



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 for the years of 2020-2021

Volume (2)

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Zakat and Tax Appeal Committees
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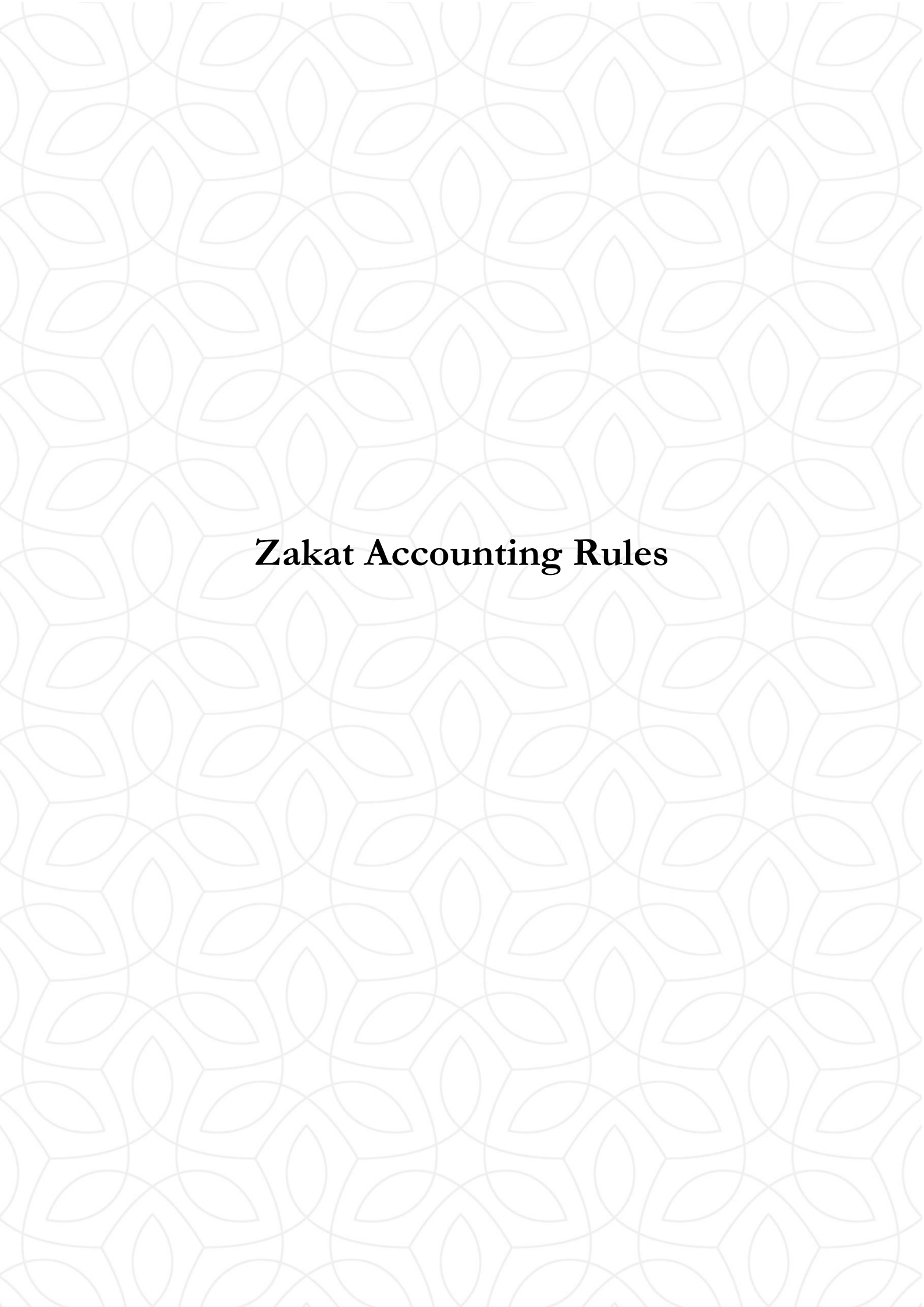
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Zakat Accounting Rules



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-128)
Delivered in Appeal No. (Z-1497-2018)

Principle No. 148

Deducting the current account differences does not require removal of the effect of covering the losses of the current account, because deducting or adding retained earnings or deducting or adding carried forward losses is made according to the lower balance at the beginning or end of the year.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday 19/11/1442 AH corresponding to 29/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh city to hear the appeal filed on 05/03/1439 AH corresponding to 22/12/2020 AD by Company against the Decision of the Second Zakat and Tax Objection Committee in Riyadh No. (25) for the year 1438 AH delivered regarding objection No. (10/38) filed in respect of the zakat assessment for the years from 1990 to 2012 by the Appellant against the Zakat, Tax and Customs Authority (ZATCA). The primary Decision ruled as follows:

First: In formal aspect:

Accept in from the objection submitted by the Zakat Payer Company for the years from 1990 to 2012.

Second: On Merits:

1. Dismiss the Zakat Payer's objection to the item of the difference in carried forward losses for the Grounds stated in the Decision.
2. End the dispute over the item of the partners' contribution to covering losses for the year 1991, for the Grounds stated in the Decision.
3. Dismiss the Zakat Payer's objection to the item of writing off amounts payable by related parties for the Grounds stated in the Decision.
4. Accept the Zakat Payer's objection to the item of current account difference for the Grounds stated in the Decision.

Dissatisfied with the Decision, the Zakat Payer Company submitted a statement of appeal, which is summarized as follows:

The Zakat Payer appeals the primary Decision in three items. With regard to the item of "difference in carried forward losses" for carried forward losses for the years from 1990 to 1995, and the years from 1997 to 2012, the Zakat Payer bases his appeal against the fact that ZATCA did not follow a specific and established method in its assessment for deducting the carried forward losses. The Zakat Payer also requested that the carried forward losses are deducted based on the Company's audited accounting statements rather than the zakat assessment issued by ZATCA. As for the carried forward losses for the year



1996, the Zakat Payer explains that ZATCA did not deduct the carried forward losses for being covered by the new partners, wondering how come ZATCA adds the increase of SAR 7,655,577 to the partners' account and not deduct the carried forward losses they covered from the aforementioned increase. As for the losses carried forward for the year 1993, the Zakat Payer objects to ZATCA's Decision to deduct the losses carried forward at the end of the year amounting to SAR 9,806,245 instead of the losses at the beginning of the year amounting to SAR 10,548,080 and requests that this procedure be corrected. As for the item of "writing off amounts payable by related parties for the years 1998, 2005, 2010", the Zakat Payer claimed that these amounts should have not been added to the zakat base, being uncollectible and hence not subject to zakat. As for the item of "difference in partners' current account for the years 1994 and 2002", the Zakat Payer based his appeal regarding this item on the fact that the audited financial statements do not contain a balance for the partners' current account at the beginning of the year, and that the partners' current account balance at the end of the year had been accrued during the year and a year has not passed on them. Accordingly, the Zakat Payer requests that the partners' current balance not be added to the zakat base.

Upon opening the door for pleadings, ZATCA submitted a reply on 30/05/1441 AH, corresponding to 26/01/2020 AD, in which it responded to the Zakat Payer's appeal regarding the items in dispute maintaining its arguments that had been submitted before the Primary Committee. ZATCA also confirms that the Zakat Payer's appeal is nothing but reiteration of the same claims and arguments it raised before the Primary Committee, which ZATCA responded to. ZATCA concluded its reply confirming the validity and soundness of its procedures and requests that the Zakat Payer's appeal be dismissed and that the primary Decision be upheld.

On Thursday 26/08/1442 AH, corresponding to 08/04/2021 AD, the Department decided to hold a 10-day e-hearings. However, that period passed without receiving any further submissions from the two parties to the appeal.

On Thursday 24/09/1442 AH corresponding to 06/05/2021 AD, the Department, having reviewed the statement of appeal and examined the case file and in respect of the removal of amounts received from related parties, requested the Zakat Payer to prove that those related parties had recognized those amounts within their revenues subject to zakat, and to submit such proof through the e-portal within 30 days from the date of hearing. On 22/10/1442 AH corresponding to 03/06/1442 AH, the Department received a brief from the Zakat Payer indicating that it had been unable to obtain the documents that the Department has requested.

