeals addressed to decision what deserves a response thereto more than what those reasons contained. As such, and since it is established that the appealed decision regarding dispute on items subject matter of appeal was consistent with valid reasons on which it was based and sufficient to support its ruling, as the Primary Department conducted a thorough examination of dispute and concluded to the facts reached in its wording. Since the Department found validity of conclusion reached by Primary Department in its decision, and that reasons on which it based its decision are sufficient to support that decision, and since the Department did not notice anything that requires correction or comment in light of the arguments raised before it. Therefore, the Department dismisses ZATCA appeal and upholds Primary Department's decision subject matter of appeal regarding the conclusion related to items subject matter of ZATCA appeal based on its reasons.

Decision:

First: Accept appeal filed by Taxpayer (... Company for Development), C.R. No. (...), TIN (...), and appeal filed by ZATCA regarding First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1317) issued in Case No. (Z-32898-2020) related to zakat assessment for years from 2013 to 2018.

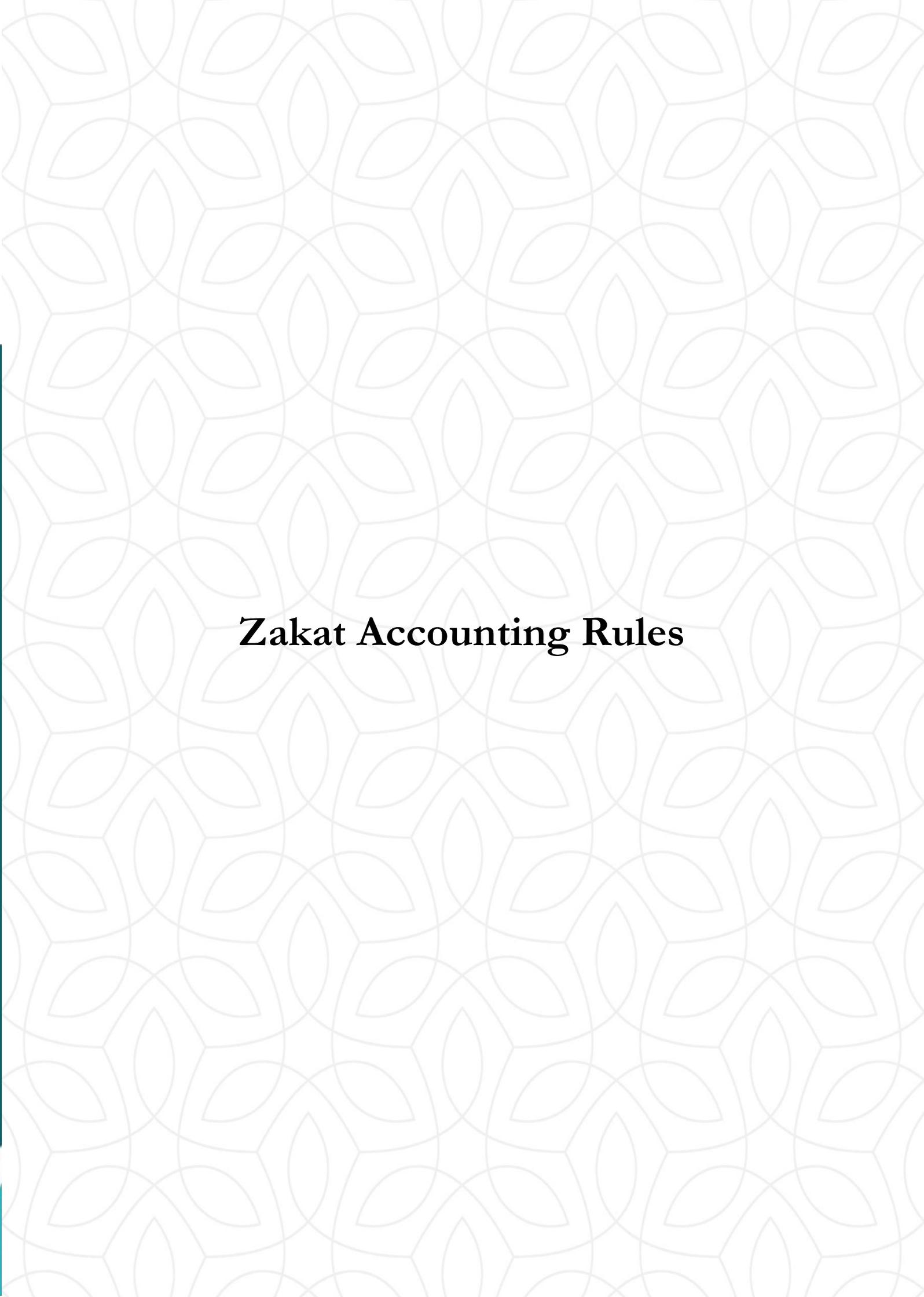
Second: On Merits:



- Accept Taxpayer's Appeal regarding (Dividend Income) item and amend decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds and reasons stated herein.
- Accept Taxpayer's Appeal regarding (Deferred Rental Assets) item and amend decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds and reasons stated herein.
- Dismiss Taxpayer's Appeal regarding the items subject matter of the Case, and uphold decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds and reasons stated herein.

This decision shall be deemed final and enforceable in accordance with Articles (47) and (48) of Tax Dispute and Violation Committee Procedures.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.



Zakat Accounting Rules



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-2038)
Issued in Appeal No. (Z-93553-
2022)

Principle No. 395

Deducting current investment balances that had transactions during the year is not accepted, while deducting the same current investment balances with no transactions during previous and subsequent years is accepted

Facts:

To consider appeal filed on 07/03/2020 AD by ... Company and ZATCA regarding Third Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ITR-2022-2141) rendered in Case No. (Z-17751-2020) related to zakat assessment for 2014 in the Case filed by Appellant against ZATCA. Primary Department decided as follows:

In form: Accept objection of Plaintiff (... Company), C.R. No. (...), to Defendant (ZATCA) decision.

On Merits:

1. Amend Defendant's decision regarding (Investments in shares of listed companies included within investments and financial assets that have undergone sale transactions) item.
2. Dismiss Plaintiff's objection regarding (Investments in Funds Included within Investments in Non-listed Company Shares) item.
 - A. Amend Defendant's decision regarding (Net (Gains) Losses Unrealized from the Reevaluation of Investments in Shares of Listed Companies included within Investments and Financial Assets that have undergone sales transactions) item.
 - B. Dismiss Plaintiff's objection regarding (Net (Gains) Losses Unrealized from the Revaluation of Investments in Shares of Non-listed Companies) item.
3. Amend Defendant's decision regarding (Zakat Paid in Advance and not Deducted from Assessment) item.

Dissatisfied with that decision, both parties filed a statement of appeal including the following claims.

Regarding Taxpayer's appeal against Primary Department's decision, the appeal concerns (Investments in Listed Company Shares) item, as the Primary Department mistakenly accepted amount deduction, considering it to outline investment balances on which no sale transactions occurred. However, the correct amount is SAR 559,467,394 for investments that had no sale transactions, noting that Company's appeal involves a request for deducting the full balance of investments amounting to SAR 1 billion, considering them as strategic holdings classified as non-current assets. The Company argues that the sale of some investments does not imply that the intention at the time of purchase was not for strategic holding. If ZATCA insists on rejecting deduction of investment balances, then the corresponding sources of financing included in Zakat base must be excluded to ensure balance. Regarding (Investments in Funds Included in Non-Listed Company Shares from 2009 to 2018) item, Taxpayer claims that these investments include



investments in Jadwa Luberef Fund, Intaj Capital Fund and Gulf Strategy Fund. In addition, ... Company, registered with ZATCA under TIN (...), submits its declarations and pays zakat due. Therefore, the investment must be deductible for zakat purposes to avoid double taxation of zakat according to Sharia. As for investment in Intaj Capital Fund, the purpose of investment is to acquire and retain such investments for a long period to achieve returns. The auditors reviewed Company's accounts and ensured Company's intention to classify such investments as long-term assets. In addition, ZATCA has started accepting registration of investments in funds. Therefore, the Company requests that investments in funds be treated the same as external investments. Furthermore, the Company has attached statements elaborating calculation of zakat due on Company's share in zakat base of Intaj Capital Fund, which results in zakat variances due, and requests that such investments be added to zakat assessments, while accepting deduction of mentioned investment balances from zakat base. Furthermore, it added that the investment in the Gulf Strategy Fund was for the purpose of acquiring and maintaining it for a long period to achieve return, and therefore must be deducted from zakat base because it was predominant in the company's action that these investments are long-term. With regard to (Net unrealized (gains) losses from revaluation of investments in traded company shares on which a transaction was made, and investments in funds within investments in shares of non-traded companies), Taxpayer requests to accept treatment of item according to its zakat declarations and audited financial statements for years in question, in the case of accepting deduction of investment balances referred to above. Regarding (Balance of other long-term assets for years from 2015 to 2018 and balance of Murabaha financing for 2012 and 2018) item, Taxpayer claims that the Department did not mention balance of other long-term assets for years from 2015 to 2018 and balance of Murabaha financing for 2012 and 2018 in its decision subject of appeal, as Taxpayer adheres to what was stated in letter of objection and letter of response to ZATCA's point of view, and requests to accept deduction of the above items from zakat base. Therefore, Taxpayer requests overturning Primary Department's decision regarding items subject matter of appeal for the aforementioned reasons.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

With regard to ZATCA's appeal against Adjudication Department's decision, its appeal regarding the item (Investments in shares of traded companies within investments and financial assets on which a sale took place) lies in that it clarifies that it did not deduct traded investments from investments available for sale because it turns out that these investments are for the purpose of trading and not for purpose of acquisition. In this case, they are traded assets intended for sale, and their period of stay in the company depends on factors of supply and demand in market to achieve the highest price. In addition, two basic conditions must be met to consider such investments as long-term investments, namely: Availability of documented intention of authorized person prior to the issuance of investment decision and absence of trading operations that took place during the year (movement) on these investments, which the company did not have, since nature of these investments is to buy for resale, and thus intention to sell is available at the beginning of investment. No proof has been provided of documented intention of authorized person before investment, in application of Sharia Fatwa No. (19382) dated 20/01/1418 AH, which stipulated: (As for assets, zakat shall not be due on them if they are not intended for sale. However, if assets are intended for sale, zakat shall be due thereon when a year is passed thereon, together with their profits, like all other trading assets). Moreover, in accordance with Article 1.2 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which stipulates as follows: (Every activity intended to gain money or work is subject to zakat, including, but not limited to: 2- Investment activity in all its forms, including investment in securities, whether long-term or short-term, whether issued by private sector or by the Government, domestic or foreign, as well as investment in goods and services and trade contributions. Furthermore, it is answered on reasons of the Department's decision that



ZATCA refused to deduct investments of 2014, because the two key conditions for considering investments as long-term investments are not met, namely availability of documented intention of authorized person before investment decision is issued, and failure to provide a detailed statement of investments indicating their nature, value, date of ownership and movement occurred during the year. Having reviewed detailed statement of these investments, it is evident that there was a sale movement thereon, which means that the intention is to trade. Taxpayer stated in his memorandum submitted to the Secretariat that there are amounts to be added to base if ZATCA insists on its opinion, which confirms that the Department's decision on this item under appeal is invalid according to law. The department did not ask Taxpayer for any detailed note proving validity of his argument, and ZATCA did not find any attached documents in this regard in any case, which makes the decision worthy of cancellation. Moreover, Taxpayer, when submitted his objection to ZATCA, did not submit these documents pertaining to item subject of appeal, and ZATCA did not find out on what the Department relied, and whether the Department reviewed chartered accountant's approval thereof. The Department did not explain how this item was accessed in a detailed accounting and legal manner, which should be noted. Moreover, since Taxpayer's objection lacked documentary evidence from the beginning for item subject of appeal and clarification of how it was initially dealt with to ZATCA, in addition to establishing this item in a correct accounting manner, and chartered accountant's detailed approval thereof. Based on the foregoing, ZATCA rejected Taxpayer's objection based on Article 20.3 of the Regulations for the Collection of Zakat, which stipulates: (Burden of proving validity of items and any other data contained in Taxpayer's declaration falls on Taxpayer. If Taxpayer cannot prove validity of its declaration contents, ZATCA may not approve the item that is not validated by Taxpayer or make an estimated assessment according to ZATCA's point of view in the light of circumstances and facts related to case and information available thereto). With regard to the item (net unrealized (gains) losses from revaluation of investments in traded companies' shares within investments and financial assets on which a sale movement has taken place), ZATCA explains that it has amended an unrealized gain item from revaluation of investments for zakat base of 2014, because the item is related to investments that cannot be deducted, since investments in shares of traded companies and financial assets on which sale movement took place were not deducted. Accordingly, Taxpayer's objection was rejected, as long as these losses are related thereto, these losses must be amended and not approved because asset deduction was not approved, and therefore no profits or losses related to those investments were approved. Therefore, ZATCA adheres to validity soundness of its procedure and requests that Adjudication Department's decision on items subject matter of appeal be overturned for the foregoing reasons.

On Sunday, 27/11/2022 AD, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video communication in accordance with the procedures of remote visual litigation; Based on what is stated in Clause No.: 15.2 of Tax Dispute and Violation Committee Procedures, issued by Royal Decree No. 26040 dated 21/04/1441 AH. Having reviewed appeal submitted by parties to case, and having examined contents of case file, the Department determined that the case was ready for adjudication and decision on its merits. Since the Department found no grounds for presence of parties to the appeal, it decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filling.

On merits, regarding Taxpayer's appeal on (investments in shares of traded companies) item, and since Taxpayer's appeal centers on objection to Adjudication Department decision on such item, as he claims that sale of certain investments does not imply a renunciation of origin of their status



as for the purpose of acquisition. Paragraph (4.A) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in establishments inside the Kingdom - in partnership with others - if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base". Based on the foregoing, having examined subject of dispute, and having perused replication submitted by Taxpayer before the Adjudication Department, containing indication of Taxpayer's approval of ZATCA's procedure in principle regarding not deducting balances of traded investments on which transaction took place during the year only, taking into account acceptance of deducting the same balances of traded investments that were not subject to transaction during the previous and subsequent years. Furthermore, Taxpayer indicated that balances to be excluded from zakat base are SAR (448,085,564), as shown in the table attached to such replication. Having studied detailed movement submitted by Taxpayer before Adjudication Department, it is evident that total balances of investments on which no movement was made is SAR (559,467,394). Having matched detailed movement with the table showing balances of investments on which no movement was made contained in the appeal memorandum, it became clear that amounts mentioned in that table are correct, with a material error in total amount of investments of 2010, as the correct amount is SAR 136,923,160, instead of SAR 163,923,160, noting that this error did not affect validity of total amount for all years. Therefore, it is evident that amount referred to in adjudication decision in the amount of SAR (448,085,564) represents total amount of investments on which there is movement, which Taxpayer agreed not to deduct from zakat base, and does not represent the investments on which there is no movement. Therefore, the Department concludes to amend Adjudication Department's decision and deduct investments in accordance with balances set out in statement of appeal, taking into account correction of material error in total investments of 2010 to be in the amount of SAR 136,923,160.

Regarding Taxpayer's appeal on the item (net unrealized (gains) losses from revaluation of investments in shares of traded companies within investments and financial assets on which a sales transaction has taken place), and since Taxpayer's appeal lies in objecting to Adjudication Department's decision on this item. He claims that the item should be treated in accordance with its zakat declarations and audited financial statements for disputed years, once deduction of investment balances is accepted. Since Article 4.h of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision in Figures No. (2082) dated 01/06/1438 AH provides that: "For zakat purposes, results of securities revaluation, whether profit or loss in accordance with market value, are taken into consideration". Based on the foregoing, since ZATCA's action to amend zakat base in the disputed item was due to its connection with investments that cannot be deducted, and since the first item of Taxpayer's appeal related to investments in traded company shares concluded with amending adjudication decision regarding deducting investments that did not receive a sale transaction during disputed years, which results in amending adjudication decision regarding net (gains) unrealized losses on revaluation of investments in traded company shares. Therefore, the Department concluded to amend Adjudication Department's decision on this item.

As for the appeal of the Taxpayer and ZATCA on the rest of the items in question, Whereas the Department is not obligated to consider reasons for the appealed decision or add to them when it determines that these reasons are sufficient and require no new justification. By affirming those reasons, it confirms that the appeals against the decision did not present any new arguments warranting further response beyond what was already provided. It has been established that the decision in question, regarding the disputed items under appeal, aligns with the justified reasons on which it was based and is sufficient to support its ruling. The issuing department thoroughly examined the disputed matter and reached the conclusion reflected in decision's operative part. Since this department found no grounds for correction or further comment based on the arguments presented, it concludes that Taxpayer's appeal should be dismissed, as well as ZATCA's



appeal, thereby upholding the decision of the Adjudication Department in its entirety, supported by the reasons provided.

Decision:

First: Accept appeal in form from Taxpayer/..... Company, CR No. (.....), TIN (....), and appeal filed by ZATCA against Third Department to Adjudicate the Value Added Tax Violations and Disputes in Riyadh Decision No. (ITR-2022-2141) delivered in Case No. (Z-17751-2020) related to zakat assessment of 2014.

Second: On Merits:

1. Amend Third Department to Adjudicate the Value Added Tax Violations and Disputes in Riyadh Decision on the item (investments in shares of traded companies), according to reasons and grounds set forth in this decision.
2. Amend Third Department to Adjudicate the Value Added Tax Violations and Disputes in Riyadh Decision on the item (net unrealized (gains) losses from revaluation of investments in shares of companies traded within investments and financial assets on which sale took place), according to the reasons and grounds set forth in this decision.
3. Taxpayer's appeal and ZATCA's appeal regarding the remaining items under dispute are rejected, and decision of the First Department to Adjudicate Income Tax Violations and Disputes in Riyadh is upheld, in accordance with the reasons and justifications provided in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2129)
Issued in Appeal No. (Z-50870-2021)

Principle No. 396

Procedure to be applied to undeclared contract revenues is to calculate a net profit percentage from those contracts.

Facts:

The Department convened to consider the Appeal filed on 18/05/2021 AD, by/..., holding National ID No. (...) in his capacity as owner of the appellant organization, on the First Department for the Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-199) delivered in Case No. (Z-2019-3552) concerning estimated zakat assessment of 2017, in case filed by Appellant against ZATCA, in which decision of Adjudication Department ruled as follows:

First: In form:

- Accept Plaintiff's Case (... organization) with C.R No.: (.....) in form, for being submitted with reasons during the legal period.

Second: On merits:

- Dismiss Plaintiff's objection to 2017 zakat assessment.

Since this decision was not accepted by Taxpayer, (..... Advertising and Publicity Establishment), he submitted a statement of appeal, which contained the following:

Since Taxpayer objects to Adjudication Department's decision subject of appeal, and claims that, with respect to (Zakat assessment in 2017), everything mentioned in financial statements of company confirms that these projects have been assigned to the organization, and cannot be considered proof of validity of ZATCA's procedures by considering value of those projects as revenue, that all operations of those projects have been recorded in the organization's accounting records, and that amount of advance payment balance amounting to SAR 200 million has been withdrawn from organization's account with the bank, and recorded to bank's account to dispose of this amount to end contracting work that has not yet finished. Advance payments are subject to zakat if a year has passed thereon, which has not happened at all. Inclusion of contracts value in the amount of SAR 360 million within the organization's revenues, and amendment of its declaration in contravention of its records and financial statements, is a departure from instructions for applying the law. ZATCA must amend assessment or provide your esteemed Secretariat with evidence of invalidity of Taxpayer's financial statements. Therefore, Taxpayer demands Adjudication Department's decision subject of appeal be quashed for the foregoing reasons.

On Monday, 05/12/2022 AD, First Appellate Department for Income Tax Violations and Disputes convened a session via video conferences as per the remote video litigation procedures based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH. After reviewing Appeal Brief, examining Case file, and



deliberation according to law, since the Department did not find any reasons for attendance of both litigants, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Upon reviewing Case documents and Appeal Brief submitted by Taxpayer, the Department found that conditions the Appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal request was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law. On merits, and with regard to Taxpayer's appeal regarding (Zakat assessment of 2017), and since Article 13.5 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision (2082) dated 01/06/1438 A.H. provides that: "ZATCA has the right to hold Taxpayers accountable regarding estimated manner in order to oblige them to comply with legal requirements in the following cases: A. Failure of Taxpayer to submit its zakat declaration based on legal books and records on the regular date. B. Failure to maintain accurate books and records in the Kingdom that reflect reality of Taxpayer's activity. C. Keep books and records in non-Arabic language in case Taxpayer is notified in writing of their translation to Arabic within a period specified by ZATCA not exceeding three months and does not comply with the same. D. Failure to comply with format, forms and method required in books and records of Taxpayer as prescribed by Law of Commercial Books. E. Failure of Taxpayer to validate information recorded in its declaration based on supporting documents. F. Conceal essential information in declaration, such as concealment of revenues, inclusion of unreal expenses, or recording of assets not owned by Taxpayer." Paragraph 6.b of the same Article further states: "6. Estimated zakat base consists of the following unless Taxpayer's declaration shows a larger base: B. Net profits realized during year, which are estimated at a minimum of 15% of total revenues, except for the following categories, in which case percentage shall be as follows..." Paragraph 8 of the same Article states: "When determining zakat base using assessment method, ZATCA collects information that enables it to calculate zakat base, which fairly reflects reality of Taxpayer's activity in light of circumstances and facts related to case and information available to ZATCA through documented evidence provided by Taxpayer, through field inspection and examination conducted by ZATCA, and through any information it obtains from other parties, such as volume of imports, contracts, labor, loans and obtained subsidies". Having perused case file and papers it contained, and the Chamber's decision under appeal, it is clear that the dispute centers on Appellant's objection to 2017 estimated zakat assessment, since Appellant requests to be held accountable in accordance with audited financial statements as he keeps commercial books, and that contracts of disputed projects have been recorded in his accounting records, while ZATCA believes that Appellant has project contracts concluded with Company that was not disclosed in financial statements submitted thereto, that the assessment was made by means of estimation because Appellant failed to submit reasons for not including these contracts in declaration and failed to submit documents supporting his objection. Having reviewed documents attached to case file, it is evident that Appellant did not submit evidence that revenues of disputed contracts were disclosed in his zakat declarations submitted to ZATCA, which gives ZATCA the right to hold him accountable by means of estimation for revenues of such contracts. As for Appellant's argument regarding incorrect calculation by ZATCA of estimated assessment in terms of adding total value of projects to base without calculating an estimated net profit percentage of projects value. Accordingly, with reference to Adjudication Committee's decision, it is found that ZATCA was asked to provide the method of calculating zakat on revenues of undisclosed contracts, but this was not provided. Furthermore, appealed decision did not include in its grounds anything that clarifies that validity and reasonableness of the estimated zakat base was verified, and since procedure to be applied to revenues of undisclosed contracts is to calculate percentage of net profit from those contracts. Having examined Appellant's calculation of estimated zakat base stated in his statement of appeal, it is found that calculation of net profit is 15% of contracts value, which is reasonable according



to Appellant's activity, which is contracting. Therefore, we consider amending ZATCA's action regarding holding Appellant accountable for estimated revenues of undisclosed contracts by calculating a net profit at 15% of value of disputed contract.

Decision:

First: In form:

Accept the appeal in form submitted by Taxpayer/..... forPublicity and Advertising Establishment, CR No.(...), TIN (...) against decision of First Department for the Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2021-199) issued in Case No. (Z-2019-3552) on estimated zakat assessment for 2017.

Second: On Merits:

Amend decision of First Department for the Determination of Income Tax Violations and Disputes in Jeddah, and decide to hold Plaintiff accountable subject to percentage of achievement, according to reasons and grounds set forth in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-2530)
Issued in Appeal No. (ZIW-
48072-2020)

Principle No. 397

Zakat Treatment for Provisions is the addition of first-year provision after deducting amount used throughout the year.

Facts:

The Department convened to consider the Appeal filed on 20/04/2021 fromCompany/Factory, CR No. (.....), TIN No. (.....), against the Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISR-2020-69) issued in Case No. (ZIW-4970-2019) in connection with Zakat assessment for the period (2005-2012), in the Case filed by Appellant against ZATCA, in which the primary decision ruled as follows:

First: In form:

Accept the Case filed by Plaintiff,Company/Factory, CR No. (.....), against Defendant/ZATCA in form.

Second: On merits:

1. Dismiss the Case regarding the profit adjustment for 2011 item related to written-off accounts receivable and written-off customs duties.
2. Dismiss the Case regarding the provisions item.
3. Dismiss the Case regarding the deduction of foreign partner's share of the loss resulting from adjustments to inventory and debtors' balances, which affected the retained earnings at the beginning of 2011.
4. Confirm the settlement of the dispute regarding the adjusted carried forward losses for the period (2009-2012).
5. Dismiss the Case regarding the current account of the Saudi debtor partner item for the period (2005-2012).
6. Dismiss the Case regarding withholding tax for 2007, 2010, 2011, and 2012.
7. Dismiss the Case regarding the income tax and withholding tax fines for the period (2008-2012).

Since this decision was not accepted by the Taxpayer (.....Company/Factory), it submitted a statement of appeal that can be summed up as follows:

Taxpayer objects to appealed decision of Adjudication Department, and claims with regard to (written off receivables supported by documents), that expenses are actual expenses that have been recognized as revenue in years prior to year of their write-off, and that the company incurred such expenses in order to practice its economic activity, representing paid and recoverable customs duties under decision of the Ministry of Commerce exempting it from paying customs duties on some imported items. Taxpayer has written off these amounts and recognized them as an expense during 2011. With respect to Clause (2009 Inventory Provision Difference), Taxpayer claims that



he agrees with ZATCA regarding treatment of provisions and that must be made pursuant to provisions of the Regulations. However, objection was related to a material error in the slow-moving inventory provision of 2009, and doubtful debt provision of 2011. Regarding (previous year's amendments made in favor of foreign partner) Clause, Taxpayer alleges that the company demanded that foreign partner's share in amendments be taken into consideration and demands that foreign partner's share be deducted from loss resulting from amendments to balances of inventory and debtors affecting retained profits at the beginning of 2011, considering that it was subject to income tax in previous years. Income tax due in year of amendment must be reduced, since the Committee acknowledged that there was a material error in company's declarations and ignored correction procedure, as it ignored the same in its assessment. The Company then objected to that Clause before ZATCA and then before Adjudication Department, since this is a deliberate disregard to correction procedure, because it is in the interest of the Company and without having made a legal argument by ZATCA and Adjudication Department. Furthermore, with regard to (adjusted carried-forward losses) Clause, Taxpayer claims that dispute has not ended with respect to adjusted carried-forward losses for 2009 to 2012 and demands to consider them objectively. With regard to (current account of the Saudi debtor partner) Clause, Taxpayer claims that current account owed to the Saudi partner was not deducted from zakat declarations by mistake and that ZATCA did not rectify this mistake when preparing zakat assessment. In accordance with Article 4. Second.5, the company shall be entitled to deduct receivables owed by Saudi companies fully owned by the Saudi partner from Zakat base and not exceeding its share of remaining profits at the end of fiscal year. He pointed out that the supporting documents were attached and argued with regard to information declarations of subsidiaries of holding company, that they do not apply to previous years until 2014, since ZATCA began requesting information declarations on the automated system applicable at ZATCA as of 2015. With regard to (withholding tax for 2007, 2010, 2011, 2012), Taxpayer claims that the Company has paid all withholding taxes for professional and consulting services disclosed in Statement No. (6) in 2016, and indicated that supporting documents were attached. Therefore, Taxpayer claims to quash appealed decision of Adjudication Department for reasons stated above.

On Tuesday, 13/12/2022, the First Appellate Department for Income Tax Violations and Disputes convened via virtual communication in accordance with the remote litigation procedures; based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH. After reviewing Appeal Brief, examining Case file, and deliberation according to law, since the Department did not find any reasons for attendance of both litigants, the Department decided to close pleadings and set a date for adjudication.

Grounds:

Upon reviewing Case documents and Appeal Brief submitted by Taxpayer, the Department found that conditions the Appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal request was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law. On merits, with regard to Taxpayer's appeal regarding (losses carried-forward for 2009 to 2012) Clause

With regard to Taxpayer's appeal on (bad debt), since Taxpayer's appeal lies in the fact that expenses are actual expenses and have been recognized as revenues in years prior to writing-off year. Based on Article 9.1 of the Implementing Regulations of Income Tax Law regarding expenses that may be deducted to determine taxable income, and based on Article 9.3 of the Implementing Regulations of Income Tax Law regarding expenses that may be deducted to determine taxable income. Based on the foregoing, and since the dispute is essentially and substantially a documentary dispute, and having perused case file, it is evident that Taxpayer has submitted documents proving that bad debts met the conditions for their deduction provided for in Article 9.3 the Implementing Regulations of Income Tax Law referred to above, where a certificate from



the Chartered Accountant was attached stating that the amount SAR (8,175,153) representing debt of an external clients (... Center) was written off, and customs duties due in the amount of SAR (6,109,136) were written off. Moreover, he attached an internal memorandum on debt cancellation signed by the Director General and attached agreements with (... Center). He also attached evidence supporting existence of exemptions on customs duties, which confirms Taxpayer's point of view, which means that Taxpayer's appeal should be accepted and decision of Adjudication Department regarding not to deduct bad debts from tax base should be quashed.

Taxpayer appeal regarding written-off customs duties stemmed from recognition of actual expenses as revenues throughout the years preceding the written-off year. Based on Article 9.1 of the Implementing Regulations of Income Tax Law regarding expenses that may be deducted to determine taxable income, and based on Article 9.3 of the Implementing Regulations of Income Tax Law regarding expenses that may be deducted to determine taxable income. Based on the foregoing, and since the dispute is essentially and substantially a documentary dispute, and having perused case file, it is evident that Taxpayer has submitted documents proving that bad debts met the conditions for their deduction provided for in Article 9.3 the Implementing Regulations of Income Tax Law referred to above, where a certificate from the Chartered Accountant was attached stating that the amount SAR (8,175,153) representing debt of an external clients (... Center) was written off, and customs duties due in the amount of SAR (6,109,136) were written off. Moreover, he attached an internal memorandum on debt cancellation signed by the Director General and attached agreements with (... Center). He also attached evidence supporting existence of exemptions on customs duties, which confirms Taxpayer's point of view, which means that Taxpayer's appeal should be accepted and decision of Adjudication Department regarding not to deduct bad debts from tax base should be quashed.

With regard to Taxpayer's appeal on (2009 inventory provision difference and 2011 doubtful debt provision difference), and since Taxpayer's appeal lies in the fact that he agrees with ZATCA regarding treatment of provisions and that it must be made in accordance with provisions of the Regulations, however, objection concerned a material error in the slow-moving inventory provision for 2009 and doubtful debt provision for 2011. In accordance with Article (4.1.9) of the Implementing Regulations for the Collection of Zakat issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, and since zakat handling for provisions requires adding the provision at the beginning of the year after deducting the amount used during the year, Taxpayer acknowledged that ZATCA procedure performed pursuant to the assessment made by it, requiring amendment of the net income of the year through assessing the net movement on the provision during the fiscal year (formed -paid during the year) and adding the opening balance to zakat base as a balance that has completed a year, was unobjectionable. Taxpayer also demanded additional deductions, with the amount of (SAR 2,195,392) as the net movement of inventory provision for 2019 and (SAR 5,016,143) as the net movement of doubtful debt provision for 2011. When reviewing the audited financial statements of 2011 and 2009 AD and the zakat assessments of the disputed year, the net movement requested by Taxpayer was not clear. Taxpayer was also requested to submit the provision statement issued by the accounting system (an explanatory statement of provision movement that explains the opening balance, the balance formed during the year, the balance used during the year, and the closing balance), but he did not submit the same. ZATCA explained the method used for handling provisions by adding the balance formed during the year to the adjusted net profit as a non-deductible expense and adding the opening balance after deducting the balance used during the period to zakat base as a balance that has completed a year, which is the correct way for handling provisions. Taxpayer did not submit any documents that require any amendments or comments on the outcome concluded by the decision, subject matter of the appeal, in light of all defenses submitted by Taxpayer, which collectively represent a repetition of all matters raised before the Determination Committee when discussing Taxpayer objection regarding this item. Therefore, all presented defenses did not affect the Determination Committee decision regarding this item.