On Tuesday 05/11/1442 AH corresponding to 15/06/2021 AD, the Department, having reviewed the appeal documents and pleas and having examined the case file, established that the case was ripe for adjudication and delivering its Decision, and accordingly decided to close the pleadings and set the case for adjudication.

Grounds

After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merits, as for the Zakat Payer's appeal regarding the item (difference in carried forward losses), it was found that the Zakat Payer requests that the carried forward losses for the years from 1990 to 1995, and the years from 1997 to 2012 be deducted based on the financial statements rather than the losses that ZATCA adjusted, because when assessing the zakat base, it should be reduced by the full loss without reduction because such losses are funds no longer in the Company's possession. The Zakat Payer added that ZATCA



did not base its assessment on a specific and fixed method for deducting the carried forward losses, while ZATCA believes that the carried forward losses were treated in light of ZATCA's Circular No. (92/1) of 19/07/1418 AH, which states that (the carried forward losses that may be deducted are the losses of the previous year or years adjusted according to ZATCA's assessment after adding them to the provisions or reserves only, which have been used to cover these losses in the year of their accrual to avoid double taxation). The Department concluded that: as for the deduction of losses for the year 1990, and for the years from 1997 to 2012 based on the zakat assessments rather than the financial statements; and since the Zakat Payer indicated that ZATCA has no consistent approach for dealing with carried forward losses; and since the Zakat Payer indicated in its appeal that the reason for ZATCA's adjustment was related to the remuneration of the board members besides the expenses that may be considered distribution expenses; and since the Zakat Payer's appeal was presented to ZATCA and no Grounds were given for the adjustment other than what the Zakat Payer indicated; and since the adjustments referred to by the Zakat Payer are not expenses carried forward or accounted for prematurely, and that not accepting them as an expense does not mean not to reduce the retained earnings or increase the losses. Accordingly, the Department decided to accept the Zakat Payer's appeal regarding this item and approve the carried forward losses as per its declaration. As for not deducting the carried forward losses for the years 1991-1992, and since the primary Decision covered all the years subject of objection without considering the Grounds for the Zakat Payer's objection to each year separately or to a group of years as per the Zakat Payer's statement of objection, which included different Grounds for each year of the years in dispute. Since the Department did not find otherwise, it then decides to accept the Zakat Payer's appeal. As for the year 1996, the Department established that the Zakat Payer objects to the primary Decision for having upheld ZATCA's procedure to not deduct the losses at the beginning of the year 1996, due to the partners amortizing the losses during the year and absence of losses balance at the end of the year. The Zakat Payer claimed that the carried forward losses be deducted at the beginning of year, while ZATCA believes that there are no carried forward losses in the financial statements for being covered by the new partners. The Department concluded that the coverage of losses by partners does not negate the fact that those losses existed at the beginning of the year, and thus they should be deducted as they represent the lower balance, and therefore the Department decided to accept the Zakat Payer's appeal in this respect. As for the deduction of the carried forward losses for the year 1993 at the end of year balance, despite being greater than the beginning of year balance, the committee did not address in the Grounds of its Decision the Zakat Payer's objection to non-deduction by ZATCA of 1993 carried forward losses at the lower balance, which is the beginning of year balance; and since the primary Decision covered all the years of objection without considering the Grounds for the Zakat Payer's objection for each year separately despite being different; and since the Department didn't find otherwise, therefore, the Department decided to accept the Zakat Payer's appeal in his respect. Accordingly, the Department concludes to accept the Zakat Payer's appeal for all years of the dispute and to overturn the primary Decision in this regard.

As for the item of writing off amounts payable by related parties for the years 1998, 2005, 2010), since the Zakat Payer requested that this item not added to the zakat base, since these amounts are not collectible, and hence not subject to zakat, while ZATCA believes that the item is included as an expense within "other expenses" item and is marked as an assignment of an amount to a related party, but the Company however did not clarify the nature of this transaction and the legal Grounds for such assignment. The Department found that writing off amounts payable by related parties entails those parties recognizing the written-off amounts as revenue being debts that have been written off. Since the Department requested the Zakat Payer to provide proof that those parties had recognized these amounts within their revenues subject to zakat, and the Zakat Payer fails to provide



such proof; and since this dispute is paper-based in nature, and given that the Department had no comment or choice in view of the submissions made by the Zakat Payer but to dismiss the appeal filed by the Zakat Payer and uphold the primary Decision in this respect. As for the item of “the difference in the partners’ current account for the years 1994 and 2002”, the Department concluded that the Zakat Payer objects to not deducting this item from the zakat base, since the audited financial statements do not contain a balance for the partners’ current account at the beginning of the year, and the balance of the partners’ current account at the end of the year has been accrued during the year and had not had a year passed on it. Given that ZATCA did not clarify its point of view regarding the Zakat Payer’s objection to the year 1994, nor did the Committee address in the Grounds of the primary Decision the Zakat Payer’s objection regarding the years 1994 and 2002, and made its Decision in general on the item in dispute, and the Committee’s conclusion to take a Decision concerning all the years of objection without considering the Grounds for the Zakat Payer’s objection which involves various Grounds for all the years in issue; and since deducting the difference in the current account does not entail removing the effect of amortizing the current account losses because according to the zakat procedures applied to all Zakat Payers, deducting retained earnings or adding carried forward losses is done to the lower balance at the beginning or end of the year, and the carried forward losses at the beginning of the year represent the lower balance of the account; And given that this Department has not find otherwise, therefore, the Department concludes to accept the Zakat Payer’s appeal in this respect.

Decision

First: Accept in form the appeal filed by the Zakat Payer Company, against the Decision of the Second Zakat and Tax Objection Committee in Riyadh, No. (25) for the year 1438 AH

Second: On Merits:

1. Accept the Zakat Payer's appeal regarding the item “difference in carried forward losses” for all years of the dispute and overturn the primary Decision in this respect according to the Grounds and facts stated in this Decision.
2. Dismiss the Zakat Payer's appeal regarding the item of “Writing off amounts payable by related parties for the years 1998, 2005, 2010”, and uphold the primary Decision in this respect according to the Grounds and facts stated in this Decision.
3. Accept the Zakat Payer's appeal regarding the item “difference in partners' current account for the years 1994 and 2002” and overturn the primary Decision in this respect according to the Grounds and facts stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-327)
Delivered in Appeal No.
(ZIW-28177-2020)

Principle No. 149

The general rule for subjecting zakat base components to zakat is the passage of a year or using them in financing other holdings deducted from the base thus making them subject to zakat whether they are classified as long-term or short-term.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday 20/03/1443 AH, corresponding to 26/10/2021, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) dated 23/12/1439 AH convened at its headquarters in Riyadh to hear the appeal filed on 11/03/1442 AH, corresponding to 27/10/2020 by in his capacity as the Director General of the Zakat Payer, and the appeal filed on 13/03/1442 AH, corresponding to 29/10/2020 AD by ZATCA against the Decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2020-123) delivered in case No. (ZIW-9510-2019) related to the amended tax assessment for the years from 2011 to 2016 filed by the Appellant against ZATCA. The Primary Decision ruled as follows:

First: In form:

To acceptance the case in form.

Second: On Merits

1. Dismiss the plaintiff's objection regarding the non-approval of deduction of tax payments amounting to SAR 1,756,163 from the tax due for the year 2015.
2. Adjustments in the tax/zakat declaration for the years from 2011 to 2013 after the expiry of five years from the due date for submitting tax/zakat declarations:
 - Accept the Plaintiff's objection for the year 2011.
 - Dismiss the plaintiff's objection for the years 2012 and 2013.
3. Charge estimated profits at a rate of (10.5%) on the import differences for the years from 2011 to 2014 and add the import difference for the year 2016:
 - Accept the Plaintiff's objection for the year 2011.
 - Dismiss the Plaintiff's objection for the years 2012 to 2014.
4. Accept the Plaintiff's objection regarding adding the balance of accounts payable against fixed assets to the zakat base for the years 2011 to 2013.
5. Add the balances of accounts payable and amounts payable to related parties to the zakat base for the years 2011 to 2013:
 - Accept the Plaintiff's objection for the year 2011.
 - Dismiss the plaintiff's objection for the years 2012 and 2013.