With regard to Taxpayer appeal made concerning (the current account of the Saudi debtor partner), Taxpayer appealed that the current account of the Saudi debtor partner was not deducted from zakat declarations by mistake, and ZATCA failed to correct the same when preparing the zakat assessment. Based on Article 4.I.2 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and based on the foregoing, and since the dispute is essentially and substantially a documentary dispute, and having reviewed case file, it is clear that Taxpayer submitted supporting documents through consolidated zakat declarations and consolidated financial statements of company and its subsidiaries. None of this affects Taxpayer's argument that ZATCA did not rectify this mistake in preparing zakat assessment, as the burden in amending declarations falls on Taxpayer, which determines that liabilities owed by companies fully owned by the Saudi partner (... Investment Company) are treated for purposes of calculating zakat as a current account owed to the Saudi partner, as investment company and its subsidiaries provide a consolidated zakat declaration and consolidated financial statements, and are treated from a zakat perspective as a single financial liability. Therefore, it becomes clear that Saudi partner is entitled to deduct the receivables due from companies he fully owns, as a current account indebted to Saudi partner not exceeding its share of remaining profits. Therefore, the Department concludes to accept Taxpayer's appeal and to overturn Adjudication Department's decision with regard to this Clause.

With regard to Taxpayer appeal concerning (the withholding tax of 2007 AD and the period 2010-2021 AD), Taxpayer appeal was based on the fact that the Company paid all withholding taxes imposed on professional and consultation services disclosed subject to statement No. (6) in 2016. In accordance with Article (63.1) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (1535) dated 11/06/1425AH, based on all the above, since the dispute is essentially and substantially a documentary dispute, and upon reviewing the Case file, it turned out that Taxpayer submitted the supporting documents proving payment of withholding tax in accordance with the file named (Withholding Tax - Supporting Documents), in which Taxpayer attached invoices issued by ZATCA and related detailed statement, and documents proving payment using the payment form issued by Third Party (Bank). Accordingly, the Department decided to accept Taxpayer appeal and reverse the Determination Department decision with regard to this item.

Concerning Taxpayer appeal with regard to (income tax and withholding tax late payment fines for the period 2008-2012), Article (70) of Law of Civil Procedures issued by Royal Decree No. (M/1) dated 22/01/1435 AH provides that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect."

Article (70.1) of Implementing Regulations of Law of Civil Procedures issued by Ministerial Resolution No. (39933) dated 19/05/1435 AH: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the above, and upon reviewing data provided by both litigants, the Department was satisfied that the dispute was settled when Taxpayer accepted ZATCA request based on the appeal statement provided on 21/04/2021 AD, which included: "We inform you that the dispute with relation to this item was settled, as the Company has paid all tax differences based on the initiative made by ZATCA, which granted companies full exemption from late payment fines if they paid the due taxes before the end of March 2021. Accordingly, full income and withholding taxes were paid based on such initiative".

With regard to the remaining items, subject matter of this Case, the Department was free to consider the challenged decision grounds without making any additions whenever it became satisfied that these grounds were sufficient and did not require any further addition, because supporting those grounds confirms that the Department did not find any decision-related



objections that deserved a response that went beyond those grounds. Accordingly, since it is established that the decision, subject matter of this appeal, with regard to challenged items was consistent with the valid reasons on which it was based and sufficient to support the ruling, as the Department issuing the decision has considered the dispute grounds and reached the conclusion mentioned in its warding, since such Department did not observe anything that deserved correction or comment in light of defenses provided thereto. Therefore, the Department decided to reject Taxpayer appeal and affirmed the decision of the Determination Department considering the appeal in its conclusions with relation to the remaining items of the Case, based on related grounds.

Decision:

Accept the appeal filed by Taxpayer/ Company, CR No. (.....), TIN No. (.....), against the Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISR-2020-69) issued in Case No. (ZIW-4970-2019) with regard to tax assessment for the period (2005-2012 AD).

Second: On Merits:

1. Disregard the item (Losses carried forward for the period (2009 - 2012 AD)).
2. Accept the appeal filed by Taxpayer regarding the item (Bad debts) and reverse the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.
3. Accept the appeal filed by Taxpayer regarding the item (Written off customs duties) and reverse the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.
4. Amend the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh with regard to the item (Difference in Inventory Provision for 2009 AD).
5. Amend the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh with regard to the item (Difference in Doubtful Debt Provision for 2009 AD), in accordance with the grounds mentioned therein.
6. Accept the appeal filed by Taxpayer regarding the item (Current account of the Saudi debtor partner) and reverse the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.
7. Accept the appeal filed by Taxpayer regarding the item (withholding tax of 2007 and 2012 AD) and reverse the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.
8. Settle the dispute related to the item (Income tax and withholding tax late payment fines for the period 2008-2012 AD).
9. Reject the appeal filed by Taxpayer regarding the remaining items in the Case and affirm the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-2119)
Issued in Appeal No. (ZIW-
68357-2021)

Principle No. (398)

Advance payments, if proven to be valid and related to the activity, shall be deducted as a deductible expense.

Facts:

To consider the appeal filed on 01/09/2020 by Company, TIN (...), and appeal filed on 02/09/2021 by ZATCA against decision of the First Department for the Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2021-808) delivered in case No. (ZIW-2020-14232) regarding zakat tax assessment for 2006 to 2016, in case filed by Appellant against ZATCA, in which Adjudication Department decided the following:

1. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN), related to zakat and tax assessment for the years from 2010 to 2012, subject of the case.
2. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to tax assessment for the years from 2006 to 2011, subject of the case.
3. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) relating to non-adjustment of the net profit with the depreciation difference for the year 2010, subject of the case.
4. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to non-approval of bonus expenses for the years 2012 and 2013, subject of the case.
5. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to warranty provision for the year 2013, subject of the case.
6. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of addition of zakat provision for the year 2011, subject of the case.
7. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of addition of warranty provision for the years 2012 and 2013, subject of the case.
8. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of addition of Islamic Murabaha for the year 2012, subject of the case.
9. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to addition of liabilities to related parties for the years 2012 and 2013, subject of the case.



10. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to addition of liabilities to related parties for the year 2010, subject of the case.
11. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the material error in addition of liabilities to related parties for the year 2013, subject of the case.
12. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item of addition of shareholder liabilities for the year 2013, subject of the case.
13. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the item of adding capital increase for the year 2011, subject of the case.
14. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the non-deduction of investments for 2010, subject of the case.
15. Confirm resolution of the dispute involving Plaintiff/ Company (TIN) With Defendant/ZATCA, regarding deduction of investment in..... Company and Company and Company For the year 2013, by accepting Defendant's requests in this regard.
16. Reject objection of Plaintiff/ Company (TIN) on the decision of Defendant/ZATCA, regarding deduction of investment in..... Jadwa Fund for real estate development and the Qurtuba Fund from Zakat base for the years 2012 and 2013, subject of the case.
17. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Relating to deduction of 50% of the land of Qairawan Project (1) for the year 2013, subject of the case.
18. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to the item (Other Development Properties) for the years 2012 and 2013, subject of the case.
19. Reject objection of Plaintiff/ Company (TIN) on decision of Defendant/ZATCA, related to not deducting advance payments to suppliers for the years 2012 and 2013, subject of the case.
20. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the item of capital gains taxes and concealment fines in question.
21. Confirm resolution of the dispute involving Plaintiff/ Company (TIN) With Defendant/ZATCA, related to the withholding tax item for December 2011, subject of the case amounted to (SAR 1,776,568) one million seven hundred and seventy-six thousand five hundred and sixty-eight riyals, as well as related fines, by Plaintiff's acceptance of Defendant's action in this regard.
22. Annul decision of Defendant/ ZATCA against Plaintiff/..... Company. (TIN) Related to the item of withholding taxes on capital increase the year 2011 and related fines to the case in question.

Both litigants did not accept this decision, and each of them submitted a statement of appeal that includes the following, in summary:

Regarding Taxpayer's appeal against decision of the Adjudication Department, the appeal concerns the item of (expiration of the five-year statutory period for tax assessment for the years 2006 to 2011). The Taxpayer argues that tax liability falls on the seller as the taxable entity since the law required the seller to notify ZATCA of any capital transactions, which has been already done. Additionally, the Taxpayer asserts that the withholding tax was reported when due and paid to ZATCA within the statutory deadlines. Therefore, there is no case of submitting an incomplete tax return. The difference in views between the Taxpayer and ZATCA regarding calculation of capital gains and withholding tax does not constitute evidence of tax evasion or concealment of



information that would warrant reassessment. Regarding the item of (non-approval of bonus expenses for the years 2012 and 2013), the Taxpayer claims that the unapproved bonuses represent actual, documented expenses necessary for generating income, as they are disbursed according to the general financial policy and are approved annually by the Board of Directors. Thus, they are eligible for deduction under the law. Regarding the item of (addition of a warranty provision for the year 2013), the Taxpayer argues that these are actual, due expenses classified as confirmed liabilities, not provisions, and are paid later when cash flow permits or the due date arrives. Regarding the item of (addition of a warranty provision for the years 2012 and 2013 in the amount of SAR 9,000,000), the Taxpayer contends that this item represents due expenses and, therefore, shall not be subject to zakat as it does not fall under the category of provisions. Regarding the item of (addition of zakat provision for the year 2011), the Taxpayer asserts that it represents confirmed, non-contingent liabilities. Regarding the item of (addition of Islamic Murabaha for the year 2012), the Taxpayer argues that the full lunar year has not passed on Murabaha. Regarding the item of (addition of shareholder liabilities for the year 2013), the Taxpayer claims that the full lunar year has not passed on the amount, and it was not used to finance any capital expenditure or assets that are deductible from the base. Regarding the item of (non-deduction of investments in Jadwa Fund ... for real estate development and Manazel Qurtuba Fund from zakat base for the years 2012 and 2013), the Taxpayer argues that these are long-term investments intended for holding, and that classifying them as "available-for-sale investments" in the financial statements is an accounting term that does not change the nature of investments as long-term. Therefore, they shall be deducted from zakat base. Regarding the item of (non-deduction of development properties amounting to SAR 783,161,117 and SAR 875,844,371 for the years 2012 and 2013, respectively), the Taxpayer claims that transferring amounts to cost of sales relates to assets or properties prepared for sale and classified as current assets. Regarding the item of (non-deduction of advance payments to suppliers for the years 2012 and 2013), the Taxpayer argues that the nature of payments was not considered, specifically whether they were related to assets deducted from zakat base. Therefore, the advance payments, having been made in cash, shall be treated similarly to the assets related to those payments. Accordingly, the Taxpayer requests annulment of Adjudication Department's decision regarding contested items for the aforementioned reasons.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

Regarding ZATCA's appeal against Adjudication Department's decision, ZATCA's argument concerning (zakat assessment for the years 2006 to 2010 AD) is that proving inaccuracy of the declaration only justifies ZATCA's right to amend the declarations. These declarations were revised with Clauses that cannot be overlooked due to incorrect preparation. Concerning the adjustment of net profit for depreciation in 2010, ZATCA maintains its right to accept this Clause and return it for further review to address its perspective. As for (addition of amounts due from related parties for the years 2010, 2012, and 2013 AD), ZATCA notes that Department did not provide details on how the amounts for 2012 and 2013 were accurately determined or whether the analytical statement applied to the year under appeal. The statement lacked certification from a licensed accountant, and the daily entries needed to verify accuracy of the statement were missing. Regarding (the amounts due from related parties for 2010, ZATCA emphasizes its right to accept the Clause and return it for further review. For (the claimed material error in adding amounts due from related parties for 2013), ZATCA argues that Department did not specify the document that supported the error or whether it was certified by a licensed accountant. On the issue of (capital increase for 2011 amounting to (SAR 90,000,000), ZATCA explains that the Taxpayer reported on 11/09/1437 AH that these funds resulted from restructuring and formation of company Entries have been created from shareholders' current account(s) to the capital account in the amount of 90 million to complete nominal value of authorized capital. Moreover, having discussed Taxpayer, he submitted a written response as a result of restructuring. With regard to (deduction of investments of 2010), ZATCA clarifies that all lands included under development



land included in non-current assets list in statement of financial position, whether raw or developed, were purchased for the purpose of development and sale. With regard to (deducting 50% of land of Al Qairawan Project (1) 2013), ZATCA clarifies that Taxpayer did not provide any documents justifying the reason for deducting the same from base, since the purpose of projects under development is to be sold after completion of work, and its activity includes investment and real estate development, which indicates that projects are trading assets and not acquisition assets. Furthermore, Taxpayer submitted an analytical statement explaining purpose of each land, including villas and markets for rent, and apartments for rent, and issued decision stated that sale did not take place during the period, as the company did not purchase land for storage, but rather for sale and profit therefrom, therefore it should not be deducted from zakat base. As for (capital gains taxes and concealment fines), ZATCA explains that its decision was based on Ministerial Decision No. 1776 dated 1435 AH, which proves that it must be applied in the case of Taxpayer, since decision is applied from its date, and this means that it applies to all assessments from the date of decision delivery, in which assessment is not final. Regarding (withholding taxes on increase in capital in 2011), ZATCA explains that the essence is what matters, not the form. Therefore, increase in capital requires cash financing from outside the Kingdom. Since profits were used for that purpose instead of distributing them and then providing financing from abroad, this is considered a set-off between accounts and a legal distribution. Moreover, Kuwaiti partner sold its entire share in 2012 and 2013, and thus benefited from capital transferred to profits when selling its share. Therefore, ZATCA adheres to validity and integrity of its procedure and requests that decision of Adjudication Department be overturned for reasons stated above.

On Wednesday, dated: 29/11/2022 AD, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video communication in accordance with the procedures of remote visual litigation; Based on what is stated in Clause No.: Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Upon reviewing the appeal filed by both parties, and by examining the contents of the case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On merits, with regard to Taxpayer's appeal regarding (Addition of Islamic Murabaha in 2012), and since Taxpayer's appeal centers on the fact that a year did not pass on Murabaha. Whereas Paragraph (First/5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "Zakat base consists of all Taxpayer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. (c) Items used in trade and has passed a full lunar year". Accordingly, loans shall be included in Zakat base whenever a full lunar year is passed. A review of the submitted documents showed that the audited financial statements for 2012 were provided. Upon examination, it was found that the full lunar year did not pass for the opening balance at the start of the period. Therefore, the Department accepted Taxpayer's appeal and reversed Adjudication Department's decision on this matter.

With regard to Taxpayer's appeal on (addition due to shareholders in 2013), the appeal concerns the failure to transfer the amount and lack of financing for the properties or assets deducted from the base. Whereas Paragraph (First/5) of Article (4) of the Implementing Regulations for the



Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "Zakat base consists of all Taxpayer's funds subject to Zakat, including: Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by the Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. C. What was used in trade offers and a year has passed on them." Based on the foregoing, loans are added to zakat pot whenever a year has passed on them. Having reviewed submitted documents, it was found that audited financial statements for 2013 were submitted, and through Note No. 5 on balances and transactions with relevant authorities, it is evident that there were amounts due to shareholders at the end of period amounting to SAR 58,910,153, while at the beginning of period such amounts valued (zero). Therefore, a year has not passed on loan, which led the Chamber to accept Taxpayer's appeal and overturn decision of Adjudication Department in this Clause.

Regarding Taxpayer's appeal concerning the item of "Non-deduction of advance payments to suppliers for the years (2012 and 2013)," Taxpayer's appeal centers on the fact that the nature of payments was not considered, specifically whether they were related to assets deducted from zakat base. Therefore, since the advance payments were made in cash, they shall be treated as assets related to those payments. Whereas Paragraph (Second/1) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "The following items shall be deducted from the zakat base: 1- Fixed assets including the following: Net value of fixed assets (acquisition assets) and any payments for purchase of fixed assets, and value of spare parts not intended for sale, provided that such assets are owned by Taxpayer, unless there is an impediment to transfer of ownership, and are used in the activity". Whereas Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "The burden of proving validity of the items mentioned in Taxpayer's Zakat declaration and any other data shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove validity of the items mentioned in his declaration, the Authority may not approve the item whose validity is not proven by the Taxpayer or make a discretionary link according to Authority's point of view in light of the circumstances and facts related to the case and the information available thereto". Paragraph (1) of Article (5) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: (a) That it is an actual expense supported by documentary evidence or other indications that enable the authority to verify its accuracy, even if it relates to previous years." (b) Be related to the activity and not related to personal expenses or other activities. (c) It is not of a capital nature, and in the event that an expense of a capital nature is included in the expenses, it shall be adjusted as a result of the activity and includes the fixed assets and shall be consumed in accordance with the statutory ratios." Accordingly, and after reviewing case file, it is clear that the dispute in this item is a documentary dispute, and by reference to the documents attached to case file, it is clear that Plaintiff did not provide proof that payments made to the suppliers are related to the assets owned for the purpose of acquired assets to be accepted for deduction from Zakat base, and therefore we see support for ZATCA's action and reject Plaintiff's objection in this item. Based on the foregoing, advance payments, if proven to be valid and related to the activity, shall be deducted as a deductible expense. Having perused case file, it was found that the following was submitted: - Letter of guarantee for a down payment for Cordoba Residence Project, dated 15/12/2012, submitted bycompany, and stated that: "To pay immediately and upon your written request, and notwithstanding any objection from our party or any other party, such amount or any amounts that you request to be paid, provided that they do not exceed in total the abovementioned amount (SAR 5,335,847)", a check submitted to company in the amount of SAR (5,335,847) on 12/12/2012.- A check amounting for SAR (420,243) paid to Company on Cordoba Residence Project on 04/03/2013. - An extract from



the system showing that advances amounted to SAR 118,743,880 for 2012 and SAR 213,209,455 for 2013. Based on the foregoing, and in accordance with statement extracted from the system, the Chamber concludes to accept deduction of SAR 118,743,880 for 2012 and SAR 213,209,455 for 2013.

As for the appeal of the Taxpayer and ZATCA on the rest of the items in question, Whereas the Department is not obligated to consider reasons for the appealed decision or add to them when it determines that these reasons are sufficient and require no new justification. By affirming those reasons, it confirms that the appeals against the decision did not present any new arguments warranting further response beyond what was already provided. It has been established that the decision in question, regarding the disputed items under appeal, aligns with the justified reasons on which it was based and is sufficient to support its ruling. The issuing department thoroughly examined the disputed matter and reached the conclusion reflected in decision's operative part. Since this department found no grounds for correction or further comment based on the arguments presented, it concludes that Taxpayer's appeal should be dismissed, as well as ZATCA's appeal, thereby upholding the decision of the Adjudication Department in its entirety, supported by the reasons provided.

Decision:

First: Accept Appeal in form from Taxpayer/..... Company, CR No. (.....), TIN (.....) And the appeal submitted by ZATCA, against decision of the First Department to adjudicate income tax violations and disputes in Riyadh No. (IFR-2021-808) issued in Case No. (ZIW-2020-14232) related to tax zakat assessment for the years 2006 to 2016 AD.

Second: **On Merits:**

1. Accepting Taxpayer's appeal regarding the item of (adding Islamic Murabaha for the year 2012 AD), and overturning decision of the First Department to adjudicate income tax violations and disputes in Riyadh, in accordance with the reasons and justifications mentioned in this decision.
2. Accepting Taxpayer's appeal regarding the item of (addition of dues to shareholders in 2013), and overturning decision of the First Department to adjudicate income tax violations and disputes in Riyadh, in accordance with the reasons and justifications mentioned in this decision.
3. Accepting Taxpayer's appeal regarding the item of (failure to deduct advance payments to suppliers for the years 2012 and 2013 AD), and amending the decision of the First Department to adjudicate income tax violations and disputes in Riyadh, according to the reasons and justifications mentioned in this decision
4. Taxpayer's appeal and ZATCA's appeal regarding the remaining items under dispute are rejected, and decision of the First Department to Adjudicate Income Tax Violations and Disputes in Riyadh is upheld, in accordance with the reasons and justifications provided in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2023-71196)
Issued in Appeal No. (Z-71196-2021)

Principle No. (399)

In order to avoid double taxation, additional investment included in equity of investee company is deducted from zakat pot, and sums paid to investee companies that are classified within equity of those companies as investments for the purpose of obtaining profit from investments.

Facts:

The Department convened to consider the Appeal filed on 16/09/2021 AD, by Mr., holding National ID No. (...) in his capacity as a legal representative of Appellant company, based on decision of the First Department for the Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2021-814) delivered in Case No. (Z-27884-2020) on zakat tax assessment of 2018, in the case filed by Appellant against ZATCA, in which decision of Adjudication Department ruled as follows:

- Amend Defendant's decision, in case filed by Plaintiff / Company, (CR No.:)
- against Defendant (ZATCA) regarding zakat assessment subject matter of the case.

Since this decision was not accepted by Taxpayer, company), he submitted a statement of appeal, which contained the following:

Taxpayer objects to decision of Objection Committee under appeal, since he claims that, with respect to zakat tax assessment for 2018), he invested the amount in another company (..... Company), That is a Saudi company and registered with ZATCA with TIN (.....). Investment was intended to cover accumulated losses of investee company and to increase capital therein. Therefore, this support is included in acquisition assets, and has nothing to do with debts and forward transactions. This support was interest-free, and the investee company did not bear any interests. It was approved by company, (Statements of company were attached) under the additional capital item. Accordingly, its approval again shall be considered as double taxation of zakat. Taxpayer demands to quash appealed decision of Adjudication Department for reasons stated above. On Sunday, 30/04/2023 AD, First Appeals Chamber for Income Tax Interventions and Disputes convened a session via video conferences as per the remote video litigation procedures based on provisions of Clause no.: (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) on 21/04/1441 AH. Having reviewed the appeal, having examined contents of case file, and after legal deliberating, since the Chamber found no grounds for presence of parties to appeal, the Chamber decided to close debate and set the date for adjudication.

Grounds:

Having reviewed case documents and appeal statement submitted by Taxpayer, the Chamber found that conditions for hearing appeal have been fulfilled in form in accordance with conditions



stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, regarding Taxpayer's appeal on (Outstanding balances due to related parties for 2018), since Taxpayer's appeal centers on the fact that he invested in the company to cover accumulated losses and increase its capital. Accordingly, this support is included in acquisition assets, and has nothing to do with debt and forward transactions. Since Article (4), Clause (2), Paragraph (1/4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, provides that: "The following shall be deducted from zakat base: 4 (A): Investments in establishments inside the Kingdom - in partnership with others - if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base." Based on the foregoing, sums paid to investee companies that are classified within equity of those companies as investments for the purpose of obtaining profit from investments are not considered a loan or debt for the purpose of obtaining proceeds of loans or commissions from those amounts, which results in deducting additional investment recorded within equity of investee company from zakat base to avoid double taxation, regardless of how it is classified in equity when there is evidence indicating that financing is actually an investment. Having perused case file, and documents and defenses submitted by parties, it is evident, through financial statements of subsidiary company, that disputed amounts were classified within equity under additional capital. Therefore, this amount does not represent a loan to be repaid by subsidiary company to Taxpayer, but rather additional capital that takes ruling of capital. It was found that Al Sarh Company has added the disputed amount to zakat base, which led the Chamber to accept Taxpayer's appeal to deduct additional investment balance from zakat base and cancel ZATCA's procedure and overturn decision of Adjudication Department.

Decision:

First: Accept Appeal in form submitted by the Taxpayer, Company, CR No. (.....), TIN (.....), against decision of First Department for the Determination of Income Tax Violations and Disputes in Jeddah (No. 814-2021-12) issued in case No. (2020-27884-2) on zakat tax assessment of 2018.

Second: **On Merits:**

Accept Taxpayer's appeal and overturn decision of First Department for the Determination of Income Tax Violations and Disputes in Jeddah, according to reasons and grounds set forth in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2023-80653)
Issued in Appeal No. (Z-80653-2021)

Principle No. (400)

Financial statements included by Taxpayer in Qawaem system are considered sufficient evidence to prove determination of capital and sales on which Taxpayer is charged with zakat.

Facts:

To consider the appeal filed on 03/11/2021 by ZATCA against decision of First Department for the Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2021-1243) delivered in Case No. (Z-26694-2020) on zakat tax assessment of 1438 AH, in case filed by Taxpayer against ZATCA, in which decision of Adjudication Department ruled as follows:

- Amend Defendant's procedure, in case filed by Mr. (Holding National ID No. ...), based against Defendant's, ZATCA, decision, regarding zakat assessment subject matter of the case. Since this decision was not accepted by Appellant (ZATCA), it submitted a statement of appeal which included the following:

ZATCA objects to Adjudication Department's decision subject matter of appeal, and claims that, with regard to zakat tax assessment of 1438 AH, ZATCA explains that Appellee was held accountable by means of estimation for 1438 AH under the previous base (1437 AH), which is based on financial statements included in Qawaem system 2016, and zakat base was calculated based on Qawaem 2016 at 15% of sales. The Department's decision was to calculate capital stated in the Commercial Register, and since it is not commensurate with volume of sales stated in financial statements amounting to SAR (79,180,370), ZATCA is entitled to determine what it deems commensurate with size of Taxpayer's activity in accordance with Article 13.6.1 of Collection of Zakat Regulations of 1438 AH. Therefore, ZATCA requests that Adjudication Department's decision subject matter of appeal be overturned for the foregoing reasons.

On Tuesday, 02/05/2023, First Appeals Chamber for Income Tax Interventions and Disputes convened a session, in presence of all its members, via video conferences as per the remote video litigation procedures, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, issued by Royal Decree No. 26040 dated 21/04/1441 AH. Having reviewed appeal submitted by parties to case, and having examined contents of case file, since the Chamber found no grounds for presence of parties to appeal, the Chamber decided that the case was ready for adjudication and issuance of a decision on its merits. Therefore, the Chamber decided to close pleading and set the date for adjudication.

Grounds:

Having reviewed case documents and statement of appeal submitted by ZATCA, the Chamber found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form



for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, regarding Taxpayer's appeal concerning zakat tax assessment of (1438 AH), and since Taxpayer's appeal centers on that Appellee held accountable by means of estimation of 1438 AH according to the previous base of 1437 AH, based on included financial statements. Having perused ZATCA's statement of appeal, and since one of zakat base components is working capital, ZATCA is entitled to access the same through all legal means provided by the Regulations. Since Taxpayer has financial statements that are included in Qawaem system specifying size of his capital and sales, the Chamber concluded to accept ZATCA's appeal and decided to hold Taxpayer accountable based on sales and capital mentioned in financial statements of 2016, and to overturn decision of Adjudication Department.

Decision:

First: Accept appeal in form submitted by ZATCA, against decision of First Department for the Determination of Income Tax Violations and Disputes in Jeddah No. (1243-2021-IZJ) delivered in Case No. (2020-26694-Z) on zakat tax assessment of 1438 AH.

Second: **On Merits:**

Accept ZATCA's appeal and overturn decision of First Department for the Determination of Income Tax Violations and Disputes in Jeddah, according to reasons and grounds set forth in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-425)
Issued in Appeal No. (Z-54313-2021)

Principle No. 401

If the property is burdened with liabilities, then there is no zakat on it due to lack of recognized legal stability in imposing zakat.

Facts:

The Department convened to consider the Appeal filed on 13/06/2021 AD, by Real Estate Company, against decision of First Department for the Determination of Income Tax Violations and Disputes in Dammam (No. 382-2021-IZD) delivered in case No. (2019-7231-Z) on zakat tax assessment of 2016, in the case filed by Appellant against ZATCA, in which decision of Adjudication Department ruled as follows:

Reject Plaintiff's objection, Real Estate Company (CR No. ...) with regards to deduction of real estate investments under development from zakat base of 2016.

Since this decision was not accepted by Taxpayer, (..... Real Estate Company), he submitted a statement of appeal, which contained the following:

Taxpayer objects to decision of Committee of Objection subject matter of appeal, and claims that, with regard to Clause (Real Estate Investments Under Development of 2016), the property is still until now suspended from trading by higher authorities and no one can dispose of it, as evidenced by the letter of Eastern Province Municipality, which was submitted by the Chamber. The letter confirms that property was developed from the date of planning request on 10/04/1432 AH corresponding to 16/03/2011 AD, until final approval of plan and notification of competent authorities on 05/01/1438 AH corresponding to 07/10/2016 AD, which proves that the property falls within description of (projects under implementation) that are eligible for deduction. Therefore, Taxpayer requests to quash decision of Adjudication Department based on the foregoing reasons.

On Sunday, 09/10/2022 AD, First Appeals Chamber for Income Tax Interventions and Disputes convened a session via video conferences as per the remote video litigation procedures based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040), dated 21/04/1441 AH. Having perused the appeal, having examined contents of case file, and after legal deliberating, the Chamber decided to close debate and set the date for adjudication.

Grounds:

Having reviewed case documents and appeal statement submitted by Taxpayer, the Chamber found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form



for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, regarding Taxpayer's appeal on Clause (Real Estate Investments under Development of 2016), and since Taxpayer's appeal centers on objection to decision of Adjudication Department regarding this Clause, as he claims that property is suspended from trading and cannot be disposed of, which means that it is included within description of projects under implementation that is eligible for deduction. Since Article 4.2 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: The following shall be deducted from Zakat base: 2. Taxpayer's capital constructions under implementation which is established for the purpose of being used for the activity and not for the purpose of being sold." Paragraph (4.A) of the same Regulations further provides that: "Investments in establishments inside the Kingdom - in partnership with others - if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base". Moreover, Fatwa No. (19382) dated 20/01/1418 AH issued by the General Secretariat of the Council of Senior Ulema stipulated that: "Zakat is not due on assets that are not intended for sale. However, if they are intended for sale, zakat becomes mandatory on them upon completion of one year, together with their profits, similar to other trading assets". Based on the foregoing, and having considered subject of dispute, since the Adjudication Department decided to write to the First Notarial Office in Dammam and to the Secretary of Eastern Province to inquire about suspension of instrument trading and its status during years subject matter of the case, and since only Secretary of Eastern Province responded, and considering that failure to receive a response from Notarial Office does not constitute a reason to abandon investigation to clarify status of property and possibility of its trading or otherwise. Absence of a statement does not necessarily mean absence of argument, especially since Taxpayer cannot obtain evidence in a document held by an administrative authority that he cannot access. Since Taxpayer has provided supporting evidence represented by document issued from Dammam General Court no. (...) dated 13/10/1442 AH, including the following: "We have received a statement from the Notary Public in Dammam, numbered dated 20/07/1442 AH which includes (the aforementioned instrument in the name of Real Estate Investment Company, based on instrument No. (9/.../1), and the latest action taken regarding it is the letter addressed to the Ministry of Justice No. (.....) on 07/06/1440 AH, no action can be taken on it until the Ministry issues instructions regarding the same". This is an explicit statement indicating that the property is burdened with liabilities, that Taxpayer cannot dispose of it. As for letter of Secretary of Eastern Province no. (...) on 09/09/1442 AH, which the Adjudication Department relied upon, it did not indicate that the instrument was suspended, nor that Taxpayer company was allowed to develop the property, as this document was issued by an entity that has no relation to trading and validity of instruments and no authority to convey or transfer ownership, in addition to the fact that this description falls within description of (projects under implementation), and this letter is considered a presumption that the investment is long-term. ZATCA did not argue that there was any sales movement during years in dispute, and since ZATCA has no justification for not deducting value of this project from zakat base, despite the Taxpayer's argument that property is still suspended from trading to date and cannot be disposed of. Whenever the property is burdened with liabilities, there is no zakat due thereon due to lack of recognized legal stability for imposing zakat. Therefore, the Chamber concludes to accept Taxpayer's objection and quash decision of adjudication department on this item.