6. Dismiss the Plaintiff's objection regarding the imposition of an additional withholding tax of (15%) on rent payments.
7. End the dispute regarding the item of "Not deducting the used amount from the end-of-service gratuity provision (foreign partner's share) for the year 2016".
8. End the dispute regarding the item of "Currency Exchange profit for the year 2014".
9. Adjust the Defendant's Decision regarding the item "Delay Fine".

Dissatisfied with the Decision, each party filed an appeal, the summary of which are as follows:

The Zakat Payer challenged the primary Decision in the following items; the item of (not approving the deduction of tax payments amounting to SAR 1,756,163 from the tax due for the year 2015). The Zakat Payer claimed that he submitted all payment orders proving payment of the tax amounting to SAR 1,756,163 accompanied with a copy of the tax return for the year 2015, and requested that that amount be deducted from the base. Regarding the item (calculating estimated profits at a rate of (10.5%) on import differences for the years 2012 to 2014 and not approving the import difference for the year 2016), the Zakat Payer claimed that he submitted the Grounds for the differences for the years 2012 to 2014 and 2016, and the documents that support the matching items as a result of few errors in the return, and requested that this item be deducted from the base. Regarding the item (adding the balances of accounts payable and the amounts payable to related parties to the zakat base for the years 2012 and 2013), the Zakat Payer claims that zakat should not be imposed if the condition of complete ownership is not met, as these liabilities were not used to finance fixed assets. Although the Department sees fit to add these balances to the base, the beginning of year balances did not remain in the company's possession for a full year. Thus, the Zakat payer requested that this item be deducted from the base. With regard to the item (imposing an additional withholding tax of 15% on the rent payments for the years 2015 and 2016), the Zakat Payer claimed that the withholding tax was duly paid in accordance with the provisions of the Income Tax Law, while ZATCA has imposed a withholding tax of (15%) (SAR 2,692,347 and SAR 2,113,927 for the years 2015 and 2016) without clarifying any Grounds for that assessment requesting that this item be deducted from the base. With regard to the item (delay fines imposed on the additional income tax obligation for the years 2012 to 2016), the Zakat Payer claimed that a late payment fine should not be imposed on the additional income tax imposed due to the existence of a technical dispute between the Zakat Payer and ZATCA, and if the Department to impose the fine, the late payment fine should be calculated from the end date of objection and appeal procedures until the date of payment of the income tax and the additional withholding tax. Accordingly, the Zakat Payer requested that the primary Department Decision regarding the above items be reversed based on the Grounds stated.

ZATCA also filed an appeal against the appealed Decision, the summary of which is as follows:

As regard to the item of (adjustments to the tax/zakat declaration for the year 2011 AD after five years from the due date for submitting zakat and tax declaration, ZATCA requested that the primary Decision be canceled in this respect, clarifying that the assessment was issued based on the Zakat Payer's failure to respond to the letters and the requests for supporting documents. ZATCA also submitted that the declarations submitted by the Zakat Payer contained invalid information, which can be noted by taking a look at the Zakat Payer's customs and other declarations, which indicate that the imports in customs declarations are greater than the imports included in the declarations submitted to ZATCA. This is material evidence that the Zakat Payer's declarations contained invalid information, which entitles ZATCA to make or amend the assessment after the lapse of five years. With regard to ZATCA's appeal against the item (adding the balance of accounts payable against fixed assets to the zakat base for the years 2011 - 2013 AD) ZATCA claimed that the Department supported the Zakat Payer for the years 2011 to 2013 AD

without explaining the reason for its support for the years 2012 and 2013. ZATCA also claimed that it had requested the Zakat Payer to provide it with a statement showing the credit entries during the years in dispute, but the Zakat Payer had not provided any documents proving or supporting his claims. Accordingly, the balance of the beginning or end of the period, whichever is less, was added to the base, considering that these funds are used in the Company's current activity, as these funds are treated as assets when making the zakat assessment considering what they have become. With regard to the item (delay fine imposed on the additional income tax for the year 2011 AD), ZATCA claimed that the Department based its Decision on the fact that the opinion in the statute of limitations item concluded that the assessment procedure for the year 2011 AD was invalid, which entails the cancellation of any fine related to tax differences for that year, as a consequence of the cancellation of the obligation giving rise to that fine. However, ZATCA disagreed with that conclusion maintaining the validity and soundness of its procedure, and requesting that the primary Decision regarding the items subject to ZATCA's appeal be reversed for the Grounds stated.

Upon opening the door for pleadings, ZATCA submitted a plea dated 22/08/1442 AH, corresponding to 04/04/2021 AD, in which it responded to the Zakat Payer's appeal, stating that it maintains the validity and soundness of its Decision and that the Zakat Payer submissions in this appeal are reiteration of the same arguments that had been answered by ZATCA, requesting also that the Zakat Payer's appeal be dismissed and the primary Decision be upheld as regard to the items contested by the Zakat Payer's appeal for the Grounds stated.

On Wednesday 05/12/1442 AH corresponding to 14/07/2021 AD, the Department decided to hold a 10-day e-hearings session. However, that period has passed without receiving any further petitions from the parties to the appeal.

On Thursday 08/03/1443 AH corresponding to 14/10/2021 AD, the Department, having taken cognizance of the submissions of both parties, and having reviewed the case file, established that the case was ready for adjudication and delivering a Decision on its subject matter, and accordingly the Department decided to close the pleading and set the case for adjudication.

Grounds

Having reviewed the case documents and the statement of appeal filed by the Appellant and ZATCA, the Department found that the formal conditions for hearing the appeal had been met as per the conditions stipulated in the relevant laws, regulations and Decisions, which means that the two appeal are acceptable in form, being submitted by a person with a legal capacity, and within the period prescribed by law.

On Merits: As for the Zakat Payer's appeal regarding the item (not approving the deduction of tax payments amounting to SAR 1,756,163 from the tax due for the year 2015), the Zakat Payer argued that he has submitted all payment orders proving payment of the tax as required with a copy of the tax return for the year 2015, and requested that that item be deducted, while ZATCA maintained the validity and soundness of its procedure and requested that the Zakat Payer's appeal be dismissed and that the primary Decision be upheld in this respect. The Department found that the Zakat Payer submitted the zakat and tax declarations in addition to documents proving payment of the disputed amount. This fact is not affected by ZATCA's claim that the documents supporting the objection should be submitted before the administrative authority, which is not required by relevant regulations. Moreover, ZATCA's Decision is not final. Thus, the Zakat Payer has the right to submit documents that clarify the situation at the time of making the assessment. Since ZATCA did not challenge the validity of the documents submitted by the Zakat Payer proving the payment of the disputed amount, this Department concludes to accept the Zakat Payer's appeal and overturn the primary Department's Decision.



As for the Zakat Payer's appeal against the item (calculating estimated profits at a rate of (10.5%) on import differences for the years 2012 to 2014 and not approving the import difference for the year 2016), the Zakat Payer argued that he has submitted the Grounds for the differences for the years 2012 to 2014 and 2016, and the documents that support the matching items as a result of some errors in the declaration and requested that the item be deducted from the base, while ZATCA argued that it maintains the validity and integrity of its procedure and requested that the Zakat Payer's appeal be dismissed and the primary Department's Decision be upheld. Since the Zakat Payer provided an analysis of local and foreign purchases, where foreign purchases were declared as raw purchases within direct expenses, and local purchases, and also submitted a sample of invoices and customs declaration; and since the Zakat Payer declared the amounts of those purchases in his declaration, indicating that the existence of a difference between the external purchases contained in the customs statements and the same as declared in his declaration does not justify adding the amount of that difference to the Zakat Payer's adjusted profit as long as it has been proven that that difference has been included in the Zakat Payer's accounts, and hence this Department accepts the Zakat Payer's appeal and overturn the primary Decision in this respect.