Decision:

First: Accept Appeal in form submitted by Taxpayer/, Real Estate Company, under CR No. (.....), TIN (.....), against First Department for the Determination of Income Violations and Disputes in Dammam decision No. (382-2021-IZD) delivered in Case No. ((2019-7231-Z) on zakat tax assessment of 2016.

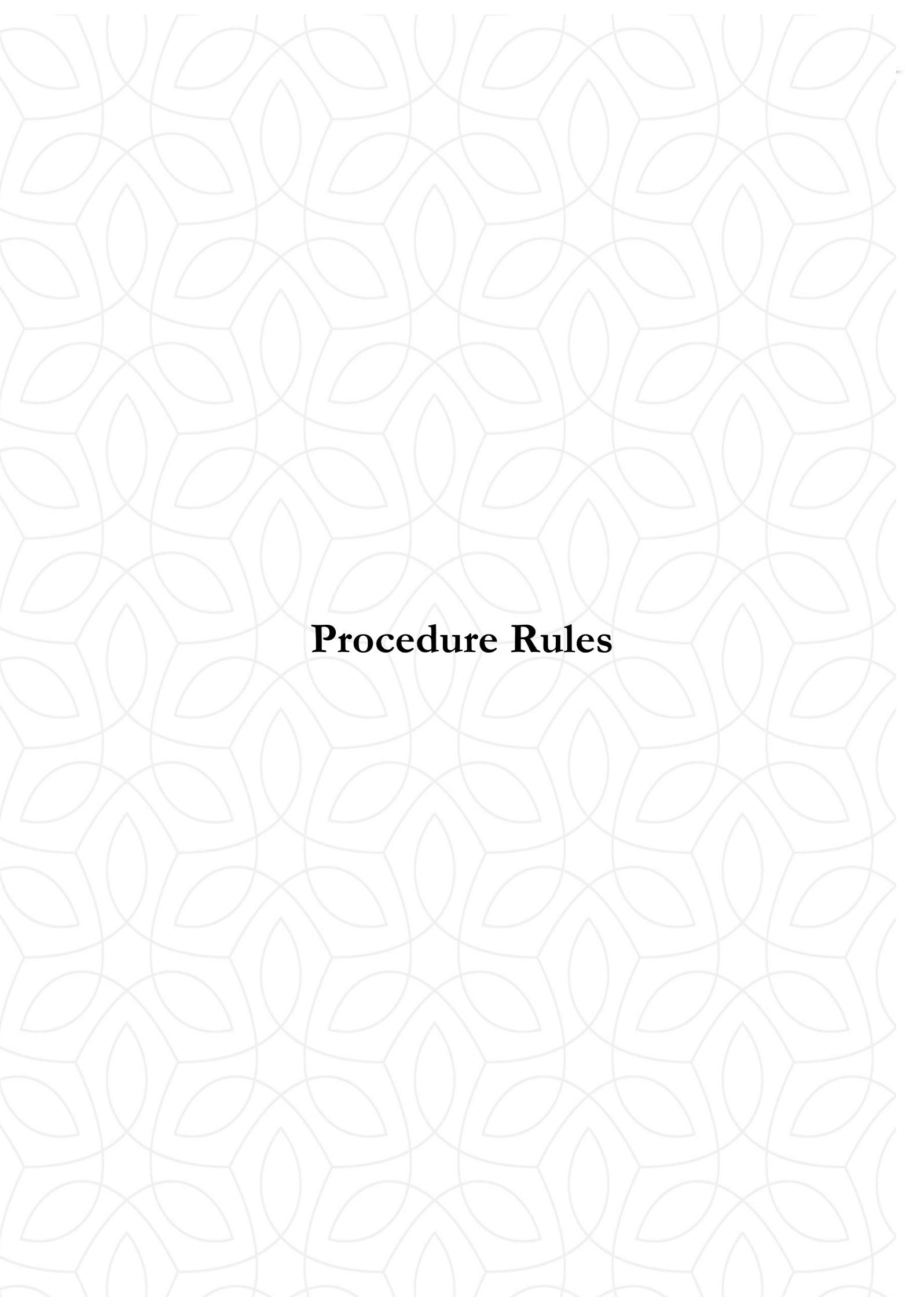


Second: On Merits:

- Accept Taxpayer's appeal and overturn First Department for the Determination of Income Tax Violations and Disputes in Dammam decision, according to reasons and grounds set forth in this decision.

This decision shall be deemed final in accordance with Articles 47 and 48 of Tax Dispute and Violation Committee Procedures.

May Allah Blessings and Peace be upon our Prophet Muhammad and his family and companions.



Procedure Rules



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-511)
Issued in Appeal No. (Z-82478-2021)

Principle No. 402

Mere silence of Taxpayer on commenting or including his objection to an item amended by ZATCA shall mean that he agrees to this amendment and he is not required to submit a written letter to that effect.

Facts:

To consider Appeal dated 16/11/2021 AD filed by ..., holder of National ID No. (...), On behalf of Appellant Company under POA No. (...) and Appeal dated 16/11/2021 AD filed by ZATCA against First Department to Adjudicate Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1317) rendered in Case No. (Z-32898-2020) related to zakat assessment for years from 2013 to 2018, in Case filed by Appellant against ZATCA. Adjudication Department's decision states:

First: Accept Plaintiff's objection, Company, (With CR No.) to legal period of zakat assessment of 2013 and 2014.

Second: Accept Plaintiff's objection, Company, (With CR No.) to Clause of land investment.

Third: Reject Plaintiff's objection, Company, (With CR No.) to Clause of dividend.

Fourth: Reject Plaintiff's objection, Company, (With CR No.) to Clause of deferred rental assets.

Both litigants did not accept this decision, and each of them submitted a statement of appeal that includes the following, in summary:

With regard to Taxpayer's appeal against Adjudication Department decision, his appeal with respect to (Dividends) Clause centers on that Taxpayer submitted supporting documents required to accept claim for deduction of dividends. He attached shareholders' decision to distribute dividends of disputed years, together with statement of bank account to verify withdrawals of shareholders during these years, contrary to conclusion of Adjudication Department. Furthermore, Taxpayer attached an analytical statement showing names of shareholders benefiting from dividends and settlement of bank transfers corresponding to shareholders' decisions to distribute dividends. Taxpayer also reported that shareholders withdrew their funds during the year, and total withdrawals made by shareholders are adjusted against profits declared by the company and which are clearly shown in attached bank statements. Regarding (deferred rental assets) Clause, Taxpayer claims that deferred rental assets are in fact an accounting entry due to transition to IFRS and change in method of revenue recognition, and does not reflect actual cash amounts collected from rent or actual revenues in accordance with expected lease contracts, as the company prepared its annual financial statements in accordance with IFRS for the first time on December 31, 2018. The company was required to record deferred rent assets as a result of difference between the value of contract and deferred fixed installment revenues in financial statements. Opening balance of



retained earnings as of January 1, 2018 was restated to reflect requirements of new standards, and an account was created for deferred rent assets, and accounting entry of opening balance of deferred rent assets. Since the corresponding set-off is reflected in opening balance of retained earnings that was added to zakat base, amount declared as “deferred rental assets” was claimed as a deduction from zakat base. ZATCA’s procedure of not accepting deduction leads to duplication of Zakat on the same amount. Therefore, Taxpayer requests to overturn Adjudication Department’s decision subject matter of appeal for the above reasons.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

With regard to ZATCA’s appeal against Adjudication Department’s decision, its appeal centers on (legal period for zakat assessment of 2013-2014) Clause. ZATCA explains that mere existence of amendments to amounts included in Taxpayer’s declaration (with Taxpayer’s approval of those amendments by not objecting thereto) means that there is incorrect information on amounts to be included in declaration, making Taxpayer liable to accountability according to application of Article 21.8 of the Implementing Regulations for the Collection of Zakat. The Department’s decision that ZATCA did not submit written letter issued by Taxpayer approving or amending assessment is inappropriate. Since mere silence of Taxpayer on commenting or including his objection in one of Clauses amended by ZATCA means his approval of this amendment and he is not required to submit a written letter to that effect. With regard to (Investment in lands) item, ZATCA clarifies that reasons behind the decision were contrary to logic. The Department stated in its decision that “value of investments shown in financial statements is relatively stable, which indicates that there is no active trading on item under objection, which is likely to be considered as investments not intended for sale in their current state”. This justification is inconsistent with figures contained in Taxpayer’s audited financial statements and their clear indication, as movement of real estate investments through audited financial position statement and movement of receipts in audited cash flow statement clearly reflect existence of land sales, as shown in the financial statements’ notes, and these are evidence that cannot be ignored to prove Taxpayer’s intention to trade. Furthermore, it was noted that the Committee did not require any evidence from Taxpayer to confirm intention of real estate investment, as may occur in such cases, such as intention documented by Taxpayer before start of investment or movement careful study in item during the year and reasons for that movement. Therefore, ZATCA adheres to validity and integrity of its procedure and requests that Adjudication Department decision on items subject matter of appeal be overturned for the foregoing reasons.

On Monday, 10/10/2022 AD, First Appellate Department for Income Tax Violations and Disputes convened a session via video conferences as per the remote video litigation procedures based on Article: 15.2 of Tax Dispute and Violation Committee Procedures, issued by Royal Decree No. 26040 dated 21/04/21 AH. Having reviewed appeal submitted by parties to case, and having examined contents of case file, since the Department found no grounds for presence of parties to appeal, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filling.

On merits, regarding Taxpayer’s appeal on (Dividends) item, and since Taxpayer's appeal centers on objection to Adjudication Department decision on such item, as he claims that he submitted supporting documents required to accept the claim to deduct dividends. Since Paragraph (8) of Clause (First) of Article (4) the Implementing Regulations for the Collection of Zakat issued by



Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "Zakat base consists of all Taxpayer's funds subject to Zakat, including: 8. Balance of profits carried forward from previous years at the end of the year". Accordingly, since dispute over this item is a documentary dispute, and having reviewed documents attached to Case file, it was found that Taxpayer attached shareholders' decisions on distributing dividends and bank statements for years in dispute and an analytical statement of distributed dividends. Having studied bank statements, it found that there are transferred amounts to shareholder "..... Saudi Holding Company, amounting to SAR 19,7 million of 2015, and SAR 600,000 of 2016, and SAR 25.3 million of 2018, taking into account that amounts transferred on 31/12/2018 were not deducted due to passage of one year thereon. Accordingly, the Department concluded to accept Taxpayer's appeal and amend Adjudication Department's decision to deduct above amounts from zakat base for disputed years in this item. With regard to Taxpayer's appeal on item (deferred rental assets), and since Taxpayer's appeal lies in objection to Adjudication Department's decision regarding this item, he claims that deferred rental assets are an accounting entry due to transition to IFRS and change in revenue recognition and do not reflect actual cash amounts collected from rent. Having reviewed Note No. 20 of 2018 financial statements regarding application of IFRS prepared for the first time, it is clear that opening balance of 2018 was adjusted and increased by the amount of deferred rental assets. Having perused 2018 zakat declaration, it is found that Taxpayer added adjusted opening balance of retained earnings as a result of applying international standards, which entails deduction of deferred rental assets in order to demonstrate that corresponding credit balance has been added to retained earnings. Financial statements also indicate that deferred rental assets are linked to operating leases and not finance leases, which indicates that reasoning of Adjudication Department's decision on this item is not valid, which concludes with rejection of Taxpayer's objection after adapting it as receivables for finance leases. Therefore, the Department concludes to accept Taxpayer's objection and overturn Adjudication Department's decision regarding this item.

With regard to ZATCA's appeal concerning remaining items subject matter of the Case, and having considered subject of dispute, and having perused the appeal, and since the Department may take into account reasons for contested decision without addition whenever it considers that those reasons are sufficient. Through its support for the same with what those reasons contained; it is confirmed that it did not find in appeals addressed to decision what deserves a response thereto more than what those reasons contained. It was established that appealed decision regarding dispute on items under appeal was consistent with valid reasons on which it was based and sufficient to support its ruling, as the issuing Department conducted a thorough examination of dispute and ended with conclusion it reached in its wording. Since the Department found validity of conclusion reached by Adjudication Department in its decision, and that reasons on which it based its decision are sufficient to support that decision, and since the Department did not notice anything that requires correction or comment in light of the arguments raised before it. Therefore, the Department concludes by rejecting ZATCA appeal and upholding Adjudication Department's decision under appeal regarding what it reached as a result in items subject matter of ZATCA's appeal, based on its reasons.

Decision:

First: Accept Appeal in form from Taxpayer/ ... Company, with Commercial Register No. (...) and appeal filed by ZATCA against First Department for the Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1317) delivered in Case No. (Z-32898-2020) on zakat assessment of 2013 to 2018.

Second: On Merits:

1. Accept Taxpayer's Appeal regarding (Dividend Income) item and amend decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds and reasons stated herein.



2. Accept Taxpayer's Appeal regarding (Deferred Rental Assets) item and amend decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds and reasons stated herein.
3. Dismiss Taxpayer's Appeal regarding the items subject matter of the Case, and uphold decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds and reasons stated herein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2023-52754)
Delivered in Appeal No. (2021-
52754-ZIW)

Principle No. 403

Certificate issued by the General Organization for Social Insurance is an important and impartial document used to verify validity and fairness of salaries and wages charged to accounts, unless Taxpayer proves otherwise.

Facts:

To consider appeal filed on 01/06/2021 by ZATCA and appeal filed on 14/06/2021 by Company / Factory ..., under CR No. (...), TIN (...), on First Department for the Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-263) delivered in Case No. (ZIW-6882-2019) regarding zakat tax assessment of 2012 to 2017, in Case filed by Taxpayer against ZATCA, in which Adjudication Department decided the following:

First: In form:

- Accept claim of Plaintiff (.... Company) under C.R. No.:)) inn form, for being submitted with reasons during the legal period.

Second: On merits:

1. Dismiss Plaintiff's objection to salary differences item of 2012 to 2015.
2. Dismiss Plaintiff's objection to item of expenses not related to activity of 2013 and 2015.
3. Proof that dispute regarding item of withholding tax and late fine of 2014 and 2015.
4. Dismiss Plaintiff's objection to item of payables of 2016 and 2017.
5. Dismiss Plaintiff's objection to item of other payables of 2016 and 2017.
6. Proof that dispute regarding bad debt expense item of 2015 and 2017 has ended.
7. Proof that dispute regarding item of advance payments for property and equipment of 2015-2017 has ended.
8. Proof that dispute regarding establishment expenses, construction under implementation, and spare parts item of 2013 has ended.
9. Proof that dispute regarding item of other expenses within cost of sales, selling and distribution expenses, and administrative and general expenses of 2016 and 2017.
10. Proof that dispute regarding item of professional fee of 2016 has ended.
11. Proof that dispute regarding item of salary and wage difference with an increase of 2016 and 2017 has ended.
12. Proof that dispute regarding item of expenses not related to activity of 2012 and 2014 has ended.

Dissatisfied with that decision, both parties filed a statement of appeal including the following claims.

With regard to Taxpayer's appeal against Adjudication Department's decision, his appeal centers on item (other payables of 2016 and 2017). Taxpayer claims that a year has not passed on other payables in financial statements to be added to the entire base and that a year has passed on only



part of balance of this item and not the entire balance added by ZATCA. He indicates that item is supported by documents and invoices from suppliers since no income can be generated without provision of different services from suppliers, and indicates that amounts that a year has passed thereon are SAR (2,388,822) of 2016 and SAR (2,596,442) of 2017. With regard to item (Accounts Payable of 2016 and 2017), Taxpayer claims that a year has not passed on accounts payable in financial statements to be added to the entire base and that a year has passed on only part of balance of this item and not the entire balance added by ZATCA. He indicates that item is supported by documents and invoices from suppliers since no income can be generated without purchasing goods and materials from suppliers, and indicates that amounts that a year has passed thereon are SAR (1,534,507) of 2016 and SAR (6,919,212) of 2017. Regarding item (Advance payments for property and equipment of 2015 and 2017), Taxpayer objects to non-deduction of item from zakat base, and explains that these amounts were paid in full to suppliers of fixed assets and have already been removed from the company's liability. Regarding item (Expenses not related to activity of 2012 to 2015), Taxpayer claims that these expenses, which were rejected by ZATCA and adjusted book profit, are fees paid annually to the Ministry of Petroleum and Mineral Resources in exchange for exploiting quarry for the benefit of the company to extract stones used in manufacture of gypsum powder, which is the basis of factory's activity. Therefore, it is an acceptable expense in terms of zakat and tax, as Zakat Collection Law and Income Tax Law clarify that expenses that may be deducted are regular and necessary expenses of the activity. Taxpayer thus explains that this expense is one of necessary expenses related to achieving the activity, and therefore it is acceptable according to laws. With regard to (salary differences of 2012 to 2015), Taxpayer claims that item of salaries, wages and their attachments within cost of activity and within administrative and public expenses shown in financial statement, includes basic salaries and other allowances for employees, as social insurance pays only basic salary and housing allowance, and the company does not pay any amounts to social insurance for other allowances for the company's employees. Accordingly, all other expenses under item of salaries, wages and their attachments shown in financial statement represent expenses related to salaries and wages, which are accepted according to law and regulations, and must be deducted. Taxpayer also emphasizes that there are no differences that carry an increase in accounts. With regard to item (Professional Fees of 2016), Taxpayer claims that ZATCA has accepted the company's objection in 2017, and rejected it in 2012, despite submission of the same supporting documents for the two years. He states that this amount is professional and legal fees supported and reinforced by supporting documents and must be deducted from the base. Therefore, Taxpayer requests that Adjudication Department's decision be overturned in items subject matter of appeal for reasons stated above.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

With regard to ZATCA's appeal against Adjudication Department decision, its appeal lies regarding (expenses not related to activity of 2012 and 2014) item. ZATCA explains that the Department's decision concluded with proving settlement of dispute between Taxpayer and ZATCA without clarifying ZATCA's acceptance was a partial acceptance in light of supporting documents submitted by Taxpayer. With reference to ZATCA's replication and minutes of the hearing, it was found that ZATCA's approval of Taxpayer's point of view was partial in light of supporting documents submitted by Taxpayer and ZATCA did not accept the entire item. This is confirmed by contents of ZATCA's replication No. (1) submitted to the General Secretariat. Therefore, since the wording of decision was general and did not clarify that ZATCA's acceptance is only partial acceptance of the item, which could be interpreted as ZATCA's acceptance being complete, and the Department did not clarify whether Taxpayer had agreed to settle dispute based on ZATCA's partial acceptance of the item. Therefore, ZATCA demands that the error be corrected in a manner that eliminates ambiguity and confusion, as this would affect implementation of decision when it becomes final. Since Taxpayer states that the Company paid all amounts of due income taxes for the two years subject matter of objection before end of the



year, in order to benefit from the royal initiative, and the Company's unwillingness to continue to object to this item. He indicates that ZATCA's approval is intended to approve the company's payment of income tax amounts and its waiver of objection to tax items. With regard to (withholding tax and late payment fine of 2014 and 2015) item, ZATCA clarifies that the Department decided to prove settlement of dispute between ZATCA and Taxpayer, without clarifying the party waiving this item. The Department stated in its decision: "With regard to the third item, withholding tax and late payment fine of 2014 and 2015, the Department found that the dispute between parties to the case concerning this item was settled. The Department considered the need to prove settlement of dispute between Plaintiff and Defendant concerning withholding tax and late payment fine of 2014 and 2015". Therefore, ZATCA confirms that it did not accept this item and did not settle dispute on its part thereon, neither in its Replication no. (1) nor in hearings held regarding the case. Furthermore, it indicated that if the Department's evidence of dispute settlement is that Taxpayer waived his objection to this item, this is a matter that ZATCA does not object to, but it requests notes to prevent confusion and ambiguity that may be contained in decision when implemented. Taxpayer states that the company paid all amounts of withholding taxes due for the two years under objection before end of the year, specifically on 31/12/2020, in order to benefit from royal initiative, and Company's unwillingness to continue objecting to this item, and this was mentioned in the mail sent to the Secretariat. Therefore, ZATCA adheres to validity and integrity of its procedure and requests that Adjudication Department decision be overturned for the reasons mentioned above.

Having presented statement of appeal to ZATCA, it submitted a memorandum that included its adherence to validity of its procedure, and requested the Department to dismiss Taxpayer's appeal and uphold Primary Department's decision regarding items subject matter of Taxpayer's appeal. On Wednesday, dated: 03/05/2023 AD, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video communication in accordance with the procedures of remote visual litigation; Based on what is stated in Clause No.: Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Upon reviewing the appeal filed by both parties, and by examining the contents of the case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On merits, regarding Taxpayer's appeal against (other payables for 2016 and 2017) item, Taxpayer's appeal lies in objecting to Adjudication Department's decision on this item. He claims that a year has not passed on amount of other payables in financial statements to be added to the entire zakat base and that a year has passed on only part of this item's balance and not entire balance added by ZATCA. Since Paragraph (5), Clause (First) of Article (4) the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "Zakat base consists of all Taxpayer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. C. The portion used for trading assets and for which a full year has passed. Based on the foregoing, other trade payables are considered a component of zakat base, provided that a year has passed on them or they are used to finance assets deducted from zakat base. Since dispute on this item is a documentary dispute, and having reviewed documents attached to case file, it is



evident that Taxpayer submitted audited financial statements and detailed movement of account for disputed years. By comparing amounts recognized in financial statements with detailed movement submitted, it was found that they matched, and by tracking movement of each account separately, it was found that a year has passed on the amount of SAR (2,388,822) in 2016, which is the same amount that Taxpayer disclosed that it had passed the year, and in 2017, a year has passed on SAR (2,641,639) not SAR (2,596,442) as claimed by Taxpayer. Therefore, the Department concluded to amend Adjudication Department's decision by adding only what was proven to have passed the year and deducting amounts that had not passed the year based on submitted documents.

Regarding Taxpayer's appeal against (payables for 2016 and 2017) item, Taxpayer's appeal lies in objecting to Adjudication Department's decision on this item. He claims that a year has not passed on amount of payables in financial statements to be added to the entire zakat base and that a year has passed on only part of this item's balance and not entire balance added by ZATCA. Since Paragraph (5), Clause (First) of Article (4) the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "Zakat base consists of all Taxpayer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. (b) Sources used to finance technical purposes. C. The portion used for trading assets and for which a full year has passed. Based on the foregoing, trade payables are considered a component of zakat base, provided that a year has passed on them or they are used to finance assets deducted from zakat base. Since dispute on this item is a documentary dispute, and having reviewed documents attached to case file, it is evident that Taxpayer submitted audited financial statements and detailed movement of account for disputed years. By comparing amounts recognized in financial statements with detailed movement submitted, it was found that they matched, and by tracking movement of each account separately, it was found that a year has passed on the amount of SAR (1,534,508) in 2016, and SAR (6,919,212) in 2017, which are the same amounts that Taxpayer disclosed that they had passed the year. Therefore, the Department concluded to accept Taxpayer's appeal and amend Adjudication Department's decision by adding only what was proven to have passed the year and deducting amounts that had not passed the year. With regard to Taxpayer's appeal regarding (advance payments for property and equipment of 2015 and 2017) item, and since Taxpayer's appeal lies in objecting to Adjudication Department's decision regarding this item, he claims that these amounts are paid in full to fixed asset suppliers and have already been discharged from the company. By referring to case file and its contents, it became clear that ZATCA, in its replication submitted before Adjudication Department, stated that it accepted Taxpayer's point of view on deducting advance payments for property and equipment in 2015 to 2017, as he submitted supporting documents. Furthermore, Adjudication Department established the same in issued decision, by proving settlement of dispute due to ZATCA's acceptance of Taxpayer's point of view. Therefore, Taxpayer has no basis for his appeal against the above item, as claimed amounts have been accepted, which leads the Department to dismiss the appeal because there is no disagreement on what is claimed.

With regard to Taxpayer's appeal on (expenses not related to activity of 2012 to 2015) item, and since Taxpayer's appeal lies in objecting to Adjudication Department's decision on this item, he claims that this expense is necessary for realization of the activity and is therefore accepted according to regulations.

Based on the foregoing, since it became clear to the Department that there was confusion between parties as a result of Adjudication Department's decision regarding settlement of dispute, as previously mentioned in the same item of ZATCA's appeal, ZATCA and Taxpayer appealed on the same item. ZATCA argues that it partially accepted the item based on submitted documents, while Taxpayer thought that ZATCA accepted tax aspect of the item. By reference to case file and documents contained therein, and since expenses associated with realization of income are



considered expenses that can be deducted, if proven to be actual expense and supported by supporting documents. Since dispute on this item is a documentary dispute, and since Taxpayer provided evidence of these expenses as fees paid annually to the Ministry of Petroleum and Mineral Resources in exchange for exploiting the quarry for the benefit of the company to extract stones used in manufacturing gypsum powder, and the basis of Taxpayer's activity according to what is stated in commercial register and audited financial statements. Therefore, the Department concludes to deduct these expenses from zakat base for 2014 and 2015. Regarding 2012 and 2013, and since it was found that ZATCA's assessment for 2012 was carried out on 26/03/1440 AH corresponding to 04/12/2018 AD, noting that the latest assessment deadline for 2012 was 30/04/2017, and since it is found that ZATCA exceeded the legal period specified in five years, ZATCA's assessment would be canceled for exceeding the legal period and for violating Article 21.8 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Article 65.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, even if Taxpayer does not argue that there is prescription and raise the issue. Accordingly, the Department concludes to accept Taxpayer's appeal of 2012 and to take into account what was stated in his declaration, considering that his declaration is final, since these rules were issued in order to achieve stability of transactions and not to leave the positions of Taxpayers concerned without specifying a certain period, making it clear to them that their financial status is not disturbed.

With regard to Taxpayer's appeal on item of (salary differences for 2012 to 2015), and since Taxpayer's appeal lies in objecting to Adjudication Department's decision on this item, as he claims that all other expenses within the item of salaries, wages and their attachments shown in financial statements represent expenses related to salaries and wages that are accepted according to law and regulations and must be deducted. Since Article 5.1 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: (a) That it is an actual expense supported by documentary evidence or other indications that enable the authority to verify its accuracy, even if it relates to previous years." (b) Be related to the activity and not related to personal expenses or other activities. C. It should not be of a capital nature and, if an expense of a capital nature is included in expenses, result of activity shall be adjusted and includes fixed assets and consumed in accordance with the legal ratios." Article 9.1 of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, concerning expenses that may be deducted to determine taxable income, provides as follows: "1. All regular and necessary expenses to achieve taxable income, whether paid or due, provided that the following controls are met: a) The expense must be an actual one, supported by documentary evidence or other proof that allows the Authority to verify its accuracy. (b) That it must be linked to the achievement of taxable income. (c) It must be related to the tax year. D. They are not of a capitalist nature." Based on the foregoing, certificate issued by GOSI is one of the important and neutral documents used to verify validity and fairness of salaries and wages charged to accounts, unless Taxpayer proves otherwise. Having perused documents submitted by Taxpayer in case file, it was found that salaries and wages paid by Taxpayer to its employees include additional wages such as overtime hours, bonuses and other allowances, in addition to hired labor under work contracts. It was also found that Taxpayer rents housing for his workers, which is proven by lease contracts and copies of checks. Having examined, it was found that amounts paid by Taxpayer exceeds what is recorded in social insurance certificate. Although social insurance certificate is one of the important neutral documents used to verify fairness of salaries and wages, it is known that many expenses such as overtime, medical insurance, housing rent, and employees' cars are not subject to social insurance and are considered necessary expenses for the activity that must be deducted from the base. Therefore, the Department concludes to accept Taxpayer's appeal and overturn Adjudication Department's decision of 2014



and 2015 for submitting supporting documents. Regarding 2012 and 2013, and since it was found that ZATCA's assessment for 2012 and 2013 was carried out on 26/03/1440 AH corresponding to 04/12/2018 AD, noting that the latest assessment deadline for 2012 was 30/04/2017 and 30/04/2018 for 2013, and since it is found that ZATCA exceeded the legal period specified in five years, ZATCA's assessment would be canceled for exceeding the legal period and for violating Article 21.8 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Article 65.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, even if Taxpayer does not argue that there is prescription and raise the issue. Accordingly, the Department concludes to accept Taxpayer's appeal of 2012 and 2013 and to take into account what was stated in his declaration, considering that his declaration is final, since these rules were issued in order to achieve stability of transactions and not to leave the positions of Taxpayers concerned without specifying a certain period, making it clear to them that their financial status is not disturbed.

Regarding ZATCA's appeal on item of (Expenses not related to activity for 2012 and 2014), and since ZATCA's appeal lies in objecting to Adjudication Department's decision on this item, as it claims that Department's decision concluded with settlement of dispute between Taxpayer and ZATCA without clarifying that ZATCA's acceptance was partial in the light of supporting documents submitted by Taxpayer. With regard to 2014 of this item, and since the Department concluded for the disputed item to accept Taxpayer's appeal as set out in Taxpayer's appeal on the same item, the Department concludes to dismiss ZATCA's appeal on 2014 of this item. Regarding 2012, and since it was found that ZATCA's assessment for 2012 was carried out on 26/03/1440 AH corresponding to 04/12/2018 AD, noting that the latest assessment deadline for 2012 was 30/04/2017, and if it is found that ZATCA exceeded the legal period specified in five years, ZATCA's assessment would be canceled for exceeding the legal period and for violating Article 21.8 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Article 65.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, even if Taxpayer does not argue that there is prescription and raise the issue. Accordingly, the Department concludes to cancel ZATCA's procedure on the grounds that Taxpayer's declaration is final, since these rules were issued in order to achieve stability of transactions and not to leave positions of Taxpayers concerned without specifying a certain period, making it clear to them that their financial status is not disturbed.

As for ZATCA's appeal regarding the item (withholding tax and late payment fine for years 2014 and 2015), which includes objection to the Primary Department's decision regarding the same, as ZATCA claims that the Primary Department decided to establish the end of the dispute between ZATCA and Taxpayer without clarifying the party waiving this item. By referring to the case file and content thereof, it was found that, among documents submitted before the Primary Committee, Taxpayer sent an e-mail on 20/06/2021 AD stating the following: "We would like to inform that Company has paid tax differences (income tax/withholding tax), waived the case regarding the tax only, and wishes to proceed with the case regarding Zakat items as per the email sent by the Company on 31/12/2020 AD"; and by referring to the said mail sent on 31/12/2020 AD, it was found that Taxpayer stated the following: "Please note that request to waive the Case under No. (ZIW-6882-2019) for Company has been submitted regarding the income tax and withholding tax items as stated in the attached waiver letters, for purposes of leveraging ZATCA initiative, taking into consideration our desire to preserve our right in the case regarding Zakat items"; and since the Department found its decision regarding end of the dispute between ZATCA and Taxpayer was valid and was based on Taxpayer's acceptance of ZATCA perspective, therefore, the Department decided to uphold Primary Department decision.

Decision:

First: Accept Taxpayer's (Company/Factory) appeal, C.R No....., TIN No. in form; and accept ZATCA's appeal against Decision No. (IZJ-2021-263) delivered by the First Department for the



Determination of Income Tax Violations and Disputes in Jeddah in Case No. (ZIW-6882-2019) in connection with Tax Zakat Assessment for years from 2012 to 2017 in form.

Second: On Merits:

1. As for ZATCA's appeal on item (non-activity expenses for years 2012 and 2014):
 - a. Abolish ZATCA action for year 2012;
 - b. Dismiss ZATCA's appeal for year 2014.
2. Establish the end of dispute regarding ZATCA's appeal on item (withholding tax and late payment fine for years 2014 and 2015).
3. Amend the appealed decision regarding Taxpayer's appeal on item (other payables for years 2016 and 2017).
4. Amend the appealed decision regarding Taxpayer's appeal on item (payables for years 2016 and 2017).
5. Uphold the Primary Department's decision in proving the end of dispute regarding the item (advance payments for property and equipment for years 2015 and 2017).
6. Accept Taxpayer's appeal and abolish the Primary Department's decision regarding the item (non-activity expenses for years from 2012 to 2015).
7. Accept Taxpayer's appeal and abolish the Primary Department's decision regarding the item (salary differences for years from 2012 to 2015).
8. Uphold the Primary Department decision in establishing the end of dispute regarding the item (professional fees for year 2016).

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2023-50675)
Issued in Appeal No. (Z-50675-2021)

Principle No. 404

Import Declaration issued by customs is considered an undoubted presumption from a neutral third party, unless otherwise proven by Taxpayer.

Facts:

The Department convened to consider the appeal filed on 11/05/2021 AD by Holding Company, C.R No., TIN No.; and the appeal filed on 18/05/2021 AD by ZATCA against Decision No. (IZD-2021-193) delivered by the First Department for the Determination of Income Tax Violations and Disputes in Dammam in Case No. (Z-4097-2019) in connection with Zakat Assessment for year 2012, filed by Taxpayer against ZATCA. The appealed decision ruled as follows:

1. Dismiss Plaintiff's objection regarding import differences.
2. Abolish Defendant's decision regarding long-term and short-term loans.
3. Abolish Defendant's decision regarding trade payables.

Dissatisfied with that decision, both parties filed a statement of appeal including the following claims.

As for Taxpayer's appeal against the Primary Department's decision regarding the item (import differences for year 2012), Taxpayer claims that imports of the Holding Company and its subsidiaries are carried out as a single import unit (Mutual Transactions Agreement), as the Holding Company carries out import procedures under purchase order of goods on its own C.R or its subsidiaries' C.Rs, finances the purchase process through short-term bank loans, and records imports in inventory accounts of actually receiving company. In 2012, offshore procurement as stated in Customs data for records of the Holding Company and its subsidiaries amounted to (SAR 165,064,583), while the Holding Company submitted its Zakat Declaration with inclusion of full cost of sales in an amount of (SAR 170,052,080) as offshore procurement for purposes of adjusting declaration data on the financial statements. This indicated that when ZATCA calculated the tax, it did not take into account the imports included in the record of the subsidiary company ".....", in the amount of (SAR 159,761,172). Moreover, offshore procurement is recorded in the Holding Company's accounts through the inventory program, and the procurement disclosed in the Declaration represents the cost of sales as already explained. It also indicates that the actual import differences, from Company's perspective, are (SAR 1,325,895), not (SAR 164,748,669) as stated in Zakat Assessment. Therefore, Taxpayer requests to reverse the Primary Department's decision of items subject of appeal for the stated grounds.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:



As for ZATCA's appeal against the Primary Department's decision regarding the item (long-term and short-term loans for year 2012), ZATCA claims that it added the balance after comparing the balance at beginning and end of the period as per the financial statements and their notes, due to Taxpayer's failure to submit supporting documents during the examination and objection stages. As for item (trade payables for year 2012), ZATCA explains that it added the balance after comparing the balance at beginning and end of the period as per the financial statements and their notes, due to Taxpayer's failure to submit supporting documents during the examination and objection stages. It also indicates that the Primary Department failed to establish how it reached its conclusion.

On Sunday, 04/06/2023 AD, corresponding to 15/11/1444 AH, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video conference in accordance with the procedures for remote video litigation based on Article 15.2 of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Upon calling parties to the Appeal, Mr. Abdullah Bin Zaid Al Aqili, National ID No. (1092945615), in his capacity as representative of Appellee "ZATCA", under Authorization Letter No. (1444/146/30307) dated 11/05/1444 AH, issued by the Deputy Governor for Legal Affairs. Despite being served of date set for the session as prescribed by Law, neither Appellant nor representative thereof appeared at the session. Appellee's representative, when questioned about the case, responded in accordance with to the statement submitted to General Secretariat of the Zakat, Tax, and Customs Committees, affirming grounds, defenses and requests, contained therein; and when questioned if he would like to add any statements, he responded with denial.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On Merits: As for ZATCA's appeal on the two items (long-term and short-term loans for year 2012 and trade payables for year 2012); whereas Article (70) of Law of Civil Procedures, promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the case record, and the court shall issue a deed to that effect"; and whereas Article (70.1) Implementing Regulations of Law of Civil Procedures, issued by the Minister of Justice Resolution No. (39933) dated 19/05/1435 stipulates: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the foregoing, and since the Department found that ZATCA request to withdraw the appeal as stated in ZATCA letter in the supplementary memorandum, which includes: "ZATCA would like to inform the Honorable Department of the withdrawal of its appeal regarding the above item in particular, together with procedures resulting therefrom, in accordance with merits satisfied by the Primary Department's decision". Therefore, the Department decided to establish that ZATCA has waived its right to file an appeal.

As for Taxpayer's appeal regarding the item (import differences for year 2012), which includes objection to the Primary Department's, as Taxpayer claims that imports of the Holding Company and its subsidiaries are carried out as a single import unit (Mutual Transactions Agreement); and whereas Paragraph (1/a) of Article (4) of Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: (a) If it is an actual expense, supported by documents or other evidence which enables ZATCA to verify its validity, even if it relates to



previous years.” In conclusion to the above, the import declaration issued by Customs is considered an undoubted presumption from a neutral third party, unless otherwise proven by Taxpayer. Upon reviewing the case file by the Department, it found that ZATCA procedure to amend results of Taxpayer’s business is due to differences in the value of imports listed in Taxpayer’s Declaration compared to imports as per Customs Declaration; and by referring to the case file and defenses and documents contained therein, it shows that Taxpayer has submitted the following documents: **1.** Mutual Internal Transactions Agreement between the Holding Company and its subsidiaries, which included the item “Imports of Goods from Abroad”, which stated that subsidiaries were authorized to receive shipments instead of the Holding Company, provided that the receipts of the imported goods are recorded in the accounts of the company that received the goods on behalf of the external supplier. Supplier Account Statement for Year 2012.; **2.** Customs Declaration of the Holding Company and Subsidiaries (..... Company and Company); **3.** Reconciliation of differences between Customs Declaration of the Holding Company and its subsidiaries, and what was recorded in accounts. Zakat Declarations of the Holding Company and its subsidiaries; and **4.** Invoices for purchase and receipt of goods. Based on the foregoing, and by reviewing the documents submitted by Taxpayer, the Department found that imports for Company “Appellant” as per Customs Declaration amounting to (SAR 197,171), imports for Company amounting to (SAR 159,761,172), and imports for Company amounting to (SAR 5,106,240), by a total amount of (SAR 165,064,583), while the amounts recorded in the Company’s accounts is (SAR 163,738,688), which shows a difference amount to (SAR 1,325,895), which was acknowledged by Taxpayer in statement of appeal thereof without submitting supporting documents for such difference. Upon reviewing Zakat Declaration of the subsidiaries by the Department, it found that the subsidiaries did not deduct the offshore procurement in the above amounts from the Zakat Base, therefore, the Department decided to accept Taxpayer’s appeal with a deduction of (SAR 163,738,688). As for ZATCA request in its Reply regarding not to accept the new documents submitted by Taxpayer for its failure to submit these documents to ZATCA during the examination and objection stages, the adoption of the inadmissibility of any document that was not submitted to ZATCA upon conducting Zakat Assessment or objecting to ZATCA decision is incompatible with the statutory provisions regulating the objection procedures to the decisions issued by the administrative authorities, as Law of Procedures Before The Board Of Grievances and its Implementing Regulations did not require the necessity of submission of supporting documents of a grievance before administrative authorities for acceptance; and since ZATCA decision is not final or imperative and can be challenged before the Adjudication Committees and the Appeal Committee, therefore, Taxpayer has the right to submit any documents that supports its claim at the time of Zakat Assessment to ensure fulfillment of the obligation in a fair manner and in consistent with reality as long as the documents submitted have not been challenged by ZATCA. In addition, the submission of documents by Taxpayer is considered evidence and indications worthy of consideration. If Taxpayer does not submit documents to ZATCA, it may amend the Declaration based on the submitted documents, which will not be affect Taxpayer’s subsequent submission of what proves the validity of declaration thereof, as long as the documents submitted have not been challenged by ZATCA; and since Taxpayer has submitted documents supporting its perspective, which clarify the difference between data stated in the Company’s accounts and Customs Declaration, therefore, the Department decided to accept Taxpayer’s appeal and abolish the Primary Department’s decision.

Decision:

First: In form:

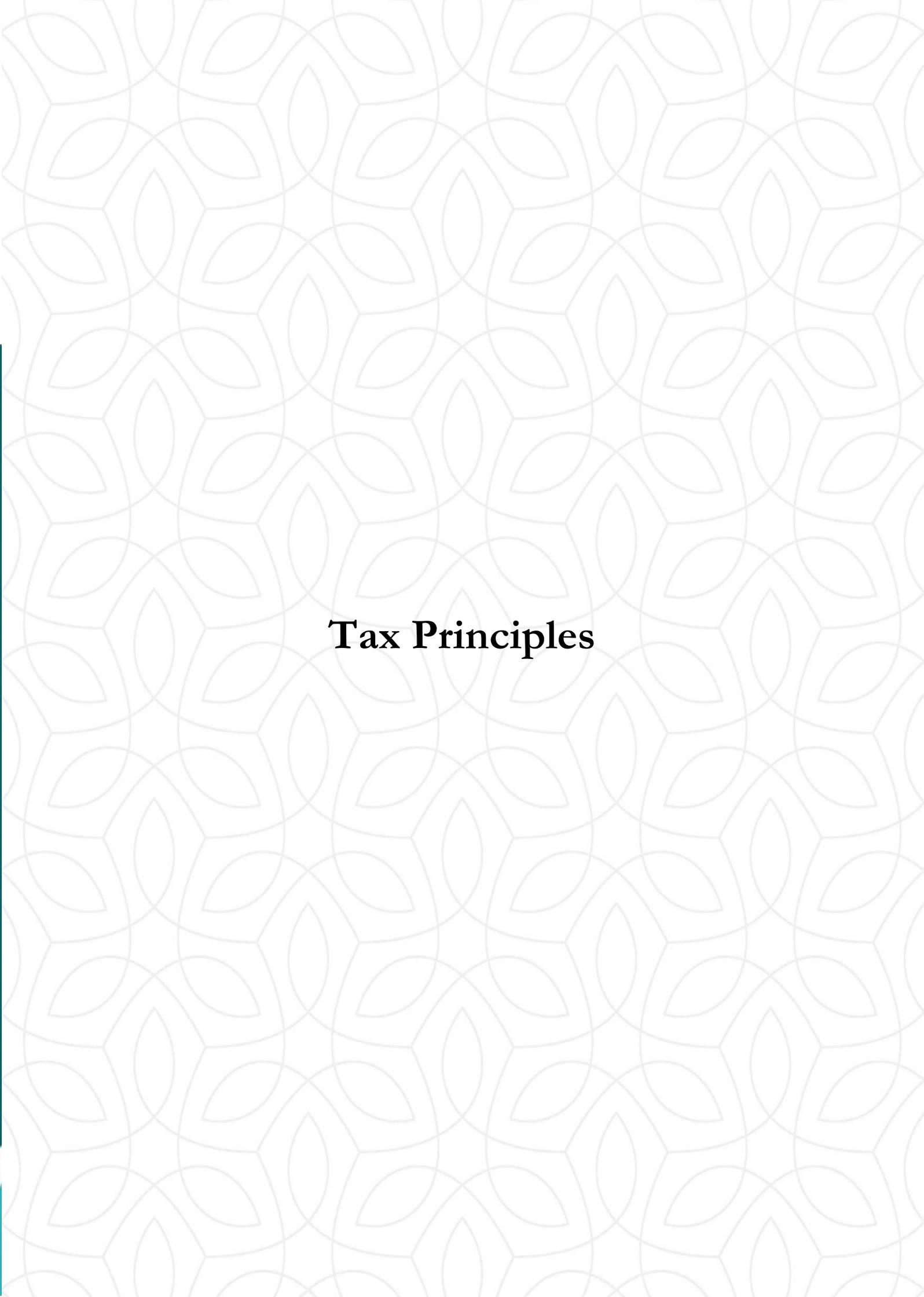
- Accept Taxpayer’s appeal, C.R No....., TIN No. in form; and accept ZATCA’s appeal against Decision No. (IZJ-2021-193) delivered by the First Department for the Determination of Income Tax Violations and Disputes in Dammam in Case No. (Z-4097-2019) in connection with Tax Zakat Assessment for year 2012.



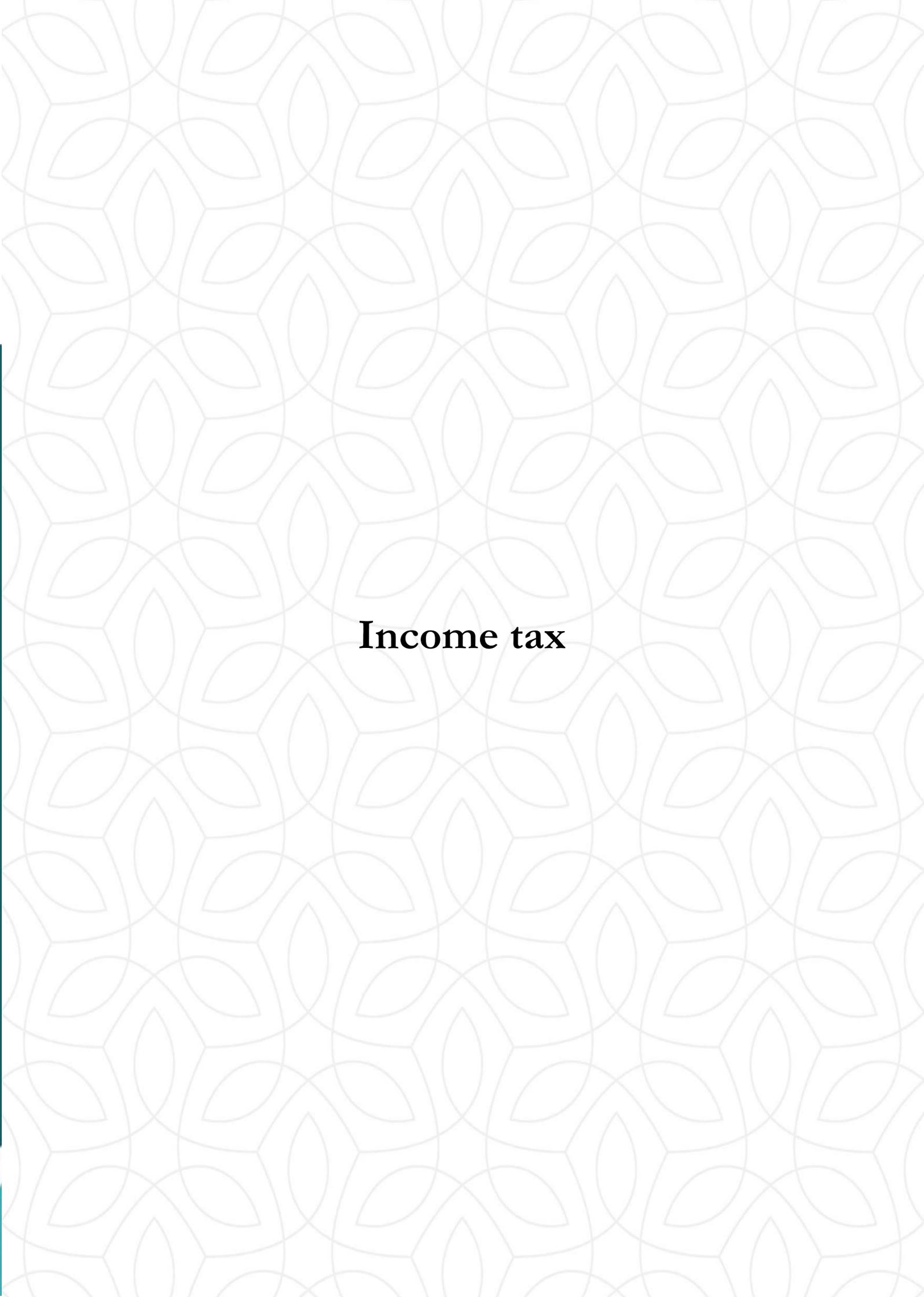
Second: On Merits:

- 1- Establish the end of dispute regarding ZATCA's appeal on item (long-term and short-term loans for year 2012).
- 2- Establish the end of dispute regarding ZATCA's appeal on item (trade payables for year 2012).
- 3- Accept Taxpayer's appeal and abolish the Primary Department's decision regarding the item (import differences for year 2012).

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Tax Principles



Income tax



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-432)
Issued in Appeal No. (I-86971-2021)

Principle No. (405)

Regular and necessary expenses related to the realization of income, paid or due, shall be deducted if they are actual and supported by documents or any other evidence related to the realization of taxable income and related to the tax year and not of a capital nature.

Facts:

The Department convened to consider the appeal filed on 19/12/2021 AD by Mr., National ID No., in his capacity as Attorney of the Appellant Company, under POA No. (423514255); and the appeal filed on 15/03/2022 AD by ZATCA against Decision No. (IZD-2021-1514) delivered by the First Department for the Determination of Income Tax Violations and Disputes in Dammam in Case No. (I-47874-2021) in connection with Zakat Assessment for year 2018, filed by Taxpayer against ZATCA. The appealed decision ruled as follows:

1. Dismiss Plaintiff's objection regarding expenses of hardship allowances and other accruals.
2. Abolish Defendant's decision regarding approval of salaries and wages reloaded from affiliated parties.
3. Amend Defendant's decision regarding approval of equipment expenses.
4. Amend Defendant's decision regarding late payment fine.

Both litigants did not accept this decision, and each of them submitted a statement of appeal that includes the following, in summary:

As for Taxpayer's appeal against the Primary Department's decision regarding the item (hardship allowances and other personnel expenses), Taxpayer claims that it had provided ZATCA with supporting documents and also submitted the same with its statement of appeal. These expenses paid to personnel during 2018 were necessary expenses for company's business and were incurred in the course of normal business in accordance with the work regulations, which must be approved as an actual expense entitled to be deducted from Tax Base. Taxpayer also indicated that he is a 100% Taxpayer, therefore, Implementing Regulations for Zakat Collection does not apply to Taxpayer. As for item (non-approval of equipment rental fees from United Arab Emirates), Taxpayer claims that the basis of accounting in the financial statements is on an accrual basis. As for invoices of the following year, they are drafted on a quarterly basis in accordance with the Lease Agreement, where the owner issues invoices to Lessee for months of October, November, and December of 2018 in January of 2019. Once the invoices are issued, accruals were recorded in the accounting books. Accordingly, there is no effect on the profit and loss account for year 2019. As for item (late payment fine), Taxpayer claims that the fine calculation should start after the completion of the objection and appeal procedures due to a technical dispute between Appellant and Appellee. Therefore, Taxpayer requests to reverse the Primary Department's decision of items subject of appeal for the stated grounds.



ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

As for ZATCA's appeal against the Primary Department's decision regarding the item (approval of salaries and wages reloaded from affiliated parties), ZATCA clarifies that Primary Department's decision was incorrect, as it accepted new documents that were not submitted to ZATCA during the examination and objection stages. As for item (approval of equipment expenses), ZATCA clarifies that, after examination, it found that they are materials that were introduced permanently and not temporary for the purpose of rental, which are supposed to be an expense for a year as they are small consumable materials, which is illogical for this equipment to carry out work throughout these years under the harsh circumstances of the nature of the activity. As for item (late payment fine), ZATCA adheres to the validity of its procedure and requests to reverse the Primary Department's decision regarding the same. Therefore, ZATCA adheres to the validity of its procedure and requests to reverse Primary Department's decision of items subject of appeal for the stated grounds.

On Monday, 10/10/2022 AD, First Appellate Department for Income Tax Violations and Disputes convened a session via video conferences as per the remote video litigation procedures based on Article: 15.2 of Tax Dispute and Violation Committee Procedures, promulgated by Royal Decree No. 26040 dated 21/04/21 AH. Having reviewed appeal submitted by parties to case, and having examined contents of case file, since the Department found no grounds for presence of parties to appeal, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On Merits: As for Taxpayer's appeal regarding the item (hardship allowances and other personnel expenses), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that this item must be deducted as it is documentary proven and necessary for the activity of earning taxable income; and whereas Paragraph (1) of Article (9) of Implementing Regulations of Income Tax law issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH stipulates: "Deductible expenses in determining taxable income are as follows: 1. All ordinary and necessary expenses to achieve taxable income, whether paid or due, provided that the following controls are in place: a) The expense must be an actual one, supported by documentary evidence or other proof that allows the Authority to verify its accuracy. (b) That it must be linked to the achievement of taxable income. (c) It must be related to the tax year. d) It is of non-capital nature". Based on the foregoing, payments to personnel as salary and financial benefits are considered to be deductible expenses whenever it is proven that they are actual expenses related to the activity subject of appeal. Upon reviewing the case file by the Department, it found that Taxpayer has submitted number of documents supporting the hardship expense; and since Taxpayer has submitted a proof of payment of expenses, therefore the Department satisfies to accept Taxpayer's objection and reverse the Primary Department's decision regarding this item. As for Taxpayer's appeal regarding the item (non-approval of equipment rental fees from United Arab Emirates), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that the basis of accounting in the financial statements is on an accrual basis, and there is no effect on the profit and loss account for year 2019; and whereas Paragraph (1) of Article (9) of Implementing Regulations of Income Tax law issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH stipulates: "Deductible expenses in determining taxable income are as follows: 1. All ordinary and necessary expenses to achieve taxable income,



whether paid or due, provided that the following controls are in place: a) The expense must be an actual one, supported by documentary evidence or other proof that allows the Authority to verify its accuracy. (b) That it must be linked to the achievement of taxable income. (c) It must be related to the tax year. d) It is of non-capital nature”. Based on the foregoing, rental is considered to be deductible expenses whenever it is proven that they are actual expenses related to the activity subject of appeal. Upon reviewing the case file by the Department, it found that Taxpayer’s has submitted number of documents supporting rental expense; and since Taxpayer’s has submitted a proof of payment of expenses, therefore the Department satisfies to accept Taxpayer’s objection and reverse the Primary Department’s decision regarding this item.

As for Taxpayer’s appeal regarding the item (late payment fine), which includes objection to the Primary Department’s decision regarding the same, as Taxpayer claims that the fine is calculated from the completion date of objection procedures due to a technical dispute between Taxpayer and ZATCA; and whereas Paragraph (a) of Article (77) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH states that: “A. In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a Taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. Based on the foregoing, the fine is imposed from the date of maturity. In the event of a significant technical dispute, the fine is imposed from the date of issuance of the final decision thereon; and since the fine is subject to the items appealed against; and since Taxpayer’s appeal was accepted for the above items, the fine is dropped accordingly. Therefore, the Department satisfies to accept Taxpayer’s objection and reverse the Primary Department’s decision regarding this item.

As for ZATCA’s appeal regarding the remaining items in question; and by considering the dispute and reviewing the appeal by the Department; and since the Department may take the grounds for the decision in question without addition whenever it deems that these grounds sufficient to provide anything new, which indicates that by supporting these grounds, it only emphasizes that the Department did not find any claims against the decision in question that requires its response more than what those grounds contained; and since it was established that the decision in question was consistent with the justifiable grounds on which it was based and sufficient to carry its judiciary, as the issuing Department examined the source of the dispute therein and reached to the conclusion it reached in its wording; and since the Department found validity of conclusion reached by the Primary Department in its decision, and that the grounds on which it based its decision were sufficient to support that decision; and since the Department did not notice anything that required correction or comment in light of the arguments presented. Therefore, the Department satisfies to dismiss ZATCA’s appeal and uphold the Primary Department’s decision in question, attributed to its grounds.

Decision:

First: In form:

Accept Taxpayer’s (Company/Factory) appeal, C.R No....., TIN No. in form; and accept ZATCA’s appeal against Decision No. (IZD-2021-1514) delivered by the First Department for the Determination of Income Tax Violations and Disputes in Dammam in Case No. (I-47874-2021) in connection with Tax Assessment for year 2018 in form.

Second: On Merits:

1. Accept Taxpayer’s appeal regarding the item (hardship allowances and other personnel expenses); and reverse the decision of the First Department for the Determination of Income Tax Violations and Disputes in Dammam according to the grounds stated in this decision.
2. Accept Taxpayer’s appeal regarding the item (approval of equipment rental fees from United Arab Emirates in the amount of SAR 273,225.667); and reverse the decision of the



First Department for the Determination of Income Tax Violations and Disputes in Dammam according to the grounds stated in this decision.

3. Accept Taxpayer's appeal regarding (late payment fine); and reverse the decision of the First Department for the Determination of Income Tax Violations and Disputes in Dammam according to the grounds stated in this decision.
4. Dismiss ZATCA's appeal regarding the remaining items in question; and uphold the decision of the First Department for the Determination of Income Tax Violations and Disputes in Dammam according to the grounds stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-394)
Issued in Appeal No. (W-1750-
2018)

Principle No. (406)

Taxpayer can only be charged with fines after knowing Tax Assessment, as Taxpayer is not legally obligated except to do an action that is possible, within its capacity, and known to Taxpayer that ensure its compliance.

Principle No. (407)

Late payment fine is imposed on tax difference due from the date of informing Taxpayer of Assessment and knowledge thereof of the fact of Assessment.

Facts:

The Department convened to consider the appeal filed on 29/10/2020 AD by for Software Services Company and ZATCA against Decision No. (12) of 1436 AH delivered by the Third Primary Committee for Zakat and Tax Objections in Riyadh in the Case filed by Taxpayer against ZATCA in connection with Tax Assessment for years from 2008 to 2011. The appealed decision ruled as follows:

First: In form:

- Accept Taxpayer's objection in form according to the grounds of the decision.

Second: On Merits:

1. As for withholding tax differences for years from 2008 to 2011, recalculate the amounts owed by Taxpayer for withholding taxes, taking into account the following:
 - a. Paying an amount of (SAR 25,732,805) to date according to the grounds of the decision.
 - b. Withholding tax on all amounts subject to withholding tax on the basis that they have been paid according to the grounds of the decision.
 - c. Dismiss Taxpayer's objection to withholding tax at a rate of 15% on what Taxpayer considered unrelated parties according to the grounds of the decision.
 - d. Dismiss Taxpayer's objection to withholding tax for travel expenses paid to multiple related non-resident parties according to the grounds of the decision.
 - e. Dismiss Taxpayer's objection to withholding tax for what Taxpayer deems to be procurement payments from non-resident parties according to the grounds of the decision.
 - f. Dismiss Taxpayer's objection to withholding tax for what Taxpayer deems to be air tickets payments purchased from non-resident parties according to the grounds of the decision.
 - g. Uphold Taxpayer's claim that amounts paid to employment services are not subject to tax withholding according to the grounds of the decision.



- h. Uphold Taxpayer's claim to withhold tax at 5% instead of 15% on technical, consulting, and communication and insurance services paid to an unrelated company according to the grounds of the decision.
 - i. Dismiss Taxpayer's objection to withholding tax on amounts transferred to Company, on behalf of its customers according to the grounds of the decision.
 - j. Uphold Taxpayer in determining amounts paid for technical services for related companies according to ZATCA description for year 2011 in the amount of (SAR 11,706,740), in determining amounts paid for technical services for unrelated companies in the amount of (SAR 5,063,081), and in determining amounts paid for consulting services for a Company in Dubai in the amount of (SAR 246,969) according to the grounds of the decision.
2. As for late payment fine,
- a. Uphold Taxpayer's claim for non-imposition of late payment fine on withholding tax differences resulting from ZATCA application a rate of 15% instead of 5% on amounts paid to related parties according to the grounds of the decision.
 - b. Dismiss Taxpayer's objection to the imposition of late payment fine on other withholding tax differences according to the grounds of the decision.

Both litigants did not accept this decision, and each of them submitted a statement of appeal that includes the following, in summary:

As for Taxpayer's appeal against the Objection Committee's decision regarding the item (raise of withholding tax rate from (5%) to (15%) for payments to companies (.....,, and) on the basis that they are related companies, Taxpayer claims that these companies are not considered related companies and are not subject to a percentage of (15%), as they are not under the control of (50%) or more. In addition, services provided by non-resident parties are not services provided to the company; they were provided directly to company's customers under contracts concluded between the company and its customers. As for item (imposition of withholding tax from the date of register of the expense in the accounts instead of the actual payment date), Taxpayer claims that withholding tax is due upon payment and not merely upon recording thereof in the books, as claimed by ZATCA from its view. As for item (request correction of procedural errors contained in ZATCA Assessment), Taxpayer claims that errors contained in ZATCA Assessment must be corrected. As for item (travel expenses paid to multiple non-resident parties), Taxpayer claims that the travel expenses consist of two parts: 1. Hotel and Accommodation Expenses. 2. Travel Tickets. This amount is included in the amounts of the technical services that have been assessed to by ZATCA, in addition to subjecting thereof to tax again within a separate item in the Assessment. In addition, the source of income for hotel and accommodation expenses has not been realized, as these amounts were paid by personnel of non-resident companies, which in turn charged and paid these expenses to the company. Hotel and accommodation expenses are not legally subject to withholding tax, as they do not represent a source of income. As for item (miscellaneous expenses), Taxpayer claims that this item must be deducted from Tax Base. As for item (remittances), Taxpayer claims that these amounts are royalties provided by company to company, which in turn transferred those amounts to the company (Appellant) instead of company. As for item (salaries and wages), Taxpayer claims that the amounts paid in salaries and wages are recovered expenses, paid by company for the absence of an HR Department with Appellant. As for item (miscellaneous services), Taxpayer claims that it has refunded amounts to company that it had paid to resident parties on Taxpayer's behalf, and that Taxpayer mistakenly deducted a tax of (5%) from these services, i.e., these amounts are paid to resident parties in exchange for services and in accordance with Income Tax Law. These services or expenses are not subject to tax deduction under the Law, as they are services provided by resident parties. As for item (late payment fine), Taxpayer claims that late payment fine must be from the date of ZATCA claim, not from the date of Declaration submission in accordance with Paragraph (2) of Article



(68) of Implementing Regulations of Income Tax Law. Therefore, Taxpayer requests to reverse the Objection Committee's decision of items subject of appeal for the stated grounds.

ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

As for ZATCA's appeal against the decision of the Primary Department regarding (uphold of Taxpayer in determining amounts paid for technical services for related companies according to ZATCA description for year 2011 in the amount of (SAR 11,706,740), in determining amounts paid for technical services for unrelated companies in the amount of (SAR 5,063,081), and in determining amounts paid for consulting services for a company in Dubai in the amount of (SAR 246,969), ZATCA clarifies that it reached the amounts paid for the technical services of related and unrelated companies through the analytical statement submitted by the company during the field examination of the item (activity costs) contained in the Declaration and matching thereof with the audited financial statements dated 20/02/1435 AH, signed and stamped by company's stamp. ZATCA also reached this conclusion through the statements attached to the Declaration submitted for year 2011, where amounts were distributed in a total amount of (SAR 17,045,752), which was mentioned in the Tax Assessment that the company delayed in submitting thereof. As for item (late payment fine), ZATCA clarifies that there is no disagreement in views on items subject of the fine, and that Taxpayer's lack of understanding of what is necessarily required does not mean a disagreement in views. Therefore, ZATCA adheres to the validity of its procedure and requests to reverse the Objection Committee's decision of items subject of appeal for the stated grounds.