With regard to the Zakat Payer's appeal against the item (adding the account payable balances and amounts payable to related parties to the zakat base for the years 2012 and 2013), the Zakat Payer argued that the zakat shall not apply unless the condition of complete ownership is met requesting that that item be deducted from the base, while ZATCA maintained the validity and soundness of its procedure requesting that the Zakat Payer's appeal be dismissed and the primary Department's Decision be upheld. Having reviewed the documents submitted by the Zakat Payer, including the statements showing the movement of balances payable to related parties for the years in dispute; and since a condition for applying zakat is the passage of a year or the use of the holding in question for financing an item deducted from the base, which results in the application of zakat on such holding be it classified as long-term or short-term; and since the statements submitted by the Zakat Payer proves that a year had passed on a total of SAR 7,699,826 of the amounts in dispute for the year 2012, and a year had passed on a total of SAR 6,257,366 of the amounts in dispute for the year 2013, therefore, the Department concluded to accept the Zakat Payer's appeal and adjust Decision of the primary Department by adding the amounts had a year passed on them and excluding otherwise.

As for the Zakat Payer's appeal regarding the item (imposing an additional withholding tax of 15% on rent payments for the years 2015 and 2016), the Zakat Payer's argued that the withholding tax had been paid in accordance with the provisions of the Income Tax Law, while ZATCA, in its assessment, imposed a withholding tax of (15%) for the years 2015 and 2016 without clarifying any Grounds for this procedure. The Zakat Payer requested that the item be deducted from the base, while ZATCA maintained the validity and soundness of its procedure and requested that the Zakat Payer's appeal be rejected and the primary Department's Decision be upheld. The Department found that the Zakat Payer had submitted a declaration on settlement of the withholding tax for the year 2015 with a payment receipt for the amount of SAR 309,346, and had also submitted supporting documents, including payment of the withholding tax of (15%) on the rent expenses with copies of the tax withholding declarations and payment orders proving payment of the withholding tax for the year 2016. Accordingly, this Department concluded to accept the Zakat Payer's appeal as to deducting the withholding tax imposed on him, and to overturn the primary Department's Decision in this respect.

With regard to the Zakat Payer's appeal regarding the item (delay fine imposed on the additional income tax for the years 2012 to 2016), the Zakat Payer argued that no delay fine should be imposed due to the presence of a technical dispute between him and ZATCA, while ZATCA maintained the validity and integrity of its procedure and



requested that the Zakat Payer's appeal be dismissed and the primary Department's Decision in this respect be upheld. Since the Department accepted the Zakat Payer's appeal against the related item, hence the consequent fine should also be canceled accordingly. Therefore, the Department concludes to accept the Zakat Payer's appeal and overturn the primary Department's Decision in this respect.

As for ZATCA's appeal regarding the item (adjustments to the tax/zakat declaration for the year 2011 after the expiry of five years from the due date for submitting zakat/tax declarations), ZATCA claimed that it had made the assessment due to the Zakat Payer's non-response and because his declaration contained invalid information, the matter which entitled ZATCA to make or adjust the assessment after the passage of five years. ZATCA maintained the validity of its procedure and requested that the primary Department's Decision in this respect be reversed. The Department, having considered the appeal, and since ZATCA had not notified the Zakat Payer of the zakat and tax assessment for the year in dispute until after (5) years from the end of the period specified by the law for submitting the declaration, and since ZATCA did not provide evidence that could be relied upon to support its point of view regarding the existence of invalid information in the Zakat Payer's declaration; and since this Department has established that the conclusion reached by the appealed Decision in this respect is valid, therefore, this Department concluded to dismiss ZATCA's appeal and uphold the primary Decision regarding this item, based on Grounds stated.

With regard to ZATCA's appeal regarding the item (adding the account payable balance against fixed assets to the zakat base for the years 2011 to 2013), ZATCA claimed that the primary Department has accepted the Zakat Payer's requests without clarifying the Grounds for its acceptance for the years 2012 and 2013. ZATCA requested the Zakat Payer to provide it with a statement clarifying the credit entries during the years in dispute, but he failed to submit the requested documents, therefore, ZATCA maintained the validity of its procedure and requested that the primary Department's Decision be overturned in this respect. Since this Department decided to dismiss ZATCA's appeal regarding the statute of limitations in the item (adjustments to the tax/zakat declaration for the year 2011 after the expiry of five years from the due date for submitting zakat/tax declaration, it thus concludes to dismiss ZATCA's appeal regarding this item and to uphold the primary Department's Decision. This conclusion however is not affected by ZATCA's argument that the Department did not mention in the Grounds of its Decision the reasons for its approval of the Zakat Payer claims for the years 2012 and 2013, where having referred to the Zakat Payer's letter of objection to ZATCA, it is found that the Zakat Payer submitted his objection regarding this item for the year 2011 only. This indicates that the inclusion of the years 2012 and 2013 in this item is a material error that can be overlooked, and the Zakat Payer did not object to it initially.

With regard to ZATCA's appeal regarding the item (delay fine imposed on the additional income tax for the year 2011), ZATCA does not agree to the Department's conclusion that the fine should be canceled for the invalidation of the cause giving rise to it. Since the Department dismissed ZATCA's appeal regarding that year due to the extinguishment of its right to make the assessment, hence the fine should be canceled accordingly. Therefore, this Department concludes to dismiss ZATCA's appeal and uphold the primary Department's Decision regarding this item.

Decision

First: Accept in form the appeal filed by the Zakat Payer.....Company, Commercial Registration No., and the appeal submitted by ZATCA against the Decision of the First Department for Determination of Income Tax Violations and Disputes in the city of Dammam, No. (IZD-2020-123) delivered in case No. (ZIW-9510-2019) related to the adjusted tax assessment for the years from 2011 to 2016.



Second: On Merits:

1. Accept the Zakat Payer's appeal regarding the item (not approving the deduction of tax payments amounting to SAR 1,756,163 from the tax due for the year 2015) and overturn the primary Department's Decision according to the Grounds stated in this Decision.
2. Accept the Zakat Payer's appeal regarding the item (calculating estimated profits at a rate of (10.5%) on import differences for the years 2012 to 2014 and not approving the import difference for the year 2016) and overturn the primary Department's Decision according to the Grounds stated in this Decision.
3. Accept the Zakat Payer's appeal regarding the item (adding the accounts payable balances and amounts payable to related parties to the zakat base for the years 2012 and 2013) and adjust the primary Department's Decision by add the amounts that had a year passed on them to the zakat base, and excluding otherwise according to the Grounds stated in this Decision.
4. Accept the Zakat Payer's appeal regarding the item (imposing an additional withholding tax of (15%) on rent payments for the years 2015 and 2016) and overturn the primary Department's Decision in this respect according to the Grounds stated in this Decision.
5. Accept the Zakat Payer's appeal regarding the item (delay fine imposed on the additional income tax for the years 2012 to 2016) and overturn the primary Department's Decision in this respect according to the Grounds stated in this Decision.
6. Dismiss ZATCA's appeal regarding the item (Adjustments to the tax/zakat declaration for the year 2011 AD after the expiry of five years from the due date for submitting tax/zakat declarations) and uphold the primary Department's Decision in this respect according to the Grounds stated in this Decision.
7. Dismiss ZATCA's appeal regarding the item (Adding the accounts payable balance against fixed assets to the zakat base for the years 2011 to 2013 AD) and uphold the primary Department's Decision in this respect according to the Grounds stated in this Decision.
8. Dismiss ZATCA's appeal regarding the item (Delay fine imposed on the additional income tax for the year 2011 AD) and uphold the primary Department's Decision in this respect according to the Grounds stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-37)
Delivered in Appeal No. (Z-1467-2018)

Principle No. 150

Matching revenues with expenses (Matching Principle) is an accounting principle, which requires that for charging zakat revenues should be matched with expenses and the result of that matching is subjected to zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday 16/11/1441 AH corresponding to 07/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) dated 23/12/1439 AH based on Article 67.b of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 19/09/1439 AH corresponding to 04/06/2018 AD, by....., against the Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh, No. (23) of the year 1439 delivered in Case No. (1467-2018-Z) filed by the Appellant against the General Authority For Zakat and Tax (GAZT). The primary Decision ruled as follows: First: Accept in from the objection submitted by the Zakat Payer... against the zakat assessment for the years 2008 to 2013.