Upon presenting statement of appeal to ZATCA, it responded with a memorandum that included its adherence to the validity of its procedure and requested to dismiss Taxpayer's appeal and uphold the Objection Committee's decision of items subject of Taxpayer's appeal.

On Monday 03/10/2022 AD, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video communication in accordance with the procedures of remote visual litigation based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Upon reviewing the appeal filed by both parties, and by examining the contents of the case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On Merits: As for Taxpayer's appeal on item (salaries and wages in the amount of SAR 4,449,386 for year 2010), which includes objection to the Objection Committee's decision regarding the same, as Taxpayer claims that the amounts paid are recovered expenses paid by company for the absence of an HR Department with Taxpayer, while ZATCA adheres to the validity of its procedure and requests to dismiss Taxpayer's appeal and uphold the Objection Committee's decision. Upon reviewing the subject of dispute by the Department, and by referring to the minutes of the field examination, it found that Taxpayer has submitted a number of supporting documents, including a sample of personnel contracts and an analysis of their salaries. Bank statements of company were reviewed, which indicates the transfer of salaries of Taxpayer personnel and match these statements with their contracts by the examiners, which shows that the salaries and wages paid by company on behalf of Taxpayer do not represent personnel borrow services, but rather were paid to Taxpayer's personnel who are under its sponsorship as per employment contracts. Accordingly, the Department satisfies to uphold Taxpayer for non-imposition of withholding tax on salaries and wages as a refundable expense, and consider the tax paid and



withheld from salaries and wages as an advance tax that Taxpayer is entitled to use thereof to pay future withholding taxes. Therefore, the Department decided to accept Taxpayer's objection and reverse the decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh.

As for Taxpayer's appeal on item (late payment fine), which includes objection to the Objection Committee's decision regarding the same, as Taxpayer claims that late payment fine is calculated from the date of ZATCA Assessment, not from the date of Declaration submission, while ZATCA adheres to the validity of its procedure and requests to dismiss Taxpayer's appeal and uphold the Objection Committee's decision; and whereas Paragraph (a) of Article (77) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH states that: "A. In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a Taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment"; and whereas Paragraph (3) of Article (67) of Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH stipulates: "Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment." Based on the foregoing, late payment fine is imposed at the rate of (1%) of the unpaid tax for every thirty (30) days of delay; and since Taxpayer can only be charged with fines after knowing Tax Assessment; and since the Sharia rule stipulates: "Taxpayer is not legally obligated except to do an action that is possible, within its capacity, and known to Taxpayer that ensure its compliance." Accordingly, ZATCA is not entitled to impose the fine for non-payment of tax difference due according to Tax Assessment as of the date set for submitting Declaration as prescribed by Law, but rather it is entitled to impose that fine from the date of informing Taxpayer of Tax Assessment, as Taxpayer can only be charged with fines after knowing Tax Assessment. Accordingly, the Department satisfies to amend the calculation of late payment fine by deciding to calculate thereof from the date of maturity for tax difference resulting from informing Taxpayer to the date of payment. Therefore, the Department decided to accept Taxpayer's objection and amend the decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh.

As for the appeal of the Taxpayer and ZATCA on the rest of the items in question; and by considering the dispute and reviewing Taxpayer's appeal and ZATCA's appeal by the Department; and since the Department satisfied to the conclusion of decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh, and that grounds on which the Department's decision was based are sufficient to support the Objection Committee's decision; and since the Department did not notice anything that required correction or comment in light of the arguments presented. Therefore, the Department decided to dismiss Taxpayer's appeal and ZATCA's appeal and uphold the decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh for the remaining items in question, attributed to its grounds.

Decision:

First: Accept Taxpayer's (..... Company for Services Ltd., C.R No., TIN No.) appeal, in form; and accept ZATCA's appeal against Decision No. (12) of 1436 AH delivered by the Third Primary Committee for Zakat and Tax Objections in Riyadh in connection with Tax Assessment for years from 2008 to 2011 in form.

Second: On Merits:

1. Accept Taxpayer's appeal on item (salaries and wages in the amount of SAR 4,449,386 for year 2010); and reverse the decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh according to the grounds stated in this decision.



2. Accept Taxpayer's appeal on item (late payment fine); and amend the decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh according to the grounds stated in this decision.
3. Dismiss Taxpayer's appeal and ZATCA's appeal for the remaining items in question; and uphold the decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh according to the grounds stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-283)
Issued in Appeal No. (I-29439-
2020)

Principle No. (408)

Capital gains are realized upon the exit of the foreign partner in the mixed company and the sale of its share by comparing the book value of its shares with amount paid for the foreign partner for the sale of those shares.

Facts:

The Department convened to consider the appeal filed on 08/04/1442 AH, corresponding to 23/11/2020 AD by Company Ltd., against the Decision No. (2/5) of 1434 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in the Case filed by Taxpayer against ZATCA in connection with Tax Assessment for year 2003. The appealed decision ruled as follows:

First: In form:

- Accept Taxpayer's objection in form for submission thereof with capacity and within period prescribed by Law, meeting the conditions stipulated in Paragraph (A) of Article (66) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH.

Second: On Merits:

1. Uphold ZATCA's decision in adding capital gains in the amount of (SAR 14,570,297) to Taxpayer's Tax Base for year 2003.
2. Uphold ZATCA's decision in imposing a concealment fine on Taxpayer at a rate of (25%) of the tax imposed on Taxpayer for year 2003, in accordance with grounds of this decision.

Since this decision was not accepted by Taxpayer (..... Company), therefore, Taxpayer filed a statement of appeal that included the following summary:

Taxpayer objects to the appealed decision in question, claiming that with regard to item (capital gains tax), capital gains resulting from the exit of the foreign partner were calculated without considering the loss or lack thereof. Taxpayer also requests not to calculate a tax on exit, due to the loss incurred from the sale. As for item (late payment and concealment fine), Taxpayer claims that there is no justification for imposing the fine, as ZATCA had all information before making the Assessment. In addition, there is a technical dispute in the views, with which late payment fine should not be imposed. Therefore, Taxpayer requests to reverse the decision of the Primary Committee for Zakat and Tax Objections subject of appeal for the stated grounds.

Whereas the Department decided to open the pleading, ZATCA submitted a Reply on 12/10/2021 AD, which includes its response to Taxpayer's appeal, including its adherence to the appealed decision, as it came in compliance with Law provisions of and the circulars issued. Accordingly, ZATCA adheres to the validity of its procedure and requests to dismiss Taxpayer's appeal and uphold the appealed decision for the stated grounds.



On Sunday 21/10/1443 AH, corresponding to 22/05/2022 AD, the Department decided to hold an electronic pleading session for a period of ten (10) days, as no addition was received from the parties to the appeal.

On Tuesday 03/02/1443 AH, corresponding to 30/08/2022 AD, and by reviewing memorandums and responds of appeal, and examining papers and documents contained in the case file, the Department decided to that the case is ready for adjudication and issuance of decision on its subject. Accordingly, the Department decided to close the pleading and set the date for adjudication.

Grounds:

Upon reviewing Case documents and Appeal Brief submitted by Taxpayer, the Department found that conditions the Appeal hearing have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal request was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law.

On Merits: As for Taxpayer's appeal on item (capital gains tax), which includes objection to the Objection Committee's decision regarding the same, as Taxpayer requested that the tax on exit should not be calculated due to the loss incurred from the sale, while ZATCA adheres to the validity of its procedure and requests to dismiss Taxpayer's appeal and uphold the Objection Committee's decision. Upon considering the dispute, reviewing the appeal, and examining the case file by the Department; it found that the dispute lies in calculation of capital gains resulting from the exit of the foreign partner, as Taxpayer requests not to calculate an income tax on exit, due to the loss incurred from the sale, and that sale amount is less than the amount calculated by ZATCA; and by reviewing the documents submitted by Taxpayer, including the Articles of Association, the audited financial statements for the period from 28/10/1423 AH, corresponding to 01/01/2003 AD to 05/10/1430 AH, corresponding to 24/09/2009 AD, and the sale agreement, which shows that the total amount transferred to UNILEVER for the sale of shares amounted to (USD 6,194,022), equivalent to (SAR 23,227,583); and upon comparing the book value with paid amounts; and whereas the Department did not find any profits from the sale as per the agreed-upon amount, therefore, it satisfies that ZATCA have no right to impose income tax on amounts in question. Accordingly, the Department decided to accept Taxpayer's appeal and reverse the decision of First Primary Committee for Zakat and Tax Objections in Jeddah.

As for Taxpayer's appeal on item (late payment and concealment fine), which includes objection to the Objection Committee's decision regarding the same, as Taxpayer claims that ZATCA had all information before the Assessment, and there is a technical dispute in the views, with which late payment fine should not be imposed, while ZATCA adheres to the validity of its procedure and requests to dismiss Taxpayer's appeal and uphold the Objection Committee's decision. Upon reviewing the appeal and examining the contents of the case file by the Department, it found that Taxpayer did not hide information that would affect the amount of tax imposed on Taxpayer; and whereas the Department has accepted Taxpayer's appeal regarding the item (capital gains); and whereas the fine in dispute is related to that item, the fine is dismissed accordingly. Therefore, the Department decided to accept Taxpayer's appeal and reverse the decision of Primary Committee for Zakat and Tax Objections in Jeddah in this regard.

Decision:

First: In form:

- Accept Taxpayer's (.... Company, C.R No..... No., TIN No.) appeal, against Decision No. (2/5) of 1434 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in connection with Tax Assessment for the year 2003 in form.

Second: On Merits:



1. Accept Taxpayer's appeal on item (capital gains tax); and reverse the decision of the First Primary Committee for Zakat and Tax Objections in Jeddah according to the grounds stated in this decision.
2. Accept Taxpayer's appeal on item (late payment and concealment fine); and reverse the decision of the First Primary Committee for Zakat and Tax Objections in Jeddah according to the grounds stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-2526)
Issued in Appeal No. (IW-
58406-2020)

Principle No. (409)

Calculation of Tax Base depends on Taxpayer's acknowledgment of Declarations submitted, along with supporting documents thereof. Financial statements represent the basis for calculating the Base, provided that financial statements are complete in terms of preparation, measurement, presentation and disclosure, and their preparation process is based on financial events supported by documents.

Facts:

The Department convened to consider the appeal filed on 08/07/2021 AD by Branch of Company, C.R No., TIN No., against Decision No. (ISR-2021-255) delivered by the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh in Case No. (IW-2019-3640) in connection with Tax Assessment and Withholding Tax for years 2016 and 2017, filed by Taxpayer against ZATCA. The appealed decision ruled as follows:

- Accept Plaintiff's (Branch of Company, C.R No. ...) case filed against ZATCA in form, and dismiss thereof on merits.

Since this decision was not accepted by Taxpayer (..... Company Branch), therefore, Taxpayer filed a statement of appeal that included the following summary:

Taxpayer objects to the Primary Department's decision in question, claiming that with regard to item (use of a larger percentage of the cost plus the profit margin for years 2016 and 2017), ZATCA procedure for considering thereof as taxable additional revenue and imposing estimated profits is incorrect, as Taxpayer has submitted its Tax Return on the basis of the audited financial statements. In addition, ZATCA issued its assessment for years from 2004 to 2014 and had not previously rejected the accounting books and records, and that the cost as well as the profit margin between Taxpayer and its Headquarters was not a matter of dispute. Taxpayer stated that it charges (10%) of the cost to the Headquarters and (15%) on its other subsidiary, in addition to the profit margin. Taxpayer also stated that the Primary Department's decision mentioned that Taxpayer did not maintain the local file and comparison analysis for years 2016 and 2017, despite that either the Primary Department nor ZATCA requested of a copy of transaction pricing studies. However, these studies were prepared, despite that transaction pricing instructions are in effect as of 15/02/2019, which was effective until 31/12/2018 and thereafter. It is also noted from the transaction pricing study that the arrangement of cost as well as profit margin Taxpayer, its Headquarters, and its subsidiaries, is in line with Taxpayer's benchmarking study. As for item (imposition of withholding tax on net income by (5%) for years 2016 and 2017), Taxpayer claims that there were no dividend distributions in the years 2016 and 2017, and that Income Tax Law and its Implementing Regulations did not include any provisions regarding withholding tax on hypothetical dividends, hence, the imposition of tax on hypothetical numbers are unjustified and contradict the Law. Taxpayer also stated that in 2018 and 2019, it transferred a cash amount to its



Headquarters and settled the withholding tax at a rate of (5%) in application of the Law. Therefore, it is clear that Taxpayer settled the appropriate tax upon the actual transfer. However, in 2016 and 2017, the withholding tax was not settled due to lack of transfers to Headquarters. As for item (late payment fine), Taxpayer claims that Laws stipulate the imposition of a late payment fine in Paragraph (A) of Article (77) of Income Tax Law and Article (68) of its Implementing Regulations, take place in the event of delay in paying the tax due, whether after Taxpayer's accepting the Assessment or the end of objection procedures. Accordingly, late payment fine is imposed from the due date of an obligation in accordance with Laws. Therefore, Taxpayer requests to reverse the Primary Department's decision in question for the stated grounds.

On Tuesday, 13/12/2022, First Appellate Department for Income Tax Violations and Disputes convened via video conference in accordance with the procedures for remote video litigation based on Item (2) of Article (15) of the Rules of Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040), dated 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Appellate Department determined that the presence of the parties was unnecessary and accordingly closed the pleadings and reserved the Case for judgment.

Grounds:

Whereas, by reviewing Case documents and statement of appeal submitted by the Taxpayer, the Primary Department found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

In form, and given the Taxpayer's appeal regarding the use of a larger percentage of the cost plus the profit margin for years 2016 and 2017), the crux of the Taxpayer's appeal is ZATCA procedure for considering thereof as taxable additional revenue and imposing estimated profits is incorrect, as Taxpayer has submitted its Tax Return on the basis of the audited financial statements. Pursuant to Paragraph (B) of Article (63) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, and based on the above, the Tax Base is calculated based on Taxpayer's acknowledgment of Declarations submitted, along with supporting documents thereof. Financial statements represent the basis for calculating the Base, provided that financial statements are complete in terms of preparation, measurement, presentation and disclosure, and their preparation process is based on financial events supported by documents. Upon reviewing the Case file, it is evident that the Determination Committee's decision was based on the Taxpayer's failure to provide a transfer pricing study, related documents, the local file for the branch, and the comparative analysis. The Committee noted that the agreements between the Taxpayer, the headquarters, and its subsidiaries were related-party agreements and were not applied as if they were between independent parties. Regarding the transfer pricing study, Taxpayers in the Kingdom were not required to maintain a local file, as the transfer pricing guidelines were not in effect before 2018 and only became applicable as of 15/02/2019. Moreover, there is no evidence that the Taxpayer was requested by the Primary Department or ZATCA to submit a transfer pricing study for the years in dispute. However, the Taxpayer subsequently submitted such a study to this Department. Upon reviewing the study and the ratios therein, it is evident that the branch's arrangement of cost plus the profit margin with its headquarters and subsidiaries exceeds both the lower and upper quartiles, while the applied rate falls within the 10% to 15% range. The summary of the study is as follows:

- The average minimum is (6.06)
- The lower quartile average is (1.36)
- The upper quartile average is (8.03)

The average maximum is (13.75)



Regarding the Primary Department's observation that the agreements were not applied as if they were between independent parties, its decision did not specify the document on which this conclusion was based. Concerning ZATCA's action of imposing an estimated profit of (40%) based on Article (16), Paragraph (4), ZATCA's right to make an estimated assessment is limited to the conditions and cases that must be met for such an assessment to be made, rather than relying on the Taxpayer's accounts as the basis for calculating the Tax Base as outlined in Article (63) of the afore-mentioned Law. Furthermore, Paragraph (3) of Article (16) of the implementing Regulations of the Income Tax Law specifies the conditions under which ZATCA can make an estimated assessment. Since it was established that the Taxpayer maintains regular accounts and provided audited financial statements, there is no justification for ZATCA to make an estimated assessment of the Taxpayer. Additionally, ZATCA did not contest the accuracy of the Taxpayer's accounts. Given that the statutory provisions require the existence of evidence and facts that justify ZATCA's refusal of the Taxpayer's acknowledgments and resort to estimated assessment, the imposition of late penalties is not valid due to the invalidity of the original assessment. Based on the legal principle that "The ruling on a matter is determined by the matter itself", the Primary Department concludes that the Taxpayer's appeal should be granted, and the decision of the Primary Department should be overturned.

Decision:

First: In form:

The appeal filed by the Taxpayer, branch of Company, C.R No. (.....), TIN No. (....), is accepted in form against the decision of the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh No. (ISR-2021-255), issued in Case No. (IW-2019-3640) in connection with Tax Assessment and Withholding Tax for years 2016 and 2017.

Second: On Merits:

The Taxpayer's appeal is accepted and the decision of the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh is overturned, in accordance with the reasons and justifications stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VA-2022-831)
Issued in Appeal No. (V-80503-2021)

Principle No. (410)

Customs documentation for imports from outside the Kingdom serves as legally acceptable substitutes for invoices, upon which data are based. Consequently, it cannot be disregarded.

Facts:

For consideration of the appeal submitted on 09/12/2021 by/, ID No. (.....) Acting on behalf of the Company under Power of Attorney No. (...) on the decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam (VD-2021-1139) in the case filed byCompany against ZATCA.

To consider the appeal dated 02/11/2021 and submitted by ZATCA against the decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam (VD-2021-1139) in the case filed byCompany against ZATCA.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: **In form:**

To Accept case in form.

Second: **On merits:**

- Prove the resolution of the dispute regarding the local purchases subject to the basic tax rate, as well as the imports subject to the reverse charge mechanism.
- Dismiss the Case regarding the item of imports for which VAT of SAR (397) is paid at customs.
- Abolish the penalties imposed on Plaintiff for the tax declaration period in question.

As this decision was not accepted by either party, the appellant, Company submitted an appeal to the Appellate Department, which included objections to the decision of the Adjudication Department, which rejected its claim regarding the final assessment for the tax period of June 2018. The Appellant requests the annulment of the Adjudication Department's decision concerning the item of (imports subject to VAT paid at customs) as it possesses supporting documents ("customs declaration") dated 03/05/2018. The disputed amount was not deducted from May declaration but was deducted in June declaration (under dispute) only once. The tax return for May confirms the same. The Appellant concludes by requesting the acceptance of the appeal and the annulment of Adjudication Department's decision.

The Appellant, ZATCA, in its capacity as Defendant, filed an appeal to the Appellate Department, challenging the decision of the Adjudication Department regarding the error in the declaration and the late payment penalties. ZATCA requests the imposition of penalties resulting from the reassessment for the disputed tax period and concludes by requesting the acceptance of the appeal and the annulment of the Adjudication Department's decision.



On Sunday 20/03/1444 AH corresponding to 16/10/2022 AD, First Appellate Department to Adjudicate Value Added Tax and Excise Goods Violations and Disputes held a session to consider the appeal submitted via video conference, based on Article 15.2 of Rules of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Adjudication Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 2/11/1438 AH, and after reviewing Rules of Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas the appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its statutory requirements in accordance with the provisions of Article 40.2 of Tax Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On merits, after reviewing case files and examining all relevant documents, submissions and replies submitted by the two parties, the Department found that the primary decision ruled to dismiss the case filed by (.....Company) with regard to canceling the Appellee (ZATCA) decision on the final assessment of the tax period including June 2018 (Import Item). Appellant raised an objection to the Adjudication Department decision because the customs declaration was issued on 03/05/2018 AD and the disputed amount was not deducted from May declaration but rather was deducted in full from June declaration, "subject matter of the dispute". While Appellee (ZATCA) confined itself to the argument that "the exclusion was based on information provided by customs stating that there were no imports during June". It is established that the declaration shall be based on invoices rather than cash. Also, the declaration letter and the preparation and inspection request No. (255983) issued on 17/08/1439 AH, corresponding to 03/05/2018 AD, i.e., during "May", did not include any evidence proving examination before exclusion. Customs' documents shall be deemed a legally acceptable alternative to invoices in cases of importing from outside KSA, and the data mentioned therein shall be depended upon; therefore, such documents shall not be ignored despite being submitted to Adjudication Department during litigation because they constitute acceptable customs' documents in accordance with provisions of Paragraph (b/1) of Article (48) of the Agreement, which did not obligate submission of a particular customs' statement so that Taxpayer could ensure that it will be depended upon and guarantee the deduction right. Moreover, Appellant submitted May tax return form, which proved that no amounts related to the relevant item were recognized, which in turn meant that the first deduction was made in June declaration, the subject matter of dispute. Accordingly, Appellate Department decided to accept Appeal and cancel the Adjudication Department decision.

As for ZATCA Appeal filed for canceling the Adjudication Department decision on the fine item, Appellant requested imposition of a fine for defaulting in declaration side by side with a late payment fine with regard to reassessment of the disputed tax period. Having determined that the appealed decision, subject matter of the current dispute, was consistent with law provisions and valid grounds upon which it was taken and sufficient to support its ruling, since the issuing department has carefully considered the disputed subject matter and concluded finally the decision reached in its ruling. Appellate Department did not find anything to be corrected or commented on with regard thereto in light of the raised defenses submitted before such Appellate Department. Accordingly, Appellate Department acknowledged that such defenses shall not affect the decision



outcome. Therefore, Appeals Chamber concludes acknowledgment of appeal rejection the support of Appeals Chamber decision it reached in this Clause, attributed to its grounds.

Decision:

First: With regard to the Appeal filed by Company,

1. accept Appeal in form.
2. Accept Appeal filed by Company, C.R. No. (.....), for exclusion of the disputed amount in the item “Imports subject to VAT and paid at customs”, cancel the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam decision No. (VD-2021-1139), and cancel Appellee decision.

Second: With regard to ZATCA Appeal:

1. accept Appeal in form.
2. Accept ZATCA Appeal with regard to the fine imposed for defaulting in declaration and late payment fine, and uphold the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam decision No. (VD-2021-1139).

May Allah’s Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VA-2023-155)
Issued in Appeal No. (V-2022-91100)

Principle No. (411)

The facts established for adjusting the supply value in accordance with the Tax Law and its Implementing Regulations are realized when they relate to Taxpayer if the supply value is previously agreed upon and then amended for any reason.

Facts:

For consideration of the appeal submitted on 09/12/2022 by/, ID No. (.....) in his capacity as Appellant attorney, under POA No. (.....), against the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah decision No. (VJ-2021-2019) in Case filed by Appellant against Appellee.

Since the facts of this Case have been stated in the decision, subject matter of appeal, so Appellate Department referred thereto for avoidance of repetition. The decision taken by Adjudication Department ruled as follows:

First: In form:

- Accept Case filed by Plaintiff in form.

Second: On merits:

1. Dismiss Plaintiff Case with regard to the item "Local sales subject to the basic tax rate" for the tax period including December 2019 AD, subject matter of Case, because Defendant decision was proved to be valid. 2. Dismiss Plaintiff Case with regard to the late payment fine for the tax period including December 2019 AD, subject matter of Case, because Defendant decision was proved to be correct. Since Appellant did not accept such decision, it submitted an appeal brief to Appellate Department including its objection to Adjudication Department decision on rejecting its Case filed against Appellee with regard to the final assessment of the tax period including December 2019 and the fine imposed thereby. Appellant demanded cancellation of Adjudication Department decision on the item "amendments to local sales subject to the basic tax rate", on the basis that the adjustments were made to prices and discounts granted to insurance companies and agreed upon subject to a final settlement signed by the company and the insurance company. So, Appellate Department decided to accept the Appeal and reject Adjudication Department decision.

First Appellate Department for Value Added Tax and Excise Goods Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of Appellate Department may be held via modern technological means provided by General Secretariat." Case file, including memoranda and documents, and Appellate Department decision subject of appeal have been reviewed. After discussion and deliberation, the Department decided to adjourn the session and issue decision.

Grounds:



Whereas, by reviewing case documents and appeal statement submitted, the Department found that conditions for hearing the appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, upon reviewing Case file and examining all documents and papers contained therein, and after reviewing all documents and replies provided by both litigants, Appellate Department found that the Adjudication Department decided to reject the Case filed by Appellant against Appellee with regard to the final assessment of the tax period including December 2019, the late payment fine, and the adjustments to local sales subject to the basic tax rate. The dispute happened as a result of Appellant objection to Appellee decision based on the fact that the adjustments were made to prices and discounts granted to insurance companies and agreed upon subject to a final settlement signed by the company and the insurance company. Appellant submitted a final settlement issued by Bupa and demonstrating the settlement amount, and also presented credit notes after applying deductions, including settlement deductions. Appellee failed to present any documents to the contrary that could be regarded as conclusive evidence to be relied upon to reject the method followed for handling the disputed items in such declarations, since its reliance on the bad debt provisions mentioned in Article (40) of the Implementing Regulations of Value Added Tax Law was not valid and did not apply to the subject matter of Case. Moreover, Adjudication Department also depended on the fact that the deductions for which Appellant demanded to adjust the supply value were not mentioned in contracts concluded with the insurance companies. This matter is irrelevant to the application of Value Added Tax Law and its Implementing Regulations when the facts establishing the supply value adjustment in accordance with Value Added Tax Law and its Implementing Regulations are realized. Therefore, in accordance with Article (40/A) regarding adjustment to supply value when related to Taxpayer in case of prior agreement on the supply value and then amended for any reason, including an additional discount offer after completion of the sale, which proved the validity of the tax assessment of the disputed item. Therefore, Appellate Department decided to accept Appeal and cancel Adjudication Department decision. With regard to objection to the late payment fine imposed as a result of the final assessment of the disputed period, since the Appeal was accepted in the abovementioned item, since the disputed fine resulted therefrom, the resulting occurrence shall take the same effect. Therefore, Appellate Department decided to accept Appeal and cancel Adjudication Department decision.

Decision:

First: Accept Appeal from ... Company, C.R. No. (...) In form for submission during the period prescribed by law.

Second: Accept Appeal from ... Company, C.R. No. (...) Regarding amendments to the basic rate of local sales subject to tax, the cancellation of the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah Decision No. (V-2019-2021), and the cancellation of the Appellee's decision.

Third: Accept Appeal from ... Company, C.R. No. (...) Regarding the late payment fine, the cancellation of the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah Decision No. (VS-2021-2019), and the cancellation of the Appellee's decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2023-33515)
Delivered in Appeal No. (1Z-
33515-2021)

Principle No. (412)

When calculating capital gains resulting from the exit of a foreign partner, the comparison of contractual value with sold property rights represented by the partner's capital and current account is considered a reasonable and fair procedure, especially when the partner's current account consists of amounts that the foreign partner has injected into the company's account and were not generated from sales profits.

Facts:

The Department convened to consider the appeal filed on 02/01/2021, by ..., National ID No. (...), in his capacity as the Appellant Company' Attorney under POA No. (...), and the appeal filed on 21/01/2021 by ZATCA against the First Department to Adjudicate Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-238) issued in Case No. (ZI-10737-2019) in connection with Zakat assessment for 2017 in the case filed by the Taxpayer against ZATCA. The appealed decision ruled as follows:

First: In form:

Accept the case filed by PlaintiffCompany, C.R. No. (.....) in form for being filed within the time limit prescribed by law.

Second: On Merits:

- 1- Accept the objection of PlaintiffCompany regarding the losses carried forward item.
- 2- Dismiss the objection of PlaintiffCompany regarding the foreign partner's exit profit item.
- 3- Amend Defendant's decision regarding the late payment fine in accordance with the conclusions reached in this decision.

Both litigants did not accept this decision, and each of them submitted a statement of appeal that includes the following, in summary:

Regarding the Taxpayer's appeal against the primary decision, the appeal centers on the item (Foreign partner's exit profit for 2017). The Taxpayer claims that due to the losses incurred by the foreign partner since the Company's incorporation, the partner decided to sell their share in the Company, including their capital and current account balance, which the partner had previously injected into the Company to cover establishment and operating expenses. The entire share of the partner was sold for an amount of (SAR 854,884), and therefore, the capital and current account of the foreign partner were transferred and closed in the capital and current account of the new partner for the same value. Regarding the item 'Late payment fines,' the Taxpayer claims that according to the appealed item, no tax or fines should be imposed on the Company. Accordingly, the Taxpayer requests the cancellation of the primary decision in the items subject to the appeal for the reasons stated above.



ZATCA dissatisfied with the decision; therefore, ZATCA filed an appeal against the contested decision under a statement of appeal summarized as follows:

Regarding ZATCA's appeal against the primary decision, the appeal centers on the item (Losses carried forward for 2017). ZATCA claims that the losses carried forward for zakat aspect were processed in accordance with the previous ZATCA's assessment, but for the tax aspect, the losses carried forward were not settled in accordance with Article (11.4) of the Implementing Regulations of Income Tax Law, which states: "Losses of a capital company that has undergone a change or amendment in its ownership or control of (50%) or more may not be carried forward, except for losses incurred after the change in ownership has taken place and which satisfy the loss carry-forward conditions". Regarding the item (Late payment fines), ZATCA claims that it imposed a late payment fine of 1% for each day of delay in paying the withholding tax, and that the Department's conclusion to calculate the fine from the date of the decision, if the dispute is technical or related to differences in opinions, would encourage Taxpayers to not comply with paying taxes and fines on time and to appeal to ZATCA and tax committees, even if they are certain that these taxes are due and there is no dispute about them. Therefore, ZATCA insists on the validity and soundness of its procedures and requests to quash the primary decision for the appealed items, based on reasons stated above.

Having presented statement of appeal to ZATCA, it submitted a memorandum that included its adherence to validity of its procedure, and requested the Department to dismiss Taxpayer's appeal and uphold Primary Department's decision regarding items subject matter of Taxpayer's appeal.

On Wednesday, 10/05/2023, the First Appellate Department for Income Tax Violations and Disputes held its session, in presence of all its members whose names are recorded in the minutes, via virtual communication in accordance with the remote litigation procedures; based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Upon reviewing the appeal filed by both parties, and by examining the contents of the case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filing.

On merits, regarding the Taxpayer's appeal concerning (Foreign partner's exit profit for 2017), the Taxpayer's appeal centers on objecting to the primary decision regarding this item; as the Taxpayer claims that the entire share of the foreign partner was sold for an amount of (SAR 854,884), and therefore, the capital and current account of the foreign partner were transferred and closed in the capital and current account of the new partner for the same value. Article (16.7/b) of the Implementing Regulations of the Income Tax Law issued by Ministry of Finance Decision No. (1535) dated 11/06/1425 AH states: "If the asset sold is an interest in a capital company, the sale value shall be determined on the basis of the contractual value, the market value or the book value of this interest in the company's books, whichever is higher. The sale value is compared with the cost base to determine the capital gain". Based on the foregoing, it is evident that the dispute revolves around the calculation of capital gains resulting from the foreign partner exit. Upon reviewing the case file and its accompanying documents, it is clear that ZATCA considered the capital as the sole basis for the cost, whereas the Taxpayer's calculation by comparing the contractual value with the sold property rights represented by the capital and the current account of the creditor partner is considered a reasonable and fair procedure. The Taxpayer has provided bank statements showing transfers from the foreign partner ..., indicating that the partner's current account consists of amounts that the foreign partner has injected into the Company's account and



were not generated from sales profits. Since no profits were generated from the foreign partner exit, the Department has concluded by accepting the Taxpayer's appeal and quashing the primary decision regarding this item.