Second: On Merits:

- a. Adjustments to the net profit:
 1. Dismiss the Zakat Payer's objection to the "Provisions" item.
 2. End the dispute regarding the "Bad Debts" item.
 3. End the dispute regarding the item "gifts for the years 2012 and 2013".
 4. End the dispute regarding the item "undeclared contracts for the year 2013".
- b. Adjustments to the zakat base:
 1. Dismiss the Zakat Payer's objection to the "Provisions" item.
 2. End the dispute regarding the item "accounts payable and accrued expenses".
 3. End the dispute regarding the "Assets" item.
 4. End the dispute regarding the item "Increase in the value of contract payment certificates".

Since the primary Decision was not accepted by the Plaintiff specifically the items of objection dismissed by the primary Department, the Plaintiff filed a statement of appeal, the summary of which is as follows:

1. With regard to the item (Calculating leaves, tickets and bonuses expenses based on the adjusted profit and charging zakat on the opening of year balances for the years from 2008 to 2013), the Zakat Payer challenges the primary committee's conclusion as to upholding GAZT's Decision in the view that these opening balances are provisions



for potential and uncertain expenses, which necessitates that the opening balance be calculated within the zakat base, given that the Zakat Payer considers these balances to represent certain expenses that will be borne by the Zakat Payer who uses the accrual accounting to recognize the same rather than the cash-based accounting, and thus they recognized as expenses are consistent with the Zakat Payer's obligations under the labor law and regulations in the Kingdom, and are also consistent with the accounting standards and rules followed in the Kingdom. Therefore, these expenses are expenses incurred by the Zakat Payer and may be deducted as required by the method of calculating zakat under sharia rules, as there is no future possibility that they are not paid as claimed by the Zakat Payer justifying his position. GAZT responded to the Zakat Payer's argument maintaining its point of view as indicated in the plea submitted to the primary committee regarding the items subject matter of appeal and the primary Decision has also confirmed the validity and soundness of GAZT's procedure in dealing with the appealed item, while the Appellant did not bring any new arguments other than those raised before the primary committee.

2. As for the appealed item of: (Rejecting the project cost provision and adding it to the zakat base), the Zakat Payer's representative argued that the internal bylaws of the Appellant stipulate that if the completion rate of projects exceeds 90% and the value of those projects does not exceed SAR 5,000,000, then the remaining expenses are recognized within the relevant year's output together with the corresponding revenues for the same year. Moreover, those expenses incurred as a result of the projects, but the requirements for recognizing them are not met in full. Therefore, the Company applies its accounting policy in dealing with the revenues as it operates in providing engineering consulting services so as to minimize errors in recognizing profits and losses at the end of the year, which is consistent with the principle of matching expenses with revenues for the same period as well as the principle of accounting stability. As such, GAZT's procedure to impose zakat on the projects' cost allocation without deducting the corresponding revenues would lead to double taxation. To avoid that, GAZT had to deduct the revenues that were subjected to Zakat against those costs, and thus the recognition of the projects cost allocation expenses and the corresponding revenues will appear within the net accounting profit of the Appellant, which leads to paying Zakat for those projects.

GAZT replied to the Zakat Payer's arguments stated in its statement of appeal by maintaining the same arguments contained in its plea submitted to the primary committee regarding the items in issue, arguing that the primary committee's Decision regarding the item appealed by the Zakat Payer confirmed the validity and soundness of GAZT's procedure in dealing with the appealed item, and that the Appellant did not bring any new arguments other than those previously stated before the primary committee.

Grounds

The Department, having reviewed the case documents and statement of appeal submitted by the Appellant Company, established that the formal conditions for hearing the appeal were met as per the relevant laws, regulations and Decisions. Therefore, it decided to grant leave to appeal in form for being submitted by a person with a capacity and within the period prescribed by law.

As on Merits, the Department, having reviewed the case file and the papers it contained as well as the statement of appeal and having examined the Appellant's arguments regarding the item "Calculating leaves, tickets and bonuses expenses based on the adjusted profit and charging zakat on the opening of year balances for the years from 2008 to 2013", determined that the disputed amounts do not meet the accounting definition of provisions, as the provision is a liability of the establishment of indefinite value and/or time of payment. As for the disputed amounts, they are ordinary and necessary expenses for the



business activity to be maintained, which the Zakat Payer has the right to deduct from the profit to reach the profit subject to zakat. Accordingly, the Department accepted the Zakat Payer's appeal regarding those expenses being expenses that are deductible deciding that they are not calculated with the net profit. As for the opening credit balances shown in the statement of financial position, which are related to those expenses, GAZT may add all of those balances as they are at the end of the fiscal year to the zakat base, because they represent funds still in the company's possession, and therefore are considered to be elements that are subject to zakat. Therefore, the Department ruled to uphold the primary Decision in respect of those opening balances.

As for the item (Rejecting the project cost provision and adding it to the zakat base), the Appellant challenges GAZT's Decision to add the projects' cost provision expenses to the zakat base, without deducting the corresponding revenues. Since the principle of matching revenues with expenses is the adopted principle in such cases; and since the Department established that the Zakat Payer's accounting policy for dealing with such provision is consistent with that principle, and thus for calculating the amount of zakat revenues should be matched with expenses, and then the result is subjected to zakat, as it is not acceptable to take the revenues alone without deducting the expenses giving rise to those revenues. Accordingly, the Department decided to accept the Zakat Payer's appeal for not adjusting the net profit due to the existence of the expenses of the project cost provision.

Decision

First: Accept in form the appeal filed by the Zakat Payer..., C.R. No., against Decision No. (23) of 1439 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Regarding the adjustments to the net profit:
 - a. Accept the Zakat Payer's appeal and overturn the primary Decision, and uphold the Zakat Payer's right to deduct the expenses of leaves, tickets and bonuses in dispute to reach the net profit to be added to the zakat base for the Grounds stated in this Decision.
 - b. Accept the Zakat Payer's appeal, overturn the primary Decision and uphold the Zakat Payer's right to deduct the expenses of the projects in question to reach the net profit to be added to the zakat base. for the Grounds stated in this Decision.
2. With regard to the adjustments to the zakat base:
 - a. Dismiss the Zakat Payer's appeal, and uphold the primary Decision in its conclusion regarding the opening credit balances in the statement of financial position resulting from the expenses of the leaves, tickets and bonuses in dispute for the Grounds stated in this Decision.
 - b. Dismiss the Zakat Payer's appeal and uphold the primary Decision in its conclusion regarding the opening credit balances in the statement of financial position resulting from the expenses of the projects in dispute. for the Grounds stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes

Decision No. (IR-2021-93)
Delivered in Appeal No.
(ZW-1470-2018)

Principle No. 151

The movement on the current account that is not a record of income or expense is a real movement (i.e., funds transferred to partners), which should be recognized on its date of occurrence for the purpose of calculating zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Thursday 22/10/1442 AH corresponding to 03/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to hear the appeal filed on 06/08/1439 AH, by Company against the Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh, No. (14) for the year 1439 AH, delivered regarding objection No. (65/38) on the zakat assessment for the years from 2005 to 2007 AD, filed by the Appellant against the Zakat, Tax and Customs Authority (ZATCA). The Primary Decision rules as follows:

First: In Form:

Accept in form the objection of the Zakat Payer Company

Second: On Merits

1. Dismiss the Zakat Payer's objection to the item of "Available-for-sale investments and foreign investments".
2. End of the dispute regarding the item "Adjusting the material error in calculating zakat on Company.
3. Dismiss the Zakat Payer's objection to the item "rents received in advance".
4. Dismiss the Zakat Payer's objection to the item "Processing the current account added to the zakat base for the year 2005".
5. Dismiss the Zakat Payer's objection to the item "paying the withholding tax differences".