Regarding the Taxpayer's appeal concerning (Late payment fines), the Taxpayer's appeal centers on objecting to the primary decision regarding this item; as the Taxpayer claims that according to the appealed item, no tax or fines should be imposed on the Company. Article (67.a) of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15/01/1425 AH, stipulates: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a Taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on the foregoing, the late payment fine is imposed at a rate of one percent (1%) of the unpaid tax for every thirty days of delay. However, the Taxpayer can only be charged with fines after knowing tax assessment; as this approach is in accordance with relevant legal and regulatory principles, such as the Sharia rule which stipulates: "Taxpayer is not legally obligated except to do an action that is possible, within its capacity, and known to Taxpayer that ensure its compliance". Upon reviewing the appealed decision, it is evident that the unpaid tax is due to the item (foreign partner's exit profits). Given the acceptance of the Taxpayer's appeal regarding this item and based on the legal principle: "If a matter ceases to exist, that which is incidental to it shall also cease to exist", the Department concludes by accepting the Taxpayer's appeal and cancelling the primary decision regarding this item.

Regarding ZATCA's appeal on the remaining items of the Case: The Department cannot be faulted for adopting the reasons for the appealed decision without adding to them, as long as it has determined that those reasons are sufficient without the need to introduce anything new. By affirming the decision based on these reasons, it is clear that the Department did not find any of the objections raised against the decision to be worthy of a reply beyond what was included in those reasons. Bearing the foregoing in mind, and since it is established that the appealed decision regarding the dispute over the disputed items was in accordance with the sound reasons on which it was based and sufficient to support its judgment, as the issuing Department examined the source of the dispute and concluded with regard to it the result it reached in its judgment, and since this Department has not observed anything that warrants a correction or comment regarding it in light of the defenses raised before it, this Department therefore concludes by dismissing the Taxpayer's appeal and dismissing ZATCA's appeal and upholding the primary decision regarding the result it reached in the remaining items of the Case based on its reasons.

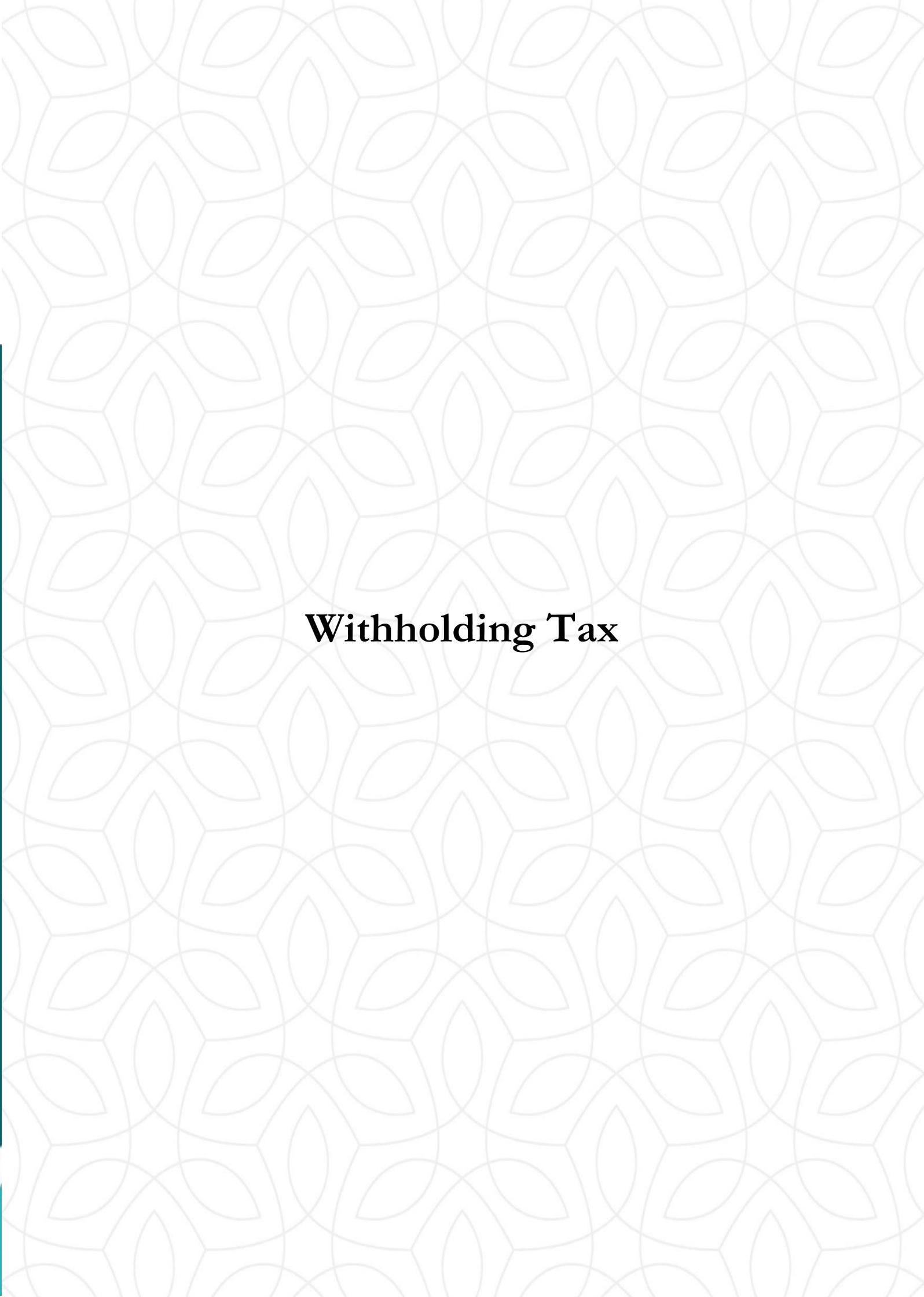
Decision:

First: Accept Appeal in form from Taxpayer/ ... Company, with Commercial Register No. (...) and the appeal submitted by ZATCA, regarding the First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-238) issued in Case No. (ZI-10737-2019) related to zakat assessment for the years from 2010 to 2012.

Second: **On Merits:**

1. Reject ZATCA's appeal and confirm the primary decision regarding the item (Losses carried forward for 2017).
2. Reject ZATCA's appeal regarding (Late payment fines).
3. Accept Taxpayer's appeal and cancel the primary decision regarding the item (Foreign partner's exit profit for 2017).
4. Accept Taxpayer's appeal and cancel the primary decision regarding the item (Late payment fines).

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

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Withholding Tax



Appeal

Appeal Committee:

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2526)
Issued in Appeal No. (IW-58406-2020)

Principle No. (413)

Subjecting net profit to withholding tax just for inclusion in the retained earnings account does not constitute a payment or settlement in the accounts between the head office and the branch.

Facts:

The Department convened to consider the Appeal filed on 08/07/2021 AD by Branch of Company, C.R No., TIN No., against Decision No. (ISR-2021-255) delivered by the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh in Case No. (IW-2019-3640) in connection with Tax Assessment and Withholding Tax for the years 2016 and 2017, filed by Taxpayer against ZATCA. The appealed decision ruled as follows:

- Accept Plaintiff's (Branch of Company) case, C.R No. (...), filed against ZATCA in form, and dismiss thereof on merits.

Since this decision was not accepted by Taxpayer (..... Company Branch), therefore, Taxpayer filed a statement of appeal that included the following summary:

Taxpayer objects to the Primary Department's decision in question, claiming that with regard to item (use of a larger percentage of the cost plus the profit margin for the years 2016 and 2017), ZATCA procedure for considering thereof as taxable additional revenue and imposing estimated profits is incorrect, as Taxpayer has submitted its Tax Return on the basis of the audited financial statements. In addition, ZATCA issued its Assessment for years from 2004 to 2014 and had not previously rejected the accounting books and records, and that the cost as well as the profit margin between Taxpayer and its Headquarters was not a matter of dispute. Taxpayer stated that it charges (10%) of the cost to the Headquarters and (15%) on its other subsidiary, in addition to the profit margin. Taxpayer also stated that the Primary Department's decision mentioned that Taxpayer did not maintain the local file and comparison analysis for years 2016 and 2017, despite that either the Primary Department nor ZATCA requested of a copy of transaction pricing studies. However, these studies were prepared, despite that transaction pricing instructions are in effect as of 15 February 2019, which was effective until 31/12/2018 AD and thereafter. It is also noted from the transaction pricing study that the arrangement of cost as well as profit margin Taxpayer, its Headquarters, and its subsidiaries, is in line with Taxpayer's benchmarking study. As for item (imposition of withholding tax on net income by (5%) for years 2016 and 2017), Taxpayer claims that there were no dividend distributions in the years 2016 and 2017, and that Income Tax Law and its Implementing Regulations did not include any provisions regarding withholding tax on hypothetical dividends, hence, the imposition of tax on hypothetical numbers are unjustified and contradict the Law. Taxpayer also stated that in 2018 and 2019, it transferred a cash amount to its Headquarters and settled the withholding tax at a rate of (5%) in application of the Law. Therefore, it is clear that Taxpayer settled the appropriate tax upon the actual transfer. However, in 2016 and 2017, the withholding tax was not settled due to lack of transfers to Headquarters. As for item



(late payment fine), Taxpayer claims that Laws stipulate the imposition of a late payment fine in accordance with Paragraph (A) of Article (77) of Income Tax Law and Article (68) of its Implementing Regulations, take place in the event of delay in paying the tax due, whether after Taxpayer's accepting the Assessment or the end of objection procedures. Accordingly, late payment fine is imposed from the due date of an obligation in accordance with Laws. Therefore, Taxpayer requests to revoke the Primary Department's decision in question for the above reasons. On Tuesday, 13/12/2022, First Appellate Department to Adjudicate Income Tax Violations and Disputes convened via video conference in accordance with the procedures for remote video litigation based on Item (2) of Article (15) of the Rules of Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040), dated 21/04/1441AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Appellate Department determined that the presence of the parties was unnecessary and accordingly closed the pleadings and reserved the Case for judgment.

Grounds:

Whereas, by reviewing Case documents and statement of appeal submitted by the Taxpayer, the Appellate Department found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

In form, and given the Taxpayer's appeal regarding the application of a higher cost-plus profit margin for 2016 and 2017, the crux of the Taxpayer's appeal is that ZATCA's treatment of including estimated taxable income and imposing estimated profits is fundamentally incorrect, because the branch submitted its tax return based on audited financial statements. Pursuant to Paragraph (B) of Article (63) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, and based on the above, the tax base is calculated based on the tax return submitted by the Taxpayer, who is required to provide supporting documentation for these returns. Financial statements serve as the primary support for calculating the tax base. For these statements to be accepted and used as the basis for calculating the tax base, they must be complete in terms of preparation, measurement, presentation, and disclosure, and must be based on financial events supported by documentary evidence. Upon reviewing the case file, it is evident that the Adjudication Committee's decision was based on the Taxpayer's failure to provide a transfer pricing study, related documents, the local file for the branch, and the comparative analysis. The committee noted that the agreements between the Taxpayer, the headquarters, and its subsidiaries were related-party agreements and were not applied as if they were between independent parties. Regarding the transfer pricing study, Taxpayers in the Kingdom were not required to maintain a local file, as the transfer pricing guidelines were not in effect before 2018 and only became applicable from 15/02/2019. Moreover, there is no evidence that the Taxpayer was requested by the Appellate Department or ZATCA to submit a transfer pricing study for the years in dispute. However, the Taxpayer subsequently submitted such a study to this Department. Upon reviewing the study and the ratios therein, it is evident that the branch's arrangement of cost-plus profit margin with its headquarters and subsidiaries exceeds both the lower and upper quartiles, while the applied rate falls within the 10% to 15% range. The summary of the study is as follows:

- The average minimum is (6.06)
- The lower quartile average is (1.36)
- The upper quartile average is (8.03)

The average maximum is (13.75)

Regarding the Department's assertion that the agreements were not implemented as if between independent parties, upon reviewing the Department's decision, it is unclear which specific document the Department relied on to reach this conclusion. As for ZATCA's action of imposing a 40% estimated profit margin based on Article (16.4), the authority's right to make an estimated



assessment is limited to the conditions and circumstances under which such an assessment can be made and the Taxpayer's accounts cannot be used as a basis for calculating the tax base. These conditions are outlined in Article 63 of the aforementioned law. Additionally, Article (16.3) of the Implementing Regulations of the aforementioned Income Tax Law specifies the cases in which ZATCA is entitled to make an estimated assessment. Given that the Taxpayer maintains systematic accounts and has submitted audited financial statements, there is no justification for ZATCA to conduct an estimated assessment on the Taxpayer. Moreover, ZATCA has not challenged the accuracy of the Taxpayer's accounts, and the legal provisions require the existence of evidence and facts that justify ZATCA's decision to disregard the Taxpayer's declarations and resort to an estimated assessment. The imposition of a late payment fine is therefore unjustified due to nullification of the principle, and based on the legal principle that states "A judgment extends to related matters". Accordingly, the Department concludes by accepting the Taxpayer's appeal and quashing the primary decision.

Decision:

First: Accept the appeal filed in form by Taxpayer Branch ofCompany, CR No. (.....), TIN No. (.....), Against the Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISR-2021-255) issued in Case No. (IW-2019-3640) in connection with tax assessment and withholding tax for the years 2016 and 2017.

Second: **On Merits:**

The Taxpayer's appeal is accepted and the decision of the Second Department to Adjudicate Income Tax Violations and Disputes in Riyadh is overturned, in accordance with the reasons and justifications stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2023-56184)
Issued in Appeal No. (ZIW-
56184-2021)

Principle No. (414)

Withholding tax is imposed on the non-Saudi partner's share of the capital increase funded by retained earnings in the year of exit, as this is considered the event causing the imposition of withholding tax.

Facts:

For considering the appeal filed on 23/06/2020 AD by Company against ZATCA with regard to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2021-446) issued in Case No. (ZIW-2020-14312) with relation to zakat tax assessment for the period (2006-2016 AD), noting that the Case was filed by Appellant against ZATCA, the Determination Department decision included the following:

First: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to tax assessment for the period (2006-2011 AD), subject matter of the Case.

Second: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to bonus expenses for 2011 AD, subject matter of the Case.

Third: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to the item of (adding guarantee provision) for 2011 AD, subject matter of the Case.

Fourth: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to loan item for 2011 AD, subject matter of the Case.

Fifth: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to the item (Non-deduction of development properties) for 2011 AD, subject matter of the Case.

Sixth: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to the item (withholding taxes) of Company, subject matter of the Case.

Seventh: Reject the objection of Plaintiff/..... Company (TIN:) Against Defendant/ZATCA decision with relation to the item (withholding tax late payment fines), subject matter of the Case.

Eighth: Amend Defendant/ZATCA procedure taken against Plaintiff/..... Company (TIN:) with relation to amounts due to partner for 2011 AD, as mentioned in the grounds.

Ninth: Cancel all other Defendant/ZATCA decisions taken against Plaintiff/..... Company (TIN:) with relation to zakat and tax assessments, subject matter of the Case.



Both litigants did not accept this decision, and each of them submitted a statement of appeal that includes the following, in summary:

With regard to the appeal filed by Taxpayer against the decision of the Determination Department, it could be appealed with relation to (termination of the five-year period specified for tax assessment for the period (2009-2011), Taxpayer claimed that provisions of statutory Articles, specifically Article (65) of the Tax Law, have provided that assessment procedures shall be made within a period not exceeding five (5) years from the end of the period specified for submitting declarations in any way. The provisions are clear, leave no room for misinterpretation, and achieve the legislator goal in terms of attempting to stabilize both Taxpayer and ZATCA situations with a limited period, which is applicable to the years of dispute. Concerning the item (Non-approval of bonus expenses), Taxpayer claims that such expenses are actual expenses incurred by the Company and were removed from its liability before completing one year, and related supporting documents were provided. Also, such expenses are related to the Company, not its partners, as the Company purchased a portion of its shares and distributed the same to its employees as part of the rewards and incentives program for senior management employees to motivate them to pursue their career in the Company. This item is also supported by financial statements audited by a chartered accountant; therefore, it must be deducted from the zakat base. As for the item (Withholding tax on the capital increase from retained earnings), Taxpayer claimed that the capital increase from retained earnings during 2009 AD with the amount of (SAR 30 million) was a proposed capital increase as indicated in the audited financial statements, and the actual capital was not amended in the AOA and commercial register until 2011, after restructuring completion, which included the following new partners: and Company which are companies residing within the Kingdom, are the ones who decided to increase in 2011. Moreover, the tax was calculated on the full amount of the proposed increase, while the share of the non-Saudi partner represents (48.34%), assuming that the Kuwaiti partner is subject to tax. As for the claim that restructuring takes the form of liquidation, the company has not been liquidated and is still practicing its activity, and such restructuring merely is an internal restructuring imposed due to the nature of activity, which resulted in the exit of the Kuwaiti partner from the company in exchange for his ownership of a share in Holding Company. Accordingly, the increase process actually took place in the company in 2011, not 2009, wherein the Kuwaiti partner was not a partner in the company, which disprove the existence of a profit distribution to the Kuwaiti partner in 2009. As for item (withholding tax on amounts owed to multiple parties), Taxpayer claims that ZATCA made an assessment of charged instead of the amounts paid, as accounting accrual principle stipulates that the expenses are charged according to the year that related thereof. In addition, there is no provision that states the imposition of a withholding tax on amounts charged to accounts, as the tax is due when a resident party pays an amount earned from a source of income within the Kingdom to a non-resident party, regardless of the date the related expense is recorded in accounts. Moreover, these amounts belong to companies residing in Gulf states, therefore, they are treated as residents of the Kingdom. As for item (addition of the guarantee provision), Taxpayer claims that it is actual expenses due as confirmed liabilities and not an allowance, which are paid later subject to the availability of cash or the due date, hence, they are an actual financial burden and not likely to occur. In addition, in matters pertaining to Zakat, the factual circumstances hold greater weight than formalities or legalities. As for item (addition of loans), Taxpayer claims that it does not aware of the source of difference added by ZATCA, as activity of Islamic Murabaha Loans derived from the audited financial statements of 2011 and set forth in the statement of appeal shows that the amount of loans completed a full year is (SAR 257,714,220). As for item (addition of amounts owed to the partner), Taxpayer claims that balance was generated during the year and a did not completed a full year, hence, it should not be subject to Zakat. As for the Primary Department's decision that the part used in operational costs is not subject to Zakat, and subjected part is the one that financed the settled asset based on account activity that proves it was generated during the year, i.e., did not completed a full year, as affirmed by company's financial



statements of 2011, as statement of cash flows shows that the net cash from operating activities amounted to (SAR 293,354,146), and the addition of property and equipment amounted to (SAR 1,445,751). As for item (non-deduction of property for development), Taxpayer claims that the item must be deducted from the Base as it is a deductible expense. As for item (late payment fine), Taxpayer objects to the imposition of a late payment fine on tax difference resulting from items that are currently under appeal. In addition, ZATCA did not calculate the tax differences until after a period of time and the lapse of the legally specified period of five (5) years to amend the Assessment of 2009 to 2011, as the company could have late payment fines if ZATCA had informed the company immediately after submitting Returns. Moreover, the dispute in question is an actual technical dispute that does not require the imposition of a fine. Therefore, Taxpayer requests to reverse the Primary Department's Decision of items in question for the stated grounds. ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

As for ZATCA's appeal against the Primary Department's decision, which includes Zakat Assessment of the period (2006-2010), ZATCA clarifies that Returns submitted by Taxpayer included incorrect information that entitles ZATCA to repeat or make the Assessment based on Paragraph (8) of Article (21) of Implementing Regulations for Zakat Collection of 1438 AH, in accordance with the grounds stated in ZATCA's Reply submitted before the Primary Department. As for item (addition of amounts owed to the partner), ZATCA clarifies that the Primary Department's decision regarding the same is in violation of Paragraph (2) of Section (First) of Article (4) of Implementing Regulations for Zakat Collection. As for item (capital gains tax and concealment fines), ZATCA clarifies that capital gains in question occurred in 2011 and 2013, and the applicable provision at that time is Paragraph (E) of Article (16) of Implementing Regulations of Income Tax Law. ZATCA also clarifies that Ministerial Resolution No. (1776) dated 19/03/2014 AD which the Primary Department concluded to its decision was after the occurrence of capital gains, which means that the Primary Department's implementation of that decision for this item is a clear violation of the established principle, which is the non-retroactivity of laws. As for item (late payment fine), ZATCA clarifies that its procedure was in compliance with Paragraph (B) of Article (77) of the Income Tax Law, and that the information provided by Taxpayer regarding submitting Returns did not include the market value, with which the amounts were not compared according to Paragraph (7/b) Article (16) of Implementing Regulations of Income Tax Law. ZATCA requests, regarding this item, to abolish the Primary Department's decision that includes abolishment of ZATCA's decision regarding late payment fine for capital gains tax for years in question. Therefore, ZATCA adheres to the validity of its procedure and requests to accept its appeal and reverse the Primary Department's decision of items in question for the stated grounds.

On Sunday 09/10/2022 AD, the First Appellate Department for Income Tax Violations and Disputes held its session in presence of all its members via video conference in accordance with the procedures for remote video litigation based on Article (15.2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Upon reviewing the appeal filed by both parties, and by examining the contents of the case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Upon reviewing case documents and statement of appeal submitted, the Department found that conditions for hearing appeal have been fulfilled in form as per conditions stipulated in relevant laws, regulations, and resolutions. Therefore, appeals are accepted in form for being filed with capacity, and within the period prescribed by law for filling.

On Merits: As for Taxpayer's appeal regarding the item (prescription for Tax Assessment of 2006 to 2011), which includes objection to the Primary Department's decision regarding the same, as



Taxpayer claims that Assessment and its amendment shall be within five (5) years and shall not exceed such period, whatever the case may be; and whereas Paragraph (A) and (B) of Article (65) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: “A. The Department may, with a reasoned notification, make or amend a tax assessment within five years of the deadline specified for filing the tax declaration for the taxable year, or at any time, upon the written consent of the Taxpayer. B. The Department may make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year if a Taxpayer does not file its tax declaration, or it is found that the declaration is incomplete or incorrect with the intent of tax evasion.”. Based on the foregoing, and with reference to the above Article, the Department found that the Tax Assessment is made within five (5) years from the end of the period specified for submitting the Tax Return, and ZATCA is entitled to exceed that period up to ten (10) years in specific cases or upon Taxpayer’s written permission; and since it is established that ZATCA has been informed of this process and the tax due was paid and declared in Company’s Annual Return, along with changes in partners’ equity that took place, which entails that Assessment period is five (5) years, as considering the capital gains tax and the withholding tax separately from Company’s Annual Return is incorrect. Moreover, by extrapolating the Law and its Implementing Regulations, it becomes clear that all procedures carried out, whether by Taxpayer or ZATCA, are subject to a specific period, in order to achieve stability of transactions and not leaving Taxpayers’ positions anxious without determining a specific period that shows Taxpayers that their financial position will not be destabilized. Accordingly, the withholding tax and the capital gains tax are subject to legal provisions related to tax prescription. In addition, stating otherwise is not consistent with principles of justice and the resulting impact on Taxpayers’ businesses and their financial and legal positions, which does not prejudice ZATCA’s Reply submitted before the Primary Department regarding the validity of its procedure from a tax perspective, and that the capital gains tax on the sale was calculated based on ZATCA obtaining new data and information that the company and its chartered accountant failed to provide upon the occurrence of the sale and exit process based on Article (65/B) of Income Tax Law, as section “Second” of ZATCA’s appeal concluded to invalidity of ZATCA’s procedure to require the company to pay capital gains based on Ministerial Resolution No. (1776) dated 18/05/1435 AH. In addition, by reviewing the decision in question, it is clear that it did not address Taxpayer’s request to abolish the Assessment of withholding tax due to the expiration of the regulatory period to make the Assessment. Moreover, ZATCA’s Reply did not clarify its opinion regarding the state of prescription on the withholding tax and the reasons for rejection of Taxpayer’s objection. Accordingly, the Department satisfies to accept Taxpayer’s objection and reverse the appealed decision on this item.

As for Taxpayer’s appeal regarding the item (withholding tax on capital increase of 2009), which includes objection to the Primary Department’s decision regarding the same, as Taxpayer claims that the increase in capital is proposed as indicated in the audited financial statements, where capital was not amended in the Articles of Association and Commercial Registration until after the year in question of this item; and whereas Paragraph (1) of Article (63) of Implementing Regulations of Income Tax Law stipulates: “A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: 5% as dividends”; and whereas Paragraph (6/b) of the same Article also stipulates: “(6) Dividends means any distribution by a resident company to a non-resident shareholder, and any profits transferred by a permanent establishment to related parties. The following shall be taken into consideration: (b) Partial or full liquidation of a company is deemed to be dividends in excess of the paid capital”; and whereas the increase in the capital by transferring the retained profits to the capital does not, in fact, represent an actual or legal dividends, which makes it not subject to withholding tax, and that the capitalization of profits is not considered a set-off between accounts and does not entail a cash flow outside the Kingdom. In addition, during 2009 as stated in the audited financial statements for year 2010, Note No. (12) related to the capital stipulates: “On



December 31, 2009, the partners decided to increase the capital of the company from (SAR 90,000,000) to (SAR 210,000,000) by transferring an amount of (SAR 30,000,000) from the retained profits and (SAR 90,000,000) from the partners' current account, while the legal procedures related to proving the increase in the capital have not yet been initiated". Moreover, the foreign partner, on whom the appealed decision was based, has left the company in 2011, while the item appealed against relates to 2009. Accordingly, the Department satisfies to amend the appealed decision by imposing a withholding tax for the year of exit 2011 as the incident establishing the imposition of the withholding tax, provided that it is imposed on the share of the non-Saudi partner of the increase in capital by (48.34%).

As for Taxpayer's appeal regarding the item (addition of amounts owed to the partner of 2011), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that balance was generated during the year and a did not completed a full year, hence, it should not be subject to Zakat; and whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "Zakat Base consists of all Taxpayer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) Sources that remained as cash and completed a full year. (b) Sources used to finance technical purposes. (c) Sources used in trade offers and completed a full year.". Based on the foregoing, the creditor partner's current account is one of the sources of funding that is added to the Zakat Base when completed a full year, or its financing is deducted from Zakat Base. Upon reviewing the case file, the Department found that through Note No. (5) contained in the audited financial statements of 2011 on "balances of the relevant authorities and transactions" that the transactions that took place with the partner during the year represent payments on partner's behalf, a transfer from (to) property for development, rental expenses, and a purchase of an investment in securities available for sale. Accordingly, it is clear that the amounts owed to the above partner are the result of transactions that took place during the year, hence, did not complete a full year. Moreover, these amounts did not finance assets settled from Zakat Base, as the deduction of property for development from Zakat Base of 2011 was rejected in accordance with Section (Five) of the appealed decision. Therefore, the Department satisfies to accept Taxpayer's objection and reverse the appealed decision on this item.

As for item (late payment fine), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that due to the existence of an actual technical dispute, late payment fine should not be imposed until the completion of objection procedures; and Whereas Paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article (76) of this Law and in Paragraph (b) of this Article, a Taxpayer shall pay a delay fine of (1%) for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on the foregoing, and since the delay penalty is imposed in relation to the tax due and payable on the due date, and since the fine resulting from the delay in paying the withholding tax on the increase in capital from retained earnings is related to a technical dispute and a difference in viewpoints between the Taxpayer and ZATCA, the Department concludes to amend the decision of the Adjudication Department to impose the fine starting from the date the Taxpayer was notified of the withholding tax assessment until the date of payment. As for the penalties related to the withholding tax on amounts due to multiple entities, since the Taxpayer did not provide evidence supporting their viewpoint on this matter, and there is a recognized technical dispute concerning it, it is decided to uphold the adjudication decision regarding those fines arising from the withholding tax on amounts due to multiple entities and to calculate them from the due date.

As for the appeal of the Taxpayer and ZATCA on the rest of the items in question, The Department shall reflect on the subject of dispute, and after reviewing Taxpayer's appeal and



ZATCA's appeal, and where this Department has determined validity of the conclusion of decision of the First Department to adjudicate income tax violations and disputes in Riyadh, and that the reasons on which its decision was based are sufficient to support that decision, and where the Department did not notice what calls for correction and comment before this Department, which ends with this Department rejecting Taxpayer's appeal and rejecting ZATCA's appeal and supporting the decision of the First Department to adjudicate income tax violations and disputes in Riyadh on outcome of the rest of the items in question, based on its reasons.

Decision:

First: Accept the appeal filed by Taxpayer/ Company, CR No. (.....), TIN No. (.....) in form, And the appeal submitted by ZATCA, against decision of the First Department to adjudicate income tax violations and disputes in Riyadh No. (IFR-2021-446) issued in Case No. (ZIW-2020-14232) related to tax zakat assessment for the years 2006 to 2016 AD.

Second: On Merits:

1. Accept Taxpayer's appeal regarding the item of (Statute of Limitations for Tax Assessments for the Years 2006 to 2011), and the annul decision of the First Department to Adjudicate Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and grounds stated in this decision.
2. Accept Taxpayer's appeal regarding the item (Withholding Tax on the Increase in Capital for the Year 2009), and amend decision of the First Department to Adjudicate Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and grounds stated in this decision.
3. Accept Taxpayer's appeal regarding the item of (Addition of Amounts Due to the Partner for 2011), and annul decision of the First Department to Adjudicate Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and grounds stated in this decision.
4. Accept Taxpayer's appeal regarding the item of (Delay fine), and amend decision of the First Department to Adjudicate Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and grounds stated in this decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-2261)
Issued in Appeal No. (ZIW-
83983-2021)

Principle No. (415)

Withholding tax is due on net distributable profits after deducting the income tax already paid on these profits.

Principle No. (416)

Neither the Income Tax Law nor its Implementing Regulations include any provisions regarding withholding tax on hypothetical dividend distributions; therefore, imposing tax on hypothetical figures is unjustified.

Facts:

The Department convened to consider the appeal filed on 25/11/2021, by ..., National ID No.(...), in his capacity as the Attorney for the Appellant Company under POA No. (...), and the appeal filed on 28/11/2021 by ZATCA against the First Department to Adjudicate Income Tax Violations and Disputes in Dammam Decision No. (IZD-2021-1370) issued in Case No. (- ZIW14677-2020), in connection with zakat assessment for the years from 2010 to 2012 in the case filed by the Taxpayer against ZATCA. The appealed decision ruled as follows:

- Accept Plaintiff's case in form.

On Merits:

1. Cancel Defendant's decision regarding the item of conducting the assessment for the years ending on 31 December 2010 and 2011 after the expiration of the deadlines prescribed by the law.
2. Regarding the exclusion of offshore procurement:
 - a. Cancel Defendant's decision for 2010 and 2011.
 - b. Dismiss Plaintiff's objection for 2012.
3. Regarding the exclusion of the customs duties, clearance and handling, and air freight expenses:
 - a. Cancel Defendant's decision for 2010 and 2011.
 - b. Dismiss Plaintiff's objection for 2012.
4. Regarding the exclusion of gifts.
 - a. Cancel Defendant's decision for 2010 and 2011.
 - b. Dismiss Plaintiff's objection for 2012.
5. Regarding customer exclusion from the provision for bad debts:
 - a. Cancel Defendant's decision for 2010 and 2011.
 - b. Dismiss Plaintiff's objection for 2012.
6. Regarding the imposition of Zakat on advance payments made against contracts:
 - a. Cancel Defendant's decision for 2010 and 2011.
 - b. Amend Defendant's decision for 2012.