Dissatisfied with the Decision, the Zakat Payer Company filed an appeal with the Department, the summary of which is as follows:

With regard to the appeal against the item (Not deducting long-term investments from the zakat base for the years 2005 to 2007), the Zakat Payer objects to the Decision of the Primary Committee to dismiss his objection to not deducting long-term investments, which are available-for-sale investments and foreign investments. The Zakat Payer stated that with regard to available-for-sale investments, the largest portion of them are shares in local companies, and the other portion are outside the Kingdom in the GCC region and Egypt, and these shares are denominated in foreign currency. The Zakat Payer claimed that this was indicated in the financial statements' Note No. (5) of the years 2005 and 2006, and Note No. (7) of the year 2007. Accordingly, the Zakat Payer requested that the above

mentioned investments be considered long-term investments that must be deducted from the zakat base as per Article 4.2 of Implementing Regulations for Zakat Collection issued on 01/06/1438 AH. The Zakat Payer also claimed that the investments in foreign companies represent a small portion of the total available-for-sale investments in the years from 2005 to 2007, and that investing in Saudi companies' shares is not for the purpose of trading. The Zakat Payer also claimed that no sales were made during any of the years in question, but rather that there were some settlements and write-offs of those investments. As for the foreign investments, which are part of this disputed item, the Zakat Payer states that he submitted to the Primary Committee the audited financial statements regarding the foreign companies in which the Zakat Payer holds stakes requesting that these investments be deducted for being investments in securities, and stressing that deducting investments in securities from the zakat base does not contradict Sharia provisions, whether these investments are inside or outside the Kingdom, as long as they are long-term investments and there is no intent to trade in them for being acquisition assets.

As for the appeal against the item (Adding the rents received in advance for the year 2005 to the zakat base), the Zakat Payer objects to the Decision of the Primary Committee approving ZATCA's procedure to add the item of rents received in advance for the year 2005 to the zakat base, claiming that he has the right to not add the balance of rents received in advance at the beginning of the year due to the fact that a year has not passed on them, as this item represents the beginning of year balance of the amounts received in advance from tenants as the rental amounts of the year 2005, and the rental revenues received in advance are debited monthly from the account. The Zakat Payer states that due to the long period that has passed since this claim, he couldn't obtain the documents supporting the movement of the account of rents received in advance, which proves that a year has not passed over the beginning of year balance.

As for the appeal against the item (processing the current account balance added to the zakat base for the year 2005), the Zakat Payer objects to the primary Decision where it upheld ZATCA's procedure to add the lesser of the beginning and end of period balance to the zakat base. The Zakat Payer affirmed his right to deduct the debit transactions made on the partners' current accounts totaling SAR 20,127,358 from the opening of year balance of the partners' accounts for the year 2005. The Zakat Payer states that the settlements made to the partners' current account are amounts that had been credited to the partners' account during the year, i.e., paid to them or on their behalf and deducted from the credit balance payable to them in addition to settlements of previous years, i.e., Transactions that should have made on their accounts in previous years but for one reason or another that did not happen. These settlements were made by the chartered accountant to complete these entries to reflect the correct balance of the accounts and consequently the true financial position of the Company. Accordingly, the Zakat Payer believed that ZATCA should not have considered that the entry was made at the end of the year but rather on the settlement date, which is usually at the end of the year when the accounts are closed.

As for the item (differences in withholding tax payments), the Zakat Payer objects to the Decision of the Primary Committee supporting ZATCA's Decision to impose a late payment fine for the withholding tax. The Zakat Payer claimed that the fine had been charged based on poor Grounds, where the Primary Committee has based its Decision on Grounds that the Zakat Payer did not submit documents supporting his point of view, affirming that he submitted to the Committee the withholding tax forms for the months of April and October 2013 with the bank payment receipt, which proves that ZATCA was wrong when imposed a late payment fine for the two years in question as the tax was due in 2007. The Zakat Payer concluded his objection requesting the Department to order that ZATCA corrects the material error and cancel the withholding tax fine imposed.



On 19/03/1442 AH corresponding to 04/11/2020 AD, the Department asked the Zakat Payer to submit further briefs to the statement of appeal he filed within a period given by the Department or to settle for the statement of appeal he filed. The given period however passed without receiving any response from the Zakat Payer.

On 06/07/1442 AH corresponding to 18/02/2021 AD, the Department decided to hold a 10-day e-hearings. During that period, ZATCA submitted a plea on 12/07/1442 AH corresponding to 23/02/2021 AD, which included responses to the claims contained in the Appellant's statement of appeal. In response to the item (not deducting long-term investments from the zakat base for the years 2005 to 2007 AD), ZATCA stated that as for the available-for-sale investments of this item, ZATCA did not deduct them from the zakat base, because it found that these investments are shares in foreign currencies, and the Zakat Payer did not submit a statement approved by the bank clarifying the movement of these available-for-sale investments in terms of the quantity of shares, cost price, market value, unrealized profits or losses and additions and exclusions for the last three months of each year of the years 2004, 2005, 2006 and 2007 AD for each of the investments in Saudi Riyal and the foreign currency, nor did it name the country of investments as required in previous requests for information, in addition to the investment impairment year after year, which constituted a reason for ZATCA to believe that there were sales and speculations in those investments, and thus supports the validity of ZATCA's procedure considering that these investments are traded investments (trade assets) that should not be deducted from the zakat base according to the letter. This is also confirmed by Article (4) / Second/ Paragraph (4/b) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH. As for the foreign investments, ZATCA replied that it had not deducted the foreign investments pursuant to Clause Second of the Ministerial Decision No. (1005) of 28/04/1428 AH, which is also affirmed by Article (4) / Clause (Second) / Paragraph (4/b) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH. Having applied the text of these provisions to the Zakat payer's case, it was found that he did not pay Zakat payable on investments nor did the Zakat Payer provided audited financial statements certified by a chartered accountant in the country of investment and by official authorities. On those Grounds, ZATCA maintained the validity of its procedure and requested that the Zakat Payer's objection be dismissed. As for the Zakat Payer's appeal against the item (Adding rentals received in advance for the year 2005 to the zakat base), ZATCA responded that the Zakat Payer did not submit the general ledger account and daily entries for this item to identify how much of these rentals had a year passed on them, and therefore that item was added to the zakat base pursuant to Article (4/First/para 4) of the implementing Regulations for Zakat Collection. As for the Zakat Payer's appeal against the item (Processing the current account balance added to the zakat base for the year 2005), ZATCA responded that, having reviewed the movement of the current account, it found that the debit movements before the completion of the year were in the mount of SAR 2,627,638, which are settlements on the account, and the total of the following movements that occurred after a year totaled SAR 17,499,720. Accordingly, the balance that had a year passed on it amounting to SAR 360,123,779 was added to the zakat base based on Article (4)/Clause First/Para (2) of the implementing Regulations for Zakat Collection issued on 01/06/1438 AH, which provided for adding the credit current account of the owner and partner at the beginning of the year or the end of it, whichever is less, as well as the increase in the current account if that increase came from equity or if used to finance an acquisition assets. As for the Zakat Payer's appeal against the item (differences in payment of withholding tax), ZATCA responded that it imposed a withholding tax fine on amounts paid to external parties in accordance with the provisions of Article 77(a) of the Income Tax Law, and Article 68.1 of the Implementing Regulations of the same Law.



On 20/07/1442 AH corresponding to 04/03/2021 AD, the Department requested the Zakat Payer to provide it with Exhibit No. (9) referred to in his statement of appeal submitted to the Department. However, the time limit given by the Department for submitting the Exhibit passes without the Zakat Payer submitting any documents or responding to the Department's request.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

As on Merits: As for the Zakat Payer's appeal against the item (not deducting long-term investments from the zakat base for the years 2005 to 2007), the Zakat Payer's requested that the available-for-sale investments and foreign investments be deducted from the zakat base, considering them long-term investments that must be deducted in application of Article (4)/Second of the implementing Regulations for Zakat Collection issued on 01/06/1438 AH, while ZATCA argued that the Zakat Payer did not fulfill the necessary requirements to deduct these investments from his zakat base and requests that the Zakat Payer's objection be dismissed. The Department concluded that since the Zakat Payer submitted a statement of the local investments, which shows that they were not taken for speculation, as they were classified in the financial statements as non-current assets, and that the movement on those investments was to completely dispose of the investment and not to speculate them by sale or purchase; and since those investment companies are subject to the Zakat Law, the Department found that the Zakat Payer is entitled to deduct them from his zakat base. As for foreign investments, since the Zakat Payer did not submit the financial statements of those foreign companies for Bank, the Department concluded that the Zakat Payer is entitled to deduct the investments in this bank from the zakat base when applying zakat to the Zakat Payer's share in this investment as per its financial statements, and to not deduct the investments in other foreign companies. Accordingly, the Department concluded to adjust the primary Decision accepting the Zakat Payer's request to deduct the investments in Saudi companies, and in deducting the investment in Bank after charging zakat on his share in this investment as per its financial statements, and to dismiss is appeal regarding the other foreign companies.