7. Regarding the credit balances:
 - a. Cancel Defendant's decision regarding the Short-Term Loans Item for the years 2010 and 2011, and dismiss Plaintiff's objection for the year 2012.
 - b. Resolution of dispute related to accrued expenses.
 - c. Cancel Defendant's decision regarding the Other Creditors Item for the years 2010 and 2011, and amend Defendant's decision for the year 2012.
 - d. Cancel Defendant's decision regarding the Amounts Due to Affiliated Parties Item for the years 2010 and 2011, and amend Defendant's decision for the year 2012.
8. Regarding the imposition of Zakat on claims for increases in sales:
 - a. Cancel Defendant's decision for 2010 and 2011.
 - b. Amend Defendant's decision for 2012.
9. Regarding the imposition of Zakat on deferred costs:
 - a. Cancel Defendant's decision for 2010 and 2011. B- Dismiss Plaintiff's objection for 2012.
10. Regarding the impact of the exclusion of expenses:
 - a. Cancel Defendant's decision for 2010 and 2011.
 - b. Dismiss Plaintiff's objection for 2012.
11. Regarding the Withholding Tax Item:
 - a. Dismiss Plaintiff's objection regarding Withholding Tax on royalties.
 - b. Dismiss Plaintiff's objection regarding Withholding Tax on distributed profits.
12. Amend Defendant's decision regarding Late Payment Fine.

Since this decision was not accepted by either party, each of them submitted a statement of appeal that can be summed up as follows:

Regarding the Taxpayer's appeal against the primary decision, the appeal lies in the (Exclusion of Offshore Procurement for the year 2012) item. The Taxpayer claims that the Committee's argument that the Company did not submit supporting documents and that it only referred to them in the letter is incorrect, as all supporting documents were submitted. The Taxpayer also states that the Company is a contracting company that operates in the field of executing electromechanical contracts for industrial and electricity projects as part of its ordinary operations. Additionally, financial statements are audited by a global firm, and the auditor always issues an unqualified report on the statements. The cost of offshore procurement determined by ZATCA represents a part of these statements. The Taxpayer points out that invoices were issued for the value of this offshore procurement and were included in the Company's total revenue and were subject to tax. Therefore, ZATCA subjected the revenue from procurement to tax but did not exclude the corresponding cost. Regarding the (Exclusion of the customs duties, clearance and handling, and air freight expenses for the year 2012) item, the Taxpayer claims that ZATCA stated that these expenses related to procurement were exempt from taxes and that the value of imported procurement is reported as both a cost and revenue at the same value. The Taxpayer indicates that upon receiving ZATCA's argument before the General Secretariat of Zakat, Tax, and Customs Committees, it was found that ZATCA stated that these expenses were excluded because they were non-deductible expenses. Therefore, the Company states that all excluded expenses were incurred in relation to offshore procurement, as when purchasing goods from a foreign country, the buyer must incur shipping expenses, customs duties, and clearance and handling expenses, thus making these necessary business expenses. Regarding the (Exclusion of gifts for the year 2012) item, the Taxpayer claims that the Company, in the course of its ordinary business operations, distributes calendars, diaries, and other gifts during the new Hijri year, the beginning of the holy month of Ramadan, Eid, and Hajj. Since this is an ordinary business practice, all expenses incurred in this regard are tax-deductible. Regarding the (Customer exclusion from the provision for bad debts for the year 2012) item, the Taxpayer claims that this information, including supporting documents to justify the exclusion from the provision for bad debts, was submitted to ZATCA. The Company is fully confident that it has complied with the provisions of



Article (9.3) of the Income Tax Law and Article (5.3) of the Implementing Regulations for the Collection of Zakat regarding bad debts. Regarding the (Impact of the exclusion of expenses on Zakat for the year 2012) item, the Taxpayer claims that in light of the arguments presented in the aforementioned items of the appeal, from the first to the fourth, it requests to allow the deduction of the items and to cancel the impact of this exclusion on the adjusted net profit returned to the Saudi shareholder. Regarding the (Imposition of Zakat on advance payments made against contracts for the year 2012) item, the Taxpayer claims that it does not agree with the legal arguments of the primary committee regarding the addition of advance payments to Zakat base based on Article (4) of the Implementing Regulations for the Collection of Zakat. It argues that the Implementing Regulations issued by Ministerial Decision No. 2082 dated 01/06/1438 AH was not in effect for the disputed years. Additionally, Zakat is based on intention, meaning it is only levied on funds that are invested for more than a year. Advance payments are used within the framework of ordinary business operations to finance ongoing operations, pay salaries, and other general expenses. Therefore, it requests the issuance of an adjusted assessment and the deletion of the added amounts. Regarding the (Short-Term Loans for the year 2012) item, the Taxpayer claims that the Company does not agree with the treatment of short-term loans. It argues that the loan was settled with an amount of (SAR 70,000,000) at the beginning of 2012, and that the Company obtained the loan to finance its daily operations (i.e., for working capital purposes) and that these loans were not used to finance fixed assets. It states that the Company does not agree with the legal arguments of the primary committee regarding the addition of short-term loans to Zakat base based on the Implementing Regulations for the Collection of Zakat, as it argues that the Implementing Regulations issued by Ministerial Decision No. 2082 dated 01/06/1438 AH was not in effect for the disputed years. Therefore, it requests the issuance of an adjusted assessment and the deletion of the added amounts. Regarding the (Other Creditors for the year 2012) item, the Taxpayer states that it does not agree with the legal arguments of the primary committee regarding the addition of other creditors to Zakat base based on the Implementing Regulations for the Collection of Zakat. It argues that the Implementing Regulations issued by Ministerial Decision No. 2082 dated 01/06/1438 AH was not in effect for the disputed years, and that the disputed amounts are for ordinary business expenses incurred by the Company. Therefore, it requests the issuance of an adjusted assessment and the deletion of the added amounts. Regarding the (Amounts Due to Affiliated Parties for the year 2012) item, the Taxpayer states that it does not agree with the legal arguments of the primary committee regarding the addition of other creditors to Zakat base based on the Implementing Regulations for the Collection of Zakat. It argues that the Implementing Regulations issued by Ministerial Decision No. 2082 dated 01/06/1438 AH was not in effect for the disputed years, and that the disputed amounts are for ordinary business expenses incurred by the Company. Therefore, it requests the issuance of an adjusted assessment and the deletion of the added amounts. Regarding the (Imposition of Zakat on claims for increases in sales for the year 2012) item, the Taxpayer states that it does not agree with the legal arguments of the primary committee that includes the disputed account to Zakat base based on the Implementing Regulations for the Collection of Zakat. It argues that the Implementing Regulations issued by Ministerial Decision No. 2082 dated 01/06/1438 AH was not in effect for the disputed years, and that these excess amounts do not represent actual earnings or investments, and therefore, should not be subject to Zakat, thus it requests the issuance of an adjusted assessment and the deletion of the added amounts. Regarding the (Imposition of Zakat on deferred costs for the year 2012) item, the Taxpayer claims that these balances represent long-term expenses and are related to fixed assets. Regarding the (Withholding tax on royalties and outsourcing for the years 2010 and 2011) item, the Taxpayer claims that the Company is still unable to determine the differences that ZATCA used to calculate the additional withholding tax on royalties and outsourcing because ZATCA has not provided any supporting evidence. Accordingly, it is difficult for the Company to provide supporting documents in response to the ZATCA's argument. However, the Company provided a detailed reconciliation of the differences



stated in the tax declaration and the amount paid in the withholding tax return for the years 2010 and 2011. It indicates that there are differences, but these differences are much less than what was stated in ZATCA's assessment, and are due to closing balances of accrued expenses and foreign exchange differences. Regarding the (Withholding tax on distributed profits for the year 2012) item, the Taxpayer claims that total amount of profits distributed to the foreign shareholder in 2012 was SAR 24,302,850, and since the Company paid an income tax of SAR 19,905,801 on behalf of the foreign shareholder, the net amount of profits that could be transferred to the foreign shareholder was SAR 4,379,049. Accordingly, the Company applied a 5% withholding tax on this net amount and remitted the remaining balance to the foreign shareholder. Regarding the (Late payment fine), the Taxpayer requests the cancellation of the primary decision on the basis that the Company always reconciled its income tax obligations in accordance with the provisions of the income tax law. Accordingly, given the Company's consistent compliance, there is no reason for ZATCA to impose a late payment fine for the additional income tax, especially since the Company has disputed this additional tax and is appealing it. In addition to the fact that the dispute between the Company and ZATCA is a technical dispute that does not require the imposition of a fine. Accordingly, the Taxpayer requests the cancellation of the primary decision in the items subject to the appeal for the reasons stated above. ZATCA also appealed against the primary decision submitting a statement of appeal including the following claims:

As for ZATCA's appeal regarding the primary decision, ZATCA asserts that its assessments for the years 2010 and 2011 were conducted within the stipulated timeframe, and thus, are valid. Regarding the exclusion of offshore procurement for the years 2010 and 2011, ZATCA maintains that its decision is justified. Regarding the imposition of Zakat on advance payments against contracts for the year 2012, ZATCA requests the cancellation of the primary decision, stating that upon reviewing the statement of advance payments from customers provided by the Taxpayer to the Department, it was found that the amount subject to Zakat for the year was (SAR 107,881,888), not (SAR 86,336,958) as the Department had previously determined. Regarding the item (other creditors for the year 2012), ZATCA claims that the Department based its decision on new documents that the Taxpayer had not previously submitted to ZATCA during the examination and objection stages. ZATCA further argues that the Department's acceptance of these new documents constitutes a violation of the provisions of Decision no. (1751) of 1438 AH. Regarding the item (amounts due to affiliated parties for the year 2012) ZATCA asserts that the Department's decision relied on new documents that the Taxpayer had not previously submitted during the examination and objection phases. ZATCA further argues that the Department's acceptance of these new documents constitutes a violation of ZATCA's rights, and accordingly, ZATCA demands that these documents be rejected based on Appel Decision no. (1751) of 1438 AH. Regarding the imposition of Zakat on claims for increases in sales for the year 2012, ZATCA asserts that the Department relied on its decision on new documents that the Taxpayer had not previously submitted to ZATCA during the examination and objection phases. ZATCA further argues that the Department's acceptance of these new documents constitutes a violation of ZATCA's rights, and therefore, ZATCA requests that these documents not be accepted based on Appel Decision no. (1751) of 1438 AH. As such, ZATCA insists on the validity and soundness of its procedures and requests the quash of that the primary decision regarding the appealed items due to the aforementioned grounds.

Upon presentation of the statement of appeal to ZATCA, it responded with a memorandum that can be summed up as follows: it maintains the correctness and soundness of its procedures, requests the dismissal of the Taxpayer's appeal be rejected and upholds the primary committee's decision regarding the items subject matter of the Taxpayer's appeal.

On Monday 12/12/2022, the First Appellate Department for Income Tax Violations and Disputes held its session, with presence of its members whose names are recorded in the minutes, through virtual communication in accordance with the remote litigation procedures; based on Article 15.2 of Tax Dispute and Violation Committee Procedures, issued by Royal Decree No. 26040 dated



21/04/1441 AH. Having reviewed appeal submitted by parties to case, and having examined contents of case file, since the Department found no grounds for presence of parties to appeal, the Department decided that the case was ready for adjudication and issuance of a decision on its merits. Therefore, the Department decided to close pleading and set the date for adjudication.

Grounds:

Whereas, by reviewing case documents and appeal statement submitted, by the Taxpayer and ZATCA, the Department found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal requests acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for their conduct. On merits, given that the Taxpayer has appealed concerning the exclusion of offshore procurement for the year 2012 item, the Taxpayer's appeal is based on a request to cancel the primary decision regarding this item. The Taxpayer argues that the committee's argument that the Company did not provide supporting documents and only referred to them in a letter is incorrect, as all supporting documents were indeed submitted. Based on Article (9.1) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decree No. (1535) dated 11/06/1425 AH, Article (5.1) of the Implementing Regulations for the Collection of Zakat, issued by Ministerial Decree No. (2082) dated 01/06/1438 AH, and based on the foregoing, the import statement issued by ZATCA shall be a primary presumption from a neutral third party unless the Taxpayer proves otherwise. Upon reviewing the case file, its defenses and documents, it appears that the Taxpayer provided offshore procurement reconciliation and explained reasons for the differences between what was stated in the tax and customs declarations. The differences center on the time difference in the registration between the company, ZATCA, some procurement that was cleared by Company, and others. Some procurement was cleared by the company's customers. The Taxpayer also provided analytical data for these reasons with their amounts, in addition to providing the customs declaration for the disputed period. As a result, the Department has concluded by accepting the Taxpayer's appeal and quashing the primary decision regarding this item. Regarding the Taxpayer's appeal concerning the exclusion of customs duties, clearance and handling expenses, as well as air freight for 2012, the Taxpayer's appeal centers on its request to cancel the primary decision regarding this item. The Taxpayer also explained that ZATCA stated that these expenses related to procurement are tax-exempt and that the value of procurement imported from abroad is reported as both an expense and revenue at the same value. Based on Article (9.1) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decree No. (1535) dated 11/06/1425 AH, Article (5.1) of the Implementing Regulations for the Collection of Zakat, issued by Ministerial Decree No. (2082) dated 01/06/1438 AH, and based on the foregoing, the expenses shall be considered deductible if proven to be actual expenses with supporting documents. Upon reviewing the case file, its defenses, and documents, it appears that the Taxpayer has submitted a detailed statement of air freight expenses, customs duties, and clearance and handling expenses, as well as sample invoices. Upon reviewing the submitted documents, it appears that the sample invoices submitted match the statement submitted. Furthermore, upon reviewing the direct expenses statement in Table No. (16), it appears that air freight expenses amount to (SAR 292,706), clearance and handling expenses amount to (SAR 4,383,731), and customs duties amount to (SAR 21,867,777), which are the same amounts that the Taxpayer is claiming as deductions. Therefore, since the Taxpayer has provided evidence that the disputed expenses are deductible expenses as they are necessary for the business activity, the Department has decided to accept the Taxpayer's appeal and quash the primary decision regarding this item.

Regarding the Taxpayer's appeal concerning the impact of excluding expenses from Zakat for the year 2012, the Taxpayer's appeal centers on its request to allow the deduction of the items and cancellation of the impact of this exclusion on the adjusted net profit returned to the Saudi shareholder.



On merits, regarding the Taxpayer's appeal concerning the short-term loans for the year 2012, the Taxpayer's appeal centers on its request to cancel the primary decision regarding this item on the basis that the Company does not agree with the treatment of short-term loans, as it states that the loan was settled for an amount of (SAR 70,000,000) at the beginning of 2012. Pursuant to Article (4.1/5) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and Article (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and based on the foregoing, loans are considered a component of Zakat base, regardless of their type, source, or classification, provided that the lunar year has passed over them or they are used to finance tangible assets deducted from Zakat base without the requirement of the lunar year passing over them. Based on the Taxpayer's statement that it does not agree with the application of the Implementing Regulations for the Collection of Zakat of 1438 AH because it was issued after the disputed year, we find that the Taxpayer's argument is unfounded, as Ministerial Decision No. (2082) of 1438 AH has stipulated that the rules and procedures contained in the Regulations shall replace all previous decisions, instructions, and circulars related to Zakat collection.

Regarding the subject of the dispute, and upon referring to the case file and its contents of defenses and documents, it appears that the Taxpayer submitted audited financial statements and a detailed movement of the disputed loan, which revealed that the balance of short-term loans at the beginning of the period was SAR 70,000,000, and at the end of the period, it was SAR 450,000,000. Upon reviewing what was submitted, it appears that the Company paid the beginning-of-period balance of short-term loans amounting to SAR 70,000,000 on 12/01/2012, as the Taxpayer submitted confirmation letters of the transfer to the lending company, as well as a bank statement indicating the deduction of the amount in two installments of SAR 30,000,000 and SAR 40,000,000. The Taxpayer also submitted the agreement concluded with "... Company", which proves the correctness of what the Taxpayer indicated regarding the settlement of the beginning-of-period balance; as a result, the Department concludes by accepting the Taxpayer's appeal and canceling the primary decision on this item.

On merits, regarding the Taxpayer's appeal concerning the (withholding tax on royalties and outsourcing for the years 2010 and 2011), the Taxpayer's appeal centers on the fact that the Company is still unable to determine the differences that ZATCA subjected to the withholding tax calculation, as ZATCA has not provided any valid evidence regarding the source and method upon which the additional withholding tax on royalties and outsourcing was reached. Based on the foregoing, it is clear that the dispute centers on ZATCA imposing a total withholding tax of (SAR 2,780,511) on royalty and outsourcing payments. Upon reviewing the case file and its contents of defenses and documents, it appears that the Taxpayer submitted the tax declaration for the disputed years, as well as payment receipts issued by ... Bank, proving the payment of dues. The Taxpayer also submitted a settlement of the withholding tax return, specifying the company name, nature of the transaction, and the expense listed in schedules (12) and (6) of the tax declaration, as well as the amount paid as stated in the withholding tax declaration, and also clarified the exchange rate differences and other settlements. Upon examination, it appears that there are two companies named ... Switzerland, namely Technology - Switzerland, and ... Company - Switzerland. Upon reviewing ZATCA's assessment, it was found that it did not specify which of the two mentioned companies had a discrepancy. However, as a precautionary measure, the accounts of both companies were audited. It was found that the difference between the expense stated in the tax declaration and the amount paid during the year and stated in the withholding tax declaration for ... Company - Switzerland was SAR 286,858 for 2010 and SAR 286,103 for 2011. For ... Company - Switzerland, the difference was SAR 49,215 for 2010 and SAR 115,482. The Taxpayer stated that these differences were due to exchange rate differences and year-end balances of accrued expenses. However, it was found that ZATCA calculated a difference of SAR 11,435,490 for 2010 and SAR 7,101,250 for 2011. Therefore, the basis for ZATCA's calculation of the aforementioned amounts has not been clarified. When ZATCA was requested to respond to the



Taxpayer's appeal, ZATCA stated that it maintains its argument regarding the disputed item and affirms the correctness of ZATCA's procedure without explaining the basis ZATCA used to calculate the differences imposed on the Taxpayer. Therefore, the burden of proof in this case falls on ZATCA. As a result, the Department concludes by accepting the Taxpayer's appeal and cancelling the primary decision regarding this item.

On merits, regarding the Taxpayer's appeal concerning the (withholding tax on distributed profits for the year 2012), the Taxpayer's appeal centers on the fact that the total distributed profits for the year 2012 attributed to the foreign shareholder were SAR 24,302,850. Given that the Company paid income tax of SAR 19,905,801 on behalf of the foreign shareholder, the net distributable profits to the foreign shareholder amounted to SAR 4,379,049. As such, the Company paid a 5% withholding tax on this amount and transferred the remaining amount to the foreign shareholder. Upon reviewing the answer to question no. (25) in the second edition of the FAQs for the year 2006, which states: Withholding tax is due on the net distributable profits of a non-resident partner after deducting the tax due on their share of the profits. For example, if a non-resident partner's share in the total profits realized after reserves is SAR 1,000,000, then the income tax due on the company for their share at a rate of 20% would be SAR 200,000, and consequently, withholding tax is imposed on the net distributable profits of the non-resident partner, which amounts to SAR 800,000.

In conclusion, the principle is that tax should be levied on distributable profits after deducting the income tax paid on these profits. Upon reviewing the case file and its contents of defenses and documents, it appears that the Taxpayer submitted a partners' resolution dated 24 March 2012, which decided to distribute profits to the partners in the amount of SAR 37,389,000. The Taxpayer also submitted the financial statements for the disputed year, which show in the cash flow statement a distribution of the same amount. Since the dispute centers on deducting the income tax paid on behalf of the foreign partner from the distributed profits, it became clear from financial statement note no. (11) that the chartered accountant stated that the income tax related to the non-Saudi partner for the year, amounting to SAR 19,905,801, was deducted from the share of the distributed profits. Furthermore, it was found that the Taxpayer submitted an annual withholding tax declaration, which showed that the distributed profits to the foreign partner were SAR 4,397,049, and the tax paid on it was SAR 219,853. Additionally, the Taxpayer provided a bank statement from ... Bank, confirming that the amount transferred to the foreign partner was SAR 4,177,197 after deducting the withholding tax. Therefore, since the distributed profits to the foreign partner were SAR 24,302,801, with SAR 19,905,801 deducted as income tax, the net distributable profits to the foreign partner were SAR 4,397,049, with a withholding tax of 5% equaling SAR 219,852. As such, the expected amount to be transferred is SAR 4,177,197. Therefore, the Taxpayer's claim is proven correct. As a result, the Department concludes by accepting the Taxpayer's appeal and cancelling the primary decision regarding this item.

On merits, regarding the Taxpayer's appeal concerning (Late payment fine), the Taxpayer's appeal centers on the fact that the Company always settles its due income tax in accordance with the provisions of the income tax law. Based on Article (77.a) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, Article (67.3) of the Implementing Regulations of the Income Tax Law, appellate Committee Decision No. (IR-6-2021) issued in appeal No. (ZIW-1657-2018), and upon reviewing the case file and its contents of defenses and documents, and since the late payment fine is calculated from the end of the deadline for submitting the declaration until the date of payment of the due tax arising from the application of the provisions of the law and the amendments made by ZATCA, and since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the regulatory provisions, therefore, we find that ZATCA's procedure of imposing a late payment fine from the due date on the items for which the Taxpayer's appeal was dismissed, and the lapse of late payment fine on the items for which the Taxpayer's appeal was accepted due to the lapse of the original imposition of the tax is valid.



Regarding the Taxpayer's appeal and ZATCA's appeal on the remaining items of the Case: The Department cannot be faulted for adopting the reasons for the appealed decision without adding to them, as long as it has determined that those reasons are sufficient without the need to introduce anything new. By affirming the decision based on these reasons, it is clear that the Department did not find any of the objections raised against the decision to be worthy of a reply beyond what was included in those reasons. Bearing the foregoing in mind, and since it is established that the appealed decision regarding the dispute over the disputed items was in accordance with the sound reasons on which it was based and sufficient to support its judgment, as the issuing Department examined the source of the dispute and concluded with regard to it the result it reached in its judgment, and since this Department has not observed anything that warrants a correction or comment regarding it in light of the defenses raised before it, this Department therefore concludes by dismissing the Taxpayer's appeal and dismissing ZATCA's appeal and upholding the primary decision regarding the result it reached in the remaining items of the Case based on its reasons.

Decision:

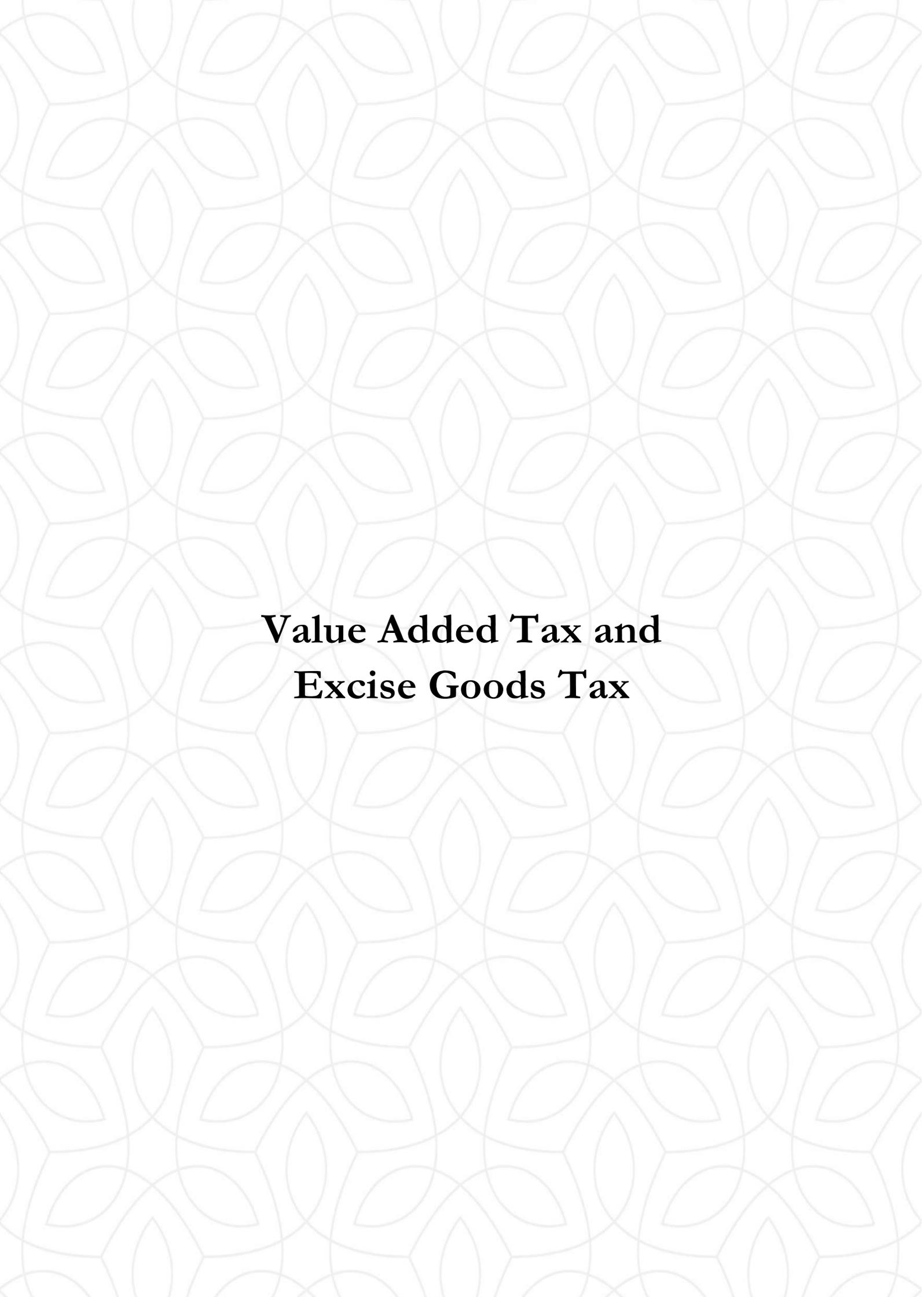
First: In form:

- Accept the appeal filed by Taxpayer Company, CR No. (.....), TIN No. (.....) in form, and the appeal submitted by ZATCA, regarding the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam, No. (IZD-2021-1370) issued in Case No. (2020-14677-ZIW) related to zakat tax assessment for the years from 2010 to 2012.

Second: On Merits:

1. Accept the appeal filed by Taxpayer regarding the item (Exclusion of offshore procurement for 2012) and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the grounds mentioned therein.
2. Accept the appeal filed by Taxpayer regarding the item (Exclusion of the customs duties, clearance and handling, and air freight expenses for 2012), and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the grounds mentioned therein.
3. Amend the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Dammam with regard to the item (Impact of the exclusion of expenses on Zakat for the year 2012), in accordance with the grounds mentioned therein.
4. Accept the appeal filed by Taxpayer regarding the item (Short-Term Loans for 2012) and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the grounds mentioned therein.
5. Accept the appeal filed by Taxpayer regarding the item (Withholding Tax on royalties and outsourcing for 2012) and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the grounds mentioned therein.
6. Accept the appeal filed by Taxpayer regarding the item (Withholding Tax on royalties and outsourcing for 2012) and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the grounds mentioned therein.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



**Value Added Tax and
Excise Goods Tax**



Appeal

Appeal Committee:

First Appellate Department for Value Added and Excise Tax Violations and Disputes

Decision No. (VA-2022-1044)
Issued in Appeal No. (V-92991-2022)

Principle No. (417)

Transfer of a debt upon entering into a financing agreement for goods with a primary customer to a third party is not subject to tax, as there is no sale between the original seller and the third party.

Facts:

The Department convened to consider the appeal filed on 03/03/2022 by ...and Finance Company, CR No. (...), against the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (VTR-2021-1332) in the Case filed by ...and Finance Company against ZATCA.

The Department also convened to consider the appeal filed on 03/03/2022 by ZATCA against the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (VTR-2021-1332).

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: Accept Plaintiff's claim, and obligate Defendant to amend its decision for the tax period subject matters of the Case with respect to the vehicle insurance fees item.

Second: Obligate Defendant to amend the fines for incorrect return and late payment for the tax period subject matter of the Case in accordance with the first item.

Third: Reject other requests.

Both parties were dissatisfied with that decision. Accordingly, the Appellant (.....Company) filed a statement of appeal to the Department, including the Appellant's objection to the primary decision rejecting its claim regarding the final assessment notice for the tax period of January 2018 and resulting fines. The Appellant requests the cancellation of the primary decision regarding the imposition of basic tax rate on the transfer of the value of debt from a customer to a third party on the grounds that the waiver is between the primary and new customer and the Company has no relation to it. Additionally, the Appellant objects to the addition of inventory differences, arguing that these differences resulted from Tawarruq (Securitization) sales and the reversal of purchase entries. The Appellant concluded by requesting acceptance of the appeal and cancellation of the primary decision.

The Appellant (ZATCA) in its capacity as Defendant also filed a statement of appeal to the Department, including the Appellant's objection to the primary decision regarding the item Vehicle Insurance and resulting fines. It demands that the insurance be subject to value-added tax in accordance with Article (14) of the Implementing Regulations of the Value Added Tax Law, on the grounds that the Taxpayer collects the cost of insurance from customers and does not subject it to tax. The Appellee concluded by requesting acceptance of the appeal and cancellation of the primary decision.



The First Appellate Department for Value Added Tax and Excise Tax Violations and Disputes held its session to review the submitted appeal via visual communication, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which states: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Adjudication Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds:

Whereas, by reviewing case documents and appeal statement submitted, the Department found that conditions for hearing appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions. This makes appeal request acceptable in form for submission by a person of legal capacity, and within the period prescribed by law for its conduct.

On merits, after reviewing case files and examining all relevant documents, submissions and replies submitted by the two parties, the Department found that the primary decision ruled to dismiss the case filed by (.....Company) regarding the final assessment notice for the tax period of January 2018, the error in declaration fine, the late payment fine, as well as the transfer of the value of debt from a customer to a third party. The dispute centers on the Appellant's objection to the primary decision to subject the transfer of the value of the debt from a customer to a third party to the basic tax rate, on the grounds that the waiver is between the primary and new customer and the Company has no relation to it. It was found that the fact of the disputed item centers on the Appellant entering into a financing contract for goods (vehicles) between it and the primary customer, and that the legal owner of the vehicle is the Company until the last installment is paid in order to preserve its rights in the value of the remaining installments. The transfer of the debt and the waiver thereof is between the primary customer and the third party, provided that the third party undertakes to pay all the remaining installments of the price of the sold vehicle, in addition to the fact that the primary customer is the actual beneficiary of the vehicle. The Appellee based its procedure on the assumption that the transfer of the debt from the previous lessee to a new lessee is a supply subject to value-added tax; this is because the Company enters into a new contract with the new lessee and does not merely acknowledge the waiver. The Appellant presented the basic financing contract with the customer (.....) against invoice no. (....) dated for a total value of (SAR 123,552). It was proven that the last payment was on 30/12/2018. The contract was waived on the same date of the last payment to the lessee (.....) for a total value of (SAR 76,815), which shows that the first payment was on 29/01/2019, i.e., in the month following the end of the last payment period for the previous lessee. The Department found that the Appellant's claim was correct that the item was not subject to tax due to the absence of a sale between the Appellant Company and the third party, which led the Department to accept the appeal filed regarding this item and cancel the primary decision.