As for the Zakat Payer's appeal against the item (Adding rentals received in advance for the year 2005 to the zakat base), the Zakat Payer requested that the rentals received in advance at the beginning of the year are not added to the zakat base on Grounds that a year had not passed on those rentals, while ZATCA argued that the Zakat Payer did not provide proof that the year had not passed on the rentals received in advance, and therefore they were added to the base, and thus claimed that the Zakat Payer's objection regarding this item be dismissed maintaining that the lesser of the beginning of period and the end of period balance should be added to the zakat base, which was the same case for the item of rentals received in advance, considering that a year has passed on the least of them. The Department, having considered the item in dispute which arose due to the application of the accrual basis of accounting where the revenues of each year is recognized according to that basis. The account of rentals received in advance appeared due to the fact that the dates of the lease contracts do not align with the end of the fiscal year, and since the tenants not to pay rentals for long periods in advance before the due date for such rentals, then the amounts appeared in this account have a year passed on them. Therefore, the Department decided to accept the Zakat Payer's appeal and overturn the primary Decision regarding this item.



As for the Zakat Payer's appeal against the item (processing the current account balance added to the zakat base for the year 2005), the Zakat Payer requested that the debit movements made on the partners' current accounts totaling SAR 20,127,358 be deducted from the opening balance of the partners' accounts for the year 2005, considering them as settlements made on the partners' current account for amounts credited to the partners' account during the year or previous years, while ZATCA argued that the current account balance at the beginning or end of the period, whichever is less, was added to the zakat base pursuant to Article (4)/Clause First/Para (2) of the implementing Regulations for Zakat Collection issued on 01/06/1438 AH, and requested that the Zakat Payer's objection regarding this item be dismissed. The Department found that the dispute regarding this item is about whether the debit movement on the current account occurred before or after the passage of the year. Since ZATCA has provided proof for account movements that occurred before the passage of a year and other movements that occurred after the passage of a year based on the statement of account submitted by the Zakat Payer, therefore, the Department decided to dismiss the Zakat Payer's appeal. This conclusion however is not affected by the Zakat payer's argument that the settlements are made at the end of the year and the example he provided of how rents are settled, since the movement on the current account does not represent proof for a revenue or expense, and therefore it is a real movement (i.e., transferring funds to partners), which should be recognized on its date of occurrence for the purpose of calculating zakat. Accordingly, the Department decided to dismiss the Zakat Payer's appeal and uphold the primary Decision regarding this item.

As for the Zakat Payer's appeal against the item (differences in withholding tax payments), the Zakat Payer claimed that the material error be corrected and the withholding tax fine imposed on him by ZATCA be canceled on Grounds that the fine was unduly levied, while ZATCA claimed that the fine was imposed pursuant to Article 77(a) of the Income Tax Law, and Article 68.1 of the Implementing regulations of the same law. The Department, having considered the arguments raised by the Appellant and ZATCA as to whether the fine should have been imposed as from the date specified for submitting the declaration or the date of assessment, established that imposing a late payment fine should apply to Zakat Payer as from the date he becomes aware of the assessment, which came after he had submitted several declarations based on legal accounts without objection from ZATCA within a reasonable time after submitting those declarations; and since the reason for imposing a fine for late payment is the existence of a tax difference resulting from the tax assessment conducted by ZATCA that differed from what the Zakat Payer declared according in his declarations that he submitted based on lawful accounts and paid the tax accordingly; and since the disagreement between ZATCA and the Zakat Payer is a technical one, the Department concluded that the due date for the tax difference resulting from the tax assessment is the date of that assessment, which was not known to the Zakat Payer on the date of submitting his declarations pursuant to Article (68/1/b) of the Implementing Regulations of the Income Tax Law, which gave ZATCA the right to impose a fine for late payment of the tax due under its assessment. This view is consistent with the legal and sharia rules, including the sharia rule that "A person can only bear an obligation that is possible and within his capability, and that is known to him such knowledge that compels him to discharge it". Accordingly, ZATCA had no right to impose a fine for failure to pay the difference in tax due according to the tax assessment as from the date set for submitting the declarations related to the years in dispute, but rather from the date of the Zakat Payer becoming aware of the assessment. Therefore, the primary Decision has to be adjusted making the date of calculating the fine on the withholding tax is the date of notifying the Zakat Payer of the tax assessment .

Decision



First: Accept in form the appeal submitted by the Zakat Payer.....Company, against the Decision No. (14) for the year 1439 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh

Second: On Merits:

1. Regarding the item (not deducting long-term investments from the zakat base for the years 2005 to 2007):
 - Accept the Zakat Payer's appeal as to his request to deduct investments in Saudi companies.
 - Accept the Zakat Payer's appeal as to his request to deduct investment in Bank after calculating zakat on his share in this investment according to the financial statements.
 - Dismiss the Zakat Payer's appeal regarding other foreign investments.
2. Accept the Zakat Payer's appeal regarding the item (Adding rentals received in advance for the year 2005 to the zakat base), and overturn the primary Decision in this respect as per the Grounds stated in this Decision.
3. Dismiss the Zakat Payer's appeal regarding the item (processing the current account balance added to the zakat base for the year 2005), and uphold the primary Decision in respect of this item for the Grounds stated in this Decision.
4. Adjust the primary Decision regarding the item (differences in withholding tax payments) by calculating the fine from the date of notifying the Zakat Payer of the assessment until the date of payment for the Grounds stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-35)
Delivered in Appeal No. (Z-1474-2018)

Principle No. 152

For making the zakat assessment and determine the zakat amount payable, the zakatable funds should be held in the Zakat Payer's possession at the end of the zakat year.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Sunday 14/11/1441 AH corresponding to 05/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) dated 23/12/1439 AH and Article 67.(b) of the Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh, to consider the appeal filed on 15/10/1438 AH corresponding to 09/07/2017 AD, by the Company against the Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh, No. (14) for the year 1438 AH, delivered in Case No. (1474-2018-Z) filed by the Appellant against the General Authority for Zakat and Tax (GAZT). The primary Decision ruled as follows:

First: Accept in form the objection submitted by the Zakat Payer.....Company against the zakat assessment for the years from 2011 to 2013.

Second: On Merits:

1. Accept the Zakat Payer's objection to the item (not deducting the loan supporting the investment) for the Grounds stated in the Decision.
2. As for the item of (imposing zakat on foreign companies), the Decision ruled as follows:

First: Dismiss the Zakat Payer's objection to imposing zakat on the Zakat Payer's share in his investment in ... Company for the Grounds stated in the Decision.

Second:

- a. End the dispute over double charging of zakat on the profits of Company amounting to SAR 12,016,875 for the year 2012 for the Grounds stated in the Decision.
 - b. Dismiss the request to deduct deferred expenses from the zakat base for..... Company for the years 2012 and 2013 for the Grounds stated in the Decision.
 - c. Reject the request to charge zakat on the adjusted profit rather than the zakat base for the year 2012 for the Grounds stated in the Decision.
3. Dismiss the Zakat Payer's objection to the item (deducting the provision for the deficit in equity) for the Grounds stated in the Decision.
 4. Accept the Zakat Payer's objection to the item (not approving the company's share in the losses of the investment subsidiaries) for the Grounds stated in the Decision.



5. Dismiss the Zakat Payer's objection to the item (the adjusted carried forward losses) for the Grounds stated in the Decision.