Regarding the objection to the inventory difference item, which consists of Tawarruq sales and the reversal of procurement entries, the Appellant requests the cancellation of the primary decision regarding the addition of inventory differences on the grounds that these differences resulted from Tawarruq sales and the reversal of procurement entries. With respect to Tawarruq sales, the Appellant objects to the decision against it in adding Tawarruq sales to the basic tax rate on the grounds that it is outside the scope of value-added tax. The Appellee subjected the differences to the basic tax rate after it became clear to it that there were differences in the inventory between the total credit movement on the inventory of vehicles and equipment and the value of the sale of cars for the years in dispute. Tawarruq is carried out through the customer purchasing from the financier on credit, then the customer authorizes (the financier) to sell the goods subject to Tawarruq contract to a third party at its market value, where the transaction is carried out at the same time for its purchase and sale without the transfer of possession. The customer (the financier)



obtains the required money in exchange for the sale in full, and the customer pays the value of its purchases from the financier in installments including a profit margin (financing cost). The main purpose is for the recipient of the financial product to obtain financing with the temporary transfer of the goods and not the goods subject to the financing, therefore, there is no tax due to be paid because there is no supply of goods. The Appellant submitted Tawarruq contracts, customer authorization, purchase invoice, and sales invoice, which prove that they are Islamic financial products and are subject to tax exemption in accordance with the provisions of Article (29.3) of the Implementing Regulations of the Value Added Tax Law. The Department therefore concludes by accepting the appeal filed in relation to this item and canceling the primary decision.

Regarding the reversing procurement entries item, the Appellant objects to the decision against it in subjecting inventory differences to the basic tax rate on the grounds that they are related to procurement returns due to canceled procurement transactions, resulting in the reversal of procurement entries. The Appellee based its procedure on the Appellant's failure to provide evidence of settling procurement returns in the adjustments section of the return. The Appellant submitted a statement of procurement from the accounting system. Since, the Appellant's claim regarding an input error and the duplication of some transactions and their subsequent reversal was proven, the Department concludes by accepting the appeal filed in relation to this item and canceling the primary decision.

Regarding the objection to the error in declaration fine and the late payment fine, and the Appellant's request to cancel these fines that resulted from the final assessment notice for the tax period in question, and since the above items have led to the cancellation of the primary decision that is the subject of the appeal, and since the fines resulted from that, then what is related to it takes its ruling, as a result of which the Department concludes by accepting the appeal and canceling the primary decision.

Regarding the appeal filed by ZATCA, wherein it objects to the acceptance of the objection of the Appellee (.....Company) and the cancelation of its decision, and wherein ZATCA requests the cancelation of the primary decision regarding the vehicle insurance, error in declaration fine, late payment fine items, by subjecting the insurance to Value Added Tax in accordance with the provisions of Article (14) of the Implementing Regulations of the Value Added Tax Law on the grounds that the Taxpayer collects the cost of insurance from customers and does not subject it to tax, Bearing the foregoing in mind, and since it is established that the appealed decision regarding the dispute over the disputed items was in accordance with the sound reasons on which it was based and sufficient to support its judgment, as the issuing Department examined the source of the dispute and concluded with regard to it the result it reached in its judgment, and since this Department has not observed anything that warrants a correction or comment regarding it in light of the defenses raised before it, this Department therefore concludes that they do not affect the outcome of the decision. Therefore, Appeals Chamber concludes acknowledgment of appeal rejection the support of Appeals Chamber decision it reached in this Clause, attributed to its grounds.

Decision:

First: Regarding the Appeal ofCompany

1. accept Appeal in form.
2. Accept Appeal from Company, C.R. No. (...) regarding the item (Transfer of the value of a debt from a customer to a third party), cancel the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (VTR-2021-1332), and cancel the Appellee's decision.
3. Accept Appeal ... From Company, C.R. No. (...) regarding the item (Inventory differences), cancel the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (VTR-2021-1332), and cancel the Appellee's decision.



4. Accept Appeal ... From Company, C.R. No. (...) regarding the item (Error in declaration fine and late payment fine), cancel the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (VTR-2021-1332), and cancel the Appellee's decision.

Second: With regard to ZATCA Appeal:

1. accept Appeal in form.
2. Dismiss ZATCA's Appeal regarding the item (Vehicle insurance), and uphold the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (VTR-2021-1332).

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Income Tax and Excise Goods Violations and Disputes in Riyadh

Decision No. (VA-2022-763)
Issued in Appeal No. (V-84172-2021)

Principle No.

The right to claim a tax deduction is established when documentary evidence, specifically a tax invoice, is provided. This invoice must demonstrate the incurred tax and specify the exact amount of tax paid.

Facts:

This is to consider the appeal filed on 28/11/2021AD, by ..., National ID No. (...), in his capacity as representative for the appellant company under power of attorney No. (...), against decision of the First Department to adjudicate Value Added Tax violations and disputes Riyadh No. (VR-2021-560) in the case filed by the appellant against the appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

To Accept case in form.

Second: On merits:

Dismiss the case filed by Plaintiff, CR. No. (...) regarding the cancellation of ZATCA's decision concerning the reassessment of June 2018, which imposed a VAT of (SAR 187,704.90), a fine for error in declaration of (SAR 93,852.45), and a fine for late payment of (SAR 262,786.86).
Dismiss the case filed by Plaintiff, CR. No. (...) regarding obligating ZATCA to pay judicial costs.

Whereas the appellant did not accept this decision, it submitted an appeal to the Appellate Department, expressing its objection to Adjudication Committee's decision to reject its case. The appeal included a request to overturn the decision made by the appellee (ZATCA) concerning revaluation of June 2018 and the associated fines. The appellant company argued that it had mistakenly submitted a commercial invoice and later provided the correct tax invoice, concluding with a request to accept the appeal and annul Committee's decision.

On Wednesday 09/03/1444 AH, corresponding to 05/10/2022 AD, First Appellate Department for Value Added Tax and Excise Goods Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of Appeals Chamber may be held via modern technological means provided by General Secretariat." Case file, including memoranda and documents, and Appeals Chamber decision subject of appeal have been reviewed. After discussion and deliberation, Department decided to adjourn session and issue decision.

Grounds:



Upon reviewing case documents and the submitted appeal list, the Department determined that the conditions for hearing the appeal have been properly met in accordance with the relevant laws, regulations, and decisions. This confirms that appeal request is procedurally acceptable, as it was submitted by an authorized party and within the legally prescribed timeframe.

On merits, upon reviewing appeal documents and examining contents of the case, including all relevant documents and evidence, and after considering the memoranda and responses submitted by both parties, and since the Appellant is challenging decision of the Department to dismiss its claim regarding reassessment of June 2018 and imposition of a fine for error in declaration and late payment. Appellant's objection specifically concerns the issue of procurement subject to a (5%) tax rate. The dispute centers on Appellant's objection to primary decision, which upheld decision of the Appellee to exclude a portion of procurement, as the Appellant Company had initially submitted the commercial invoice in error and later provided the correct tax invoice. The final assessment notice indicated that the reason for excluding the disputed amount was a violation of Article (53.5) of the Implementing Regulations of the Value Added Tax Law. According to the evidence and documents presented in the case, there are tax invoices bearing the name "Branch of (.....) Company" and a tax registration in the Kingdom No.(...). Appellee argued that branch's final accounts did not match the invoices. However, the Appellant clarified that the branch was registered for the purpose of fulfilling tax obligations, while the actual supply was made by the parent company, and therefore the transactions were recorded in the parent company's books rather than those of the branch. The Appellant holds documentary evidence (tax invoice No. 80013) that proves the tax was borne and specifies the tax amount, establishing its right to a deduction based on Article (48.1) of the Common VAT Agreement of GCC States and Article (49.7) of the Implementing Regulations of the Value Added Tax Law. Consequently, the Department concludes by accepting the appeal and cancelling the primary decision.

Regarding the penalty for incorrect reporting and the fine for late payment, as well as appellant's request to cancel those penalties that resulted from the final assessment notice for the tax period in question, since the aforementioned matter has led to the overturning of Department's decision under appeal, and given that the penalties resulted from that decision, any related issues will follow the same ruling. Consequently, the Appellate Department concludes by accepting the appeal and overturning Department's decision regarding the penalties under appeal.

With regard to judicial costs, since the dispute between the parties in this case revolves around an ambiguous right, and as the Appellate Department found no evidence of any misuse or abuse by the appellant in exercising its right as stipulated in the VAT Law, the Appellate Department concludes by rejecting the appeal on this matter.

Decision:

First: Accept Appeal from/ ..., with Commercial Register No. (...) in form to be submitted within the period specified by law.

Second: Accept Appeal from/ ..., with Commercial Register No. (...) Regarding the exclusion of the disputed amount from the item (Purchases subject to the standard tax rate (5%)), cancel the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (VR-2021-560), and cancel the Appellee's decision.

Third: Accept Appeal from/ ..., with Commercial Register No. (...) Regarding the Error in Declaration fine and late payment fine, cancel the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (560-2021-VR), and cancel the Appellee's decision.

Fourth: Reject Appeal from/ ..., with Commercial Register No. (...) related to "Judicial Costs", and uphold the First Department to adjudicate Value Added Tax Violations and Disputes in Riyadh No (560-2021-VR).

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Appeal

Appeal Committee:

First Appellate Department for Value Added and Excise Tax Violations and Disputes

Decision No. (VA-2022-831)
Issued in Appeal No. (V-80503-2021)

Principle No. (419)

The principle is that the declaration is made based on the invoice and not on a cash basis.

Facts:

The Department convened to consider the appeal filed on 09/12/2021 AD by..., ID No. (...) In his capacity as the Company's Attorney by POA No. (.....) against First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam Decision No. (VD-2021-1139), in the Case filed fromCompany against ZATCA.

The Department also convened to consider the appeal filed on 02/11/2021 by ZATCA against the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam (VD-2021-1139 in the case filed by Company Against ZATCA.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

To Accept case in form.

Second: On merits:

Prove the resolution of the dispute regarding the local purchases subject to the basic tax rate, as well as the imports subject to the reverse charge mechanism.

Dismiss the Case regarding Imports for which a Value Added Tax of SAR 397 is paid at customs. Abolish the penalties imposed on Plaintiff for the tax declaration period in question.

As this decision was not accepted by either party, the appellant, company submitted an appeal to the Appellate Department, which included objections to the decision of the Adjudication Department, which rejected its claim regarding the final assessment for the tax period of June 2018. The Appellant requests the annulment of the primary decision concerning the item of (imports subject to VAT paid at customs) as it possesses supporting documents ("customs declaration") dated 03/05/2018. The disputed amount was not deducted from May declaration but was deducted in June declaration (under dispute) only once. The tax return for May confirms the same. The Appellant concludes by requesting the acceptance of the appeal and the annulment of Adjudication Department's decision.

The Appellant, ZATCA, in its capacity as Defendant, filed an appeal to the Appellate Department, challenging the decision of the Adjudication Department regarding the error in the declaration and the late payment penalties. ZATCA requests the imposition of penalties resulting from the reassessment for the disputed tax period and concludes by requesting the acceptance of the appeal and the annulment of the primary decision.

On Sunday 20/03/1444 AH corresponding to 16/10/2022 AD, First Appellate Department to Adjudicate Value Added Tax and Excise Goods Violations and Disputes held a session to consider



the appeal submitted via video conference, based on Article 15.2 of Rules of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Adjudication Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 2/11/1438 AH, and after reviewing Rules of Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas the appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its statutory requirements in accordance with the provisions of Article 40.2 of Tax Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On merits, after reviewing case files and examining all relevant documents, submissions and replies submitted by the two parties, the Department found that the primary decision ruled to dismiss the case filed by (.....Company) Regarding the cancellation of ZATCA's decision in the final assessment for the tax period of June 2018 (Imports item). The Appellant objects to the primary decision because the customs declaration is dated 03/05/2018 and the disputed amount was not deducted from the May declaration but was deducted once in the June declaration "subject matter of the dispute,". The Appellee (ZATCA) merely argued that "the exclusion was based on information from customs indicating that there were no imports during June". The principle is that the declaration is made based on the invoice and not on a cash basis, and since the authorization letter and request for preparation and inspection no. (255983) issued on 17/08/1439 AH corresponding to 03/05/2018, i.e., during "May," did not contain anything indicating that it was examined before the decision to exclude was taken, and since customs documents in the case of imports from outside the Kingdom are the legally accepted substitute for the invoice on which their data is based and therefore cannot be ignored despite being submitted during the litigation before the Adjudication Committee, as they are accepted customs documents according to the provisions of Paragraph (b/1) of Article (48) of the Agreement, which did not stipulate the submission of a "specific statement" from customs to ensure that the Taxpayer relies on it and preserves their right to a deduction. The Appellant submitted the tax declaration for "May," which shows that no amount was declared in the item; which means that the deduction was made for the first time in the June declaration, subject matter of the dispute. Accordingly, the Department has decided to accept the appeal and cancel the primary decision.

As for ZATCA Appeal filed for canceling the Adjudication Department decision on the fine item, Appellant requested imposition of a fine for defaulting in declaration side by side with a late payment fine with regard to reassessment of the disputed tax period. Having determined that the appealed decision, subject matter of the current dispute, was consistent with law provisions and valid grounds upon which it was taken and sufficient to support its ruling, since the issuing department has carefully considered the disputed subject matter and concluded finally the decision reached in its ruling. Appellate Department did not find anything to be corrected or commented on with regard thereto in light of the raised defenses submitted before such Appellate Department. Accordingly, Appellate Department acknowledged that such defenses shall not affect the decision outcome. Therefore, Appeals Chamber concludes acknowledgment of appeal rejection the support of Appeals Chamber decision it reached in this Clause, attributed to its grounds.

Decision:

First: With regard to the Appeal filed by Company,

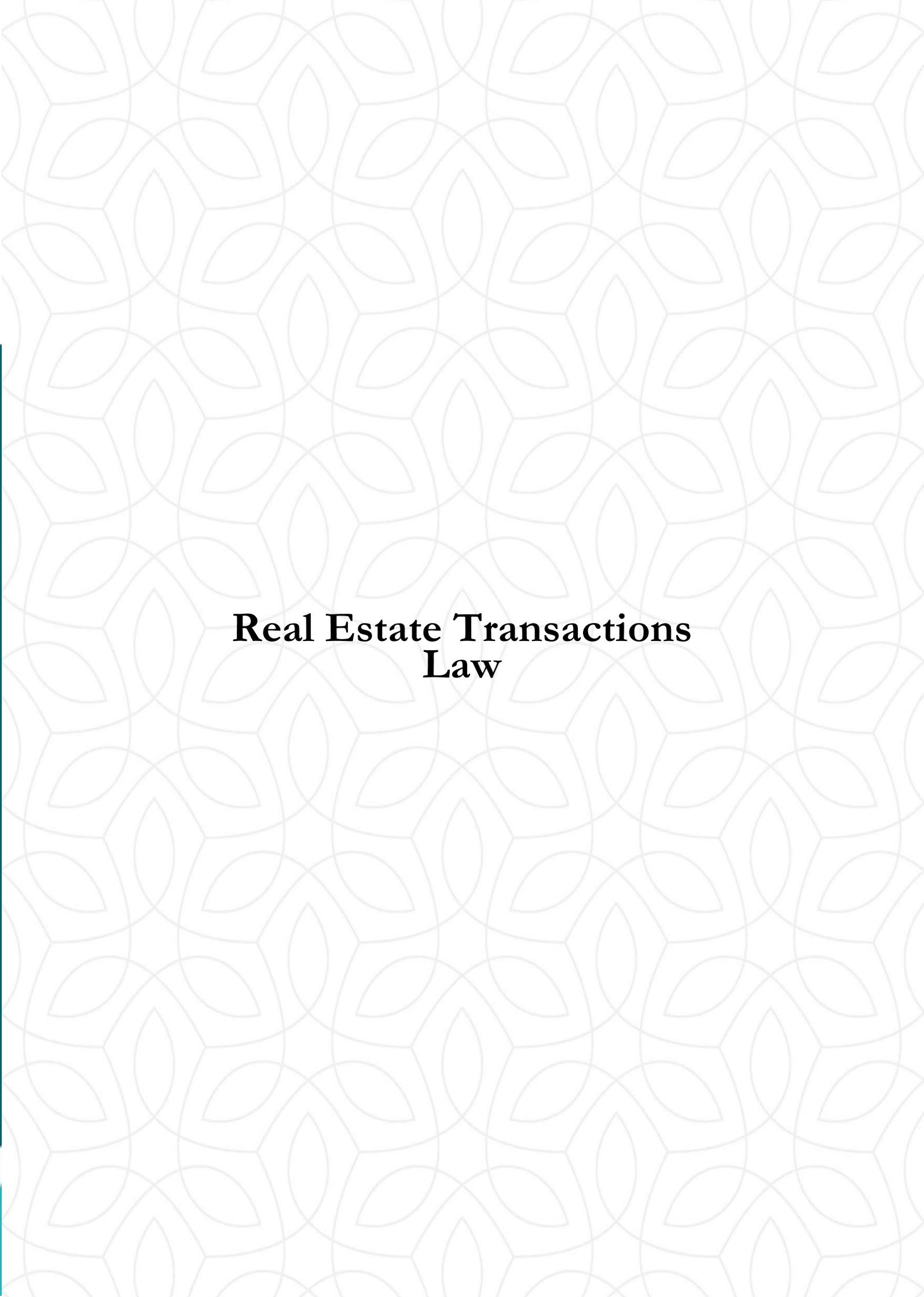


1. accept Appeal in form.
2. Accept Appeal filed by Company, C.R. No. (.....), for exclusion of the disputed amount in the item “Imports subject to VAT and paid at customs”, cancel the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam decision No. (VD-2021-1139), and cancel Appellee decision.

Second: With regard to ZATCA Appeal:

1. accept Appeal in form.
2. Accept ZATCA Appeal with regard to the fine imposed for defaulting in declaration and late payment fine, and uphold the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam decision No. (VD-2021-1139).

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**Real Estate Transactions
Law**



Appeal

Appeal Committee:

First Appellate Department for Income Tax and Excise Goods Violations and Disputes in Riyadh

Decision No. (VA-2022-702)
Issued in Appeal No. (V-88828-2021)

Principle No. (420)

A real estate buyer is entitled to a tax deduction if their VAT registration was effective and the purchase was made before the effective date of the Real Estate Transfer Tax Law.

Facts:

The Department convened to consider the appeal filed on 26/12/2021 AD by..., ID No. (...) in the Appellant's own capacity, regarding the Second Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh No. Decision No. (868-2021- (VSR in the case filed by Appellant against Appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Whereas decision of Resolution Chamber ruled the following:

First: In form:

- Accept case in form.

Second: On merits:

- Dismiss the case of Plaintiff ..., ID No. (...) On merits.

Since the Appellant did not accept this decision, the Appellant filed an appeal to the Department that included an objection to the primary decision to dismiss the case which sought to cancel ZATCA's decision regarding a reassessment of the Q3 2020. The Appellant claims being entitled to deduct input tax because the property was purchased before the real estate transactions law came into effect. The appeal concluded with a request for the appeal to be accepted and the primary decision to be cancelled.

On Tuesday, 10/02/1444 AH, corresponding to 06/09/2022 AD, First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Article 15.2 of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of Appeals Chamber may be held via modern technological means provided by General Secretariat." Case file, including memoranda and documents, and Appeals Chamber decision subject of appeal have been reviewed. After discussion and deliberation, Department decided to adjourn session and issue decision.

Grounds:

Based on Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Whereas the appeal was submitted by a person of capacity during the specified regulatory period and fulfilled its regulatory requirements in accordance with the provisions of Article 40.2 of Tax



Dispute and Violation Committee Procedures, which necessitates the acceptance of appeal in form.

On Merits: After reviewing case files and examining all relevant documents, submissions and replies submitted by two parties. The Appellant is objecting to the Department's decision to dismiss the case regarding the reassessment of Q3 2020, specifically concerning local purchases subject to the basic tax rate. The dispute centers on the Appellant's objection to the Adjudication Department's decision, as the Appellant claims being entitled to the tax deduction due to purchasing the property before the implementation of the real estate transactions law. However, the basis for the primary decision to reassess the disputed tax period is that the Appellant's registration occurred on 06/10/2021, before the real estate transactions law came into effect. Based on the evidence and documents submitted in the case, the Appellant's VAT registration date was 01/09/2020, which is before the effective date of the real estate transactions law, which was 04/10/2020. The Appellant submitted the tax declaration for the disputed tax period from 01/09/2020 to 30/09/2020. It has been established that the Appellant was subject to tax and required to register before 04/10/2020. Furthermore, the Appellant has provided the property purchase deed and the tax invoice dated 27/09/2020. As such, the Department concludes to accept the filed appeal and cancel the primary decision.

Decision:

First: Accept the Appeal from ..., ID No. (...) in form to be submitted within the period specified by law.

Second: Accept the Appeal ..., ID No. (...) regarding 'local purchases subject to the basic tax rate' in the final reassessment for Q3 2020, cancel the decision of the Second Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh No. (868-2021-VSR), and cancel the actions taken by the Appellee.

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Principle	Subject	Page
Exempting Taxpayers from Zakat on Retained Instruments for Procedural Grounds related to Collection by ZATCA of Zakat and not the Taxpayer's discharge from zakat obligation.	General Principles	15
The principle is to deal with consolidated financial statements when ownership is 100%, which results in the elimination of certain intercompany balances.	General Principles	22
The Differences between the consolidated and standalone financial statements cannot in itself be a reason for rejecting the balances presented in the consolidated financial statements.	General Principles	22
Failure to present documents initially to ZATCA does not necessarily mean that such documents will be rejected when submitted to the Determination Committees, as there are no regulatory provisions supporting rejection of documents not submitted to ZATCA.	General Principles	27
Burden of Return Amendments is on Taxpayer.	General Principles	30
Capital gains tax and withholding tax may not be considered a part from Taxpayer annual declaration.	General Principles	36
The standard approach is to trust the audited financial statements and their details unless ZATCA presents evidence warranting deviation therefrom.	General Principles	41
Departments for Adjudicating Zakat, Tax, and Customs Disputes may review Taxpayer's objection to ZATCA's	General Principles	47



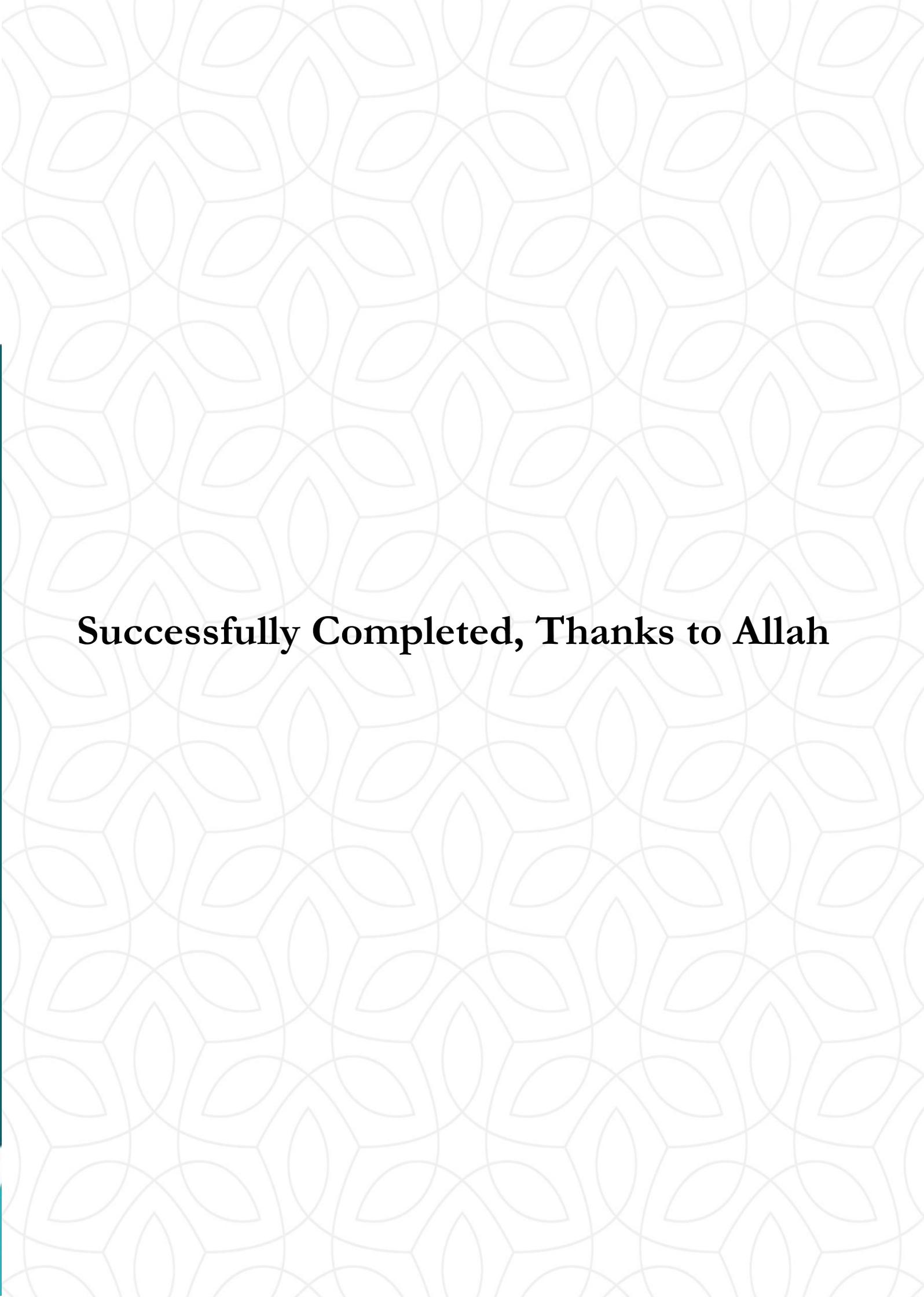
assessment if ZATCA's decision on the objection is issued before the Department issues its own decision on the matter.		
Fines are essentially a penalty resulting from the breach of laws and regulations. If the purpose behind imposing them is not fulfilled, they cannot be enforced.	General Principles	49
Fines are nullified when their basis is voided, as the subsidiary follows the Principle. The start date for calculating fines depends on the nature of dispute between the Taxpayer and ZATCA. If the dispute is technical, fines shall begin to accrue as of the date of final decision on the matter. Otherwise, they are calculated based on the statutory due date.	General Principles	50
Judicial costs shall not be due in the event that the dispute between the two parties is about an ambiguous right, and no aspect of arbitrariness has been proven by the use by either party to the dispute of its legally stipulated right.	General Principles	58
If it is found that there is a material error in the reasons for the decision issued by the Adjudication Committee, the Appellate Department may return the case to the issuing Department.	General Principles	61
Bonds are fundamentally debt instruments, and like all other forms of debt, they are subject to Zakat assessment.	Zakat Base Components	65
Audited financial statements are presumed to be accurate and reliable, and they constitute material evidence in proving zakat base components unless proven otherwise.	Zakat Base Components	72
Loans provided by partners are added to the taxable base in excess of their investment percentage.	Zakat Base Components	75
Related party liability shall be considered a source of financing and shall be handled as equity in terms of zakat calculation.	Zakat Base Components	78
Dividends announced for distribution to shareholders shall not be added to zakat base of the companies in which Taxpayer has investments if they are deposited in a special account that the Company is not allowed to use.	Zakat Base Components	84
Research & development expenses shall be considered deductible expenses as long as they are supported by documents.	Deduction from Zakat Base	91
Two primary conditions shall be met in order to consider investments as acquisition assets and be deducted from zakat base, namely: The documented intention of the authorized person indicating the purpose of investment, and the lack of sale transactions during the year on those investments.	Deduction from Zakat Base	93
Establishing addition of corresponding credit results in deducting deferred rental assets within retained earnings.	Deduction from Zakat Base	100
Deducting current investment balances that had transactions during the year is not accepted, while deducting the same current investment balances with no transactions during previous and subsequent years is accepted	Zakat Accounting Rules	105
Procedure to be applied to undeclared contract revenues is to calculate a net profit percentage from those contracts.	Zakat Accounting Rules	109



Zakat Treatment for Provisions is the addition of first-year provision after deducting amount used throughout the year.	Zakat Accounting Rules	112
Advance payments, if proven to be valid and related to the activity, shall be deducted as a deductible expense.	Zakat Accounting Rules	117
In order to avoid double taxation, additional investment included in equity of investee company is deducted from zakat pot, and sums paid to investee companies that are classified within equity of those companies as investments for the purpose of obtaining profit from investments.	Zakat Accounting Rules	126
Financial statements included by Taxpayer in Qawaem system are considered sufficient evidence to prove determination of capital and sales on which Taxpayer is charged with zakat.	Zakat Accounting Rules	128
If the property is burdened with liabilities, then there is no zakat on it due to lack of recognized legal stability in imposing zakat.	Zakat Accounting Rules	130
Mere silence of Taxpayer on commenting or including his objection to an item amended by ZATCA shall mean that he agrees to this amendment and he is not required to submit a written letter to that effect.	Procedure Rules	134
Certificate issued by the General Organization for Social Insurance is an important and impartial document used to verify validity and fairness of salaries and wages charged to accounts, unless Taxpayer proves otherwise.	Procedure Rules	137
Import Declaration issued by customs is considered an undoubted presumption from a neutral third party, unless otherwise proven by Taxpayer.	Procedure Rules	144
Regular and necessary expenses related to the realization of income, paid or due, shall be deducted if they are actual and supported by documents or any other evidence related to the realization of taxable income and related to the tax year and not of a capital nature.	Tax Principles - Income Tax	152
Taxpayer can only be charged with fines after knowing Tax Assessment, as Taxpayer is not legally obligated except to do an action that is possible, within its capacity, and known to Taxpayer that ensure its compliance.	Income tax	155
Late payment fine is imposed on tax difference due from the date of informing Taxpayer of Assessment and knowledge thereof of the fact of Assessment.	Income tax	155
Capital gains are realized upon the exit of the foreign partner in the mixed company and the sale of its share by comparing the book value of its shares with amount paid for the foreign partner for the sale of those shares.	Income tax	161
Calculation of Tax Base depends on Taxpayer's acknowledgment of Declarations submitted, along with supporting documents thereof. Financial statements represent the basis for calculating the Base, provided that financial statements are complete in terms of preparation, measurement, presentation and disclosure, and their preparation process is based on financial events supported by documents.	Income tax	164



Customs documentation for imports from outside the Kingdom serves as legally acceptable substitutes for invoices, upon which data are based. Consequently, it cannot be disregarded.	Income tax	167
The facts established for adjusting the supply value in accordance with the Tax Law and its Implementing Regulations are realized when they relate to Taxpayer if the supply value is previously agreed upon and then amended for any reason.	Income tax	170
When calculating capital gains resulting from the exit of a foreign partner, the comparison of contractual value with sold property rights represented by the partner's capital and current account is considered a reasonable and fair procedure, especially when the partner's current account consists of amounts that the foreign partner has injected into the company's account and were not generated from sales profits.	Income tax	173
Subjecting net profit to withholding tax just for inclusion in the retained earnings account does not constitute a payment or settlement in the accounts between the head office and the branch.	Withholding Tax	178
Withholding tax is imposed on the non-Saudi partner's share of the capital increase funded by retained earnings in the year of exit, as this is considered the event causing the imposition of withholding tax.	Withholding Tax	181
Withholding tax is due on net distributable profits after deducting the income tax already paid on these profits.	Withholding Tax	187
Neither the Income Tax Law nor its Implementing Regulations include any provisions regarding withholding tax on hypothetical dividend distributions; therefore, imposing tax on hypothetical figures is unjustified.	Withholding Tax	187
Transfer of a debt upon entering into a financing agreement for goods with a primary customer to a third party is not subject to tax, as there is no sale between the original seller and the third party.	Value Added Tax and Excise Goods Tax	197
The right to claim a tax deduction is established when documentary evidence, specifically a tax invoice, is provided. This invoice must demonstrate the incurred tax and specify the exact amount of tax paid.	Value Added Tax and Excise Goods Tax	201
The principle is that the declaration is made based on the invoice and not on a cash basis.	Value Added Tax and Excise Goods Tax	204
A real estate buyer is entitled to a tax deduction if their VAT registration was effective and the purchase was made before the effective date of the Real Estate Transfer Tax Law.	Real Estate Transactions Law	208



Successfully Completed, Thanks to Allah