Dissatisfied with the Decision, the Plaintiff (.....Company) submitted to the Department a statement of appeal, the summary of which is as follows:

1. The Appellant's appeal is based primarily on its objection to the calculation of the zakat on foreign investments in Company Limited for the years 2012 and 2013. As a precautionary measure, in case the Company's request to exempt these investments from zakat altogether is not granted, the Company is also appealing the method of zakat calculation, specifically regarding the treatment of deferred expenses and adjusted profit mentioned in Paragraphs (b) and (d) of (First) of Clause (2) of the appealed Decision rendered by the Committee.
2. The Company appeals against the calculation of adjusted carried-forward losses for 2011, 2012 and 2013 due to the contradiction in not accounting for these losses in Decision's wording, despite the reasons and facts stated throughout the various sections of the Decision indicating ZATCA approval of Zakat Payer Company's objection. The committee's agreement was also noted, but the effect of this approval did not appear in the operative paragraphs of the appealed Decision.
3. The Company objects to levying zakat on profits of ... Company in the amount of SAR 12,016,875 twice: Once in ZATCA assessment on Zakat Payer Company and again by ZATCA assessment on ... Company 2012.
4. Disallowing deduction of provision for deficit in equity from the adjusted losses for 2011. Despite the Committee indicating that the dispute over this matter has been resolved, the Decision still includes disallowing this deduction.
5. The Company's share of losses incurred by its subsidiary companies for 2011, 2012 and 2013 was not recognized as an ordinary expense, despite the fact that the reasons and Grounds of this Decision, as stated in the clauses related to these losses, support their inclusion and recognition when calculating zakat base for the purpose of deduction when calculating zakat due by Zakat Payer Company.

After ZATCA was provided with a copy of the appeal submitted by Zakat Payer Company, and upon reviewing ZATCA reply to that memorandum included in Case file, the Department found that ZATCA was satisfied with what had previously been submitted before the Primary Committee when it considered Zakat Payer's objection regarding the contested items.

Upon deliberating the appeal submitted by Zakat Payer Company, reviewing the appealed Decision, including its statement of facts and reasons, and taking into consideration the appeal memorandum submitted by Zakat Payer Company which affirmed that its appeal on the disputed items is also based on the same Grounds stated in Zakat Payer Company's objection letter, and after considering all the documents of the Case file, the Department decided that the case is now ready for adjudication on all the appealed items.

Grounds

The Department, having reviewed the case documents and statement of appeal submitted by the Appellant Company, established that the formal conditions for hearing the appeal were met as per the relevant laws, regulations and Decisions. Therefore, it decided to grant leave to appeal in form for being submitted by a person with a capacity and within the period prescribed by law.

On merits: Having taken cognizance of Case file, documents included therein and statement of appeal, and upon reviewing all of Appellant's arguments, the Department finds the following:

First: As for the calculation of zakat on foreign investee companies for 2012 and 2013, Company's appeal is primarily based on its objection to the calculation of zakat on foreign investments in ... Company for 2012 and 2013. Since Company's appeal is essentially based on requesting that zakat is not be calculated on such foreign investments for 2012 and



2013, arguing that the purpose of such investments was to realize returns, and therefore zakat is not due on them in its argument according to a number of fatwas and Decisions to support its position, and considering such investments as acquisition assets, and also due to the lack of intention of trade, and that they were acquired for realizing returns. However, having taken cognizance of reasons provided by Zakat Payer, which it believes justify not to considering such investments as assets subject to zakat, and considering that Zakat Payer's claim regarding such investments, denying the obligation of zakat on such investments entirely, cannot be accepted, even if the purpose of these investments was to acquire them for their income, as investment in long-term equity instruments requires that zakat be paid on Zakat Payer's share in equity of such investee companies based on the financial statements of such investee companies, which ZATCA has done in accordance with the primary Decision. Therefore, Zakat Payer's request not to levy zakat on such investments based on its financial statements is unfounded. Therefore, Zakat Payer's appeal against levying Zakat on such investments is primarily dismissed as previously stated.

Since the dispute, as such, becomes relating to Company's objection regarding the correct method for calculating zakat on such investments, considering that zakat should be calculated by taking into account the deduction of deferred expenses for 2012 and 2013, and by calculating zakat based on net zakat base instead of the adjusted net profit. This should also consider the accumulated losses to calculate zakat base without the impact of purchasing acquisition assets from profits for 2012. Since Zakat Payer insists that zakat should be calculated based on zakat base, rather than the adjusted profit. As for deferred expenses, the Department found that Zakat Payer, in its statement of appeal, states that this item appeared in the financial statements under two labels: "prepaid expenses" and "long-term prepaid amounts", both of which are considered deferred expenses. In addition, ZATCA, followed by the Committee, did not elaborate the legal basis for disallowing deduction of such deferred expenses from zakat base, especially since Zakat Payer points out, in its appeal, that such expenses are clearly reflected in the audited financial statements of ... Company for Distribution. Furthermore, the Primary Committee did not ask the Company to provide any further documents to clear up ambiguity or clarify the nature of such expenses. Furthermore, ZATCA rejection of such expenses was based on the lack of a specific item labeled (deferred expenses) in the financial statements, and it failed to consider the existence of synonymous terms that have the same accounting treatment, namely (prepaid expenses) and (long-term prepaid amounts). Since the Department found that the dispute was over the principle of the existence of such expenses, rather than their amount. Since the Committee ensured that such expenses are reflected in the financial statements; therefore, Zakat Payer position shall be upheld in deducting such expenses in accordance with its zakat declaration.

As for Zakat Payer's request to calculate zakat based on zakat base, rather than the adjusted profit of ... Company for 2012, Zakat Payer pointed out, in its appeal, to its right to decrease the adjusted profit for 2012 by the adjusted accumulated losses in accordance with Fatwa and ZATCA Circular in this regard. In addition, Zakat Payer pointed out, in its, appeal that the Primary Committee did not mention, in its Decision, Company's request to decrease the adjusted profit by the adjusted accumulated losses. Furthermore, Zakat Payer adds that Company's use of profits to purchase acquisition assets during the year requires that zakat is calculated based on zakat base, rather than the adjusted profit. In addition, Zakat Payer supported this argument by a Fatwa and several appellate Decisions. Since the established principle for calculating zakat base and identifying amount due requires the existence of wealth subject to zakat in the possession of Zakat Payer at the end of lunar year. Since the calculation of net zakat base requires taking accumulated losses into account and excluding fixed assets, regardless of how such assets were financed, to come up with zakat assessment. This should be done without being impacted by whether



the net zakat base is lower than the adjusted profit. Therefore, the Department concluded in this regard to uphold Zakat Payer's stance in calculating zakat based on net zakat base, without considering adjusted profit, which does not necessarily reflect the existence of wealth on which zakat is due, and with which the obligation to pay zakat revolves in the liability of Zakat Payer. This is not undermined by ZATCA objection to upholding its stance by subjecting Company's net profits, which have completed a full year, to zakat, and that such profits remained in Company's possession by the end of fiscal year and were not spent. Since ZATCA conclusion does not mean that the funds remain in Company's possession when classified as profits if it has been proven that the Company invested such funds in acquisition assets. In addition, the non-existence of such assets does not change the fact that Company's financial result remains recorded as accounting profits in its financial statements.

Second: As for Zakat Payer's objection to the item stated in the primary Decision as (Approval of Adjusted Deferred Losses): Since Zakat Payer's objection was based on the contradiction of primary Decision's conclusion regarding this item, despite the fact that the Decision upheld, in the fourth paragraph of its wording, and accepted Zakat Payer's objection to deducting Company's share of losses of subsidiary companies as stated in the conclusion of that item and Committee's upholding of Zakat Payer position in this regard. Therefore, the Department concluded, regarding this objection, to accept the appeal filed by Zakat Payer Company by allowing deduction of the adjusted deferred losses to confirm the committee that rendered the appealed Decision that there is no disagreement on the principle of deducting adjusted losses according to the adjusted assessments, but rather the disagreement is only in determining the amount of losses that will affect the calculation of the contested item. The Committee accepted the deduction of such amounts by determining their amount as shown in the details and reasons for its discussion of the item of approving Company's share of losses of subsidiary companies as it was in the statement of reasons for its Decision when discussing that item. As for deducting provision for deficit in equity from the adjusted losses for 2011, the Committee that rendered the Decision, during its discussion of this item and the reasons for its conclusion, concluded that ZATCA would decrease the amount of Company's share in losses of subsidiary companies in zakat calculation and the amount returned to profit by the same amount of the provision, which means that the effect of error in recording provision value is eliminated, and although the Committee concluded in this regard to dismiss Zakat Payer's objection on the basis that ZATCA would later correct this error, the fact that ZATCA acknowledged in presenting its argument that it had responded to Zakat Payer's request for deducting an amount of SAR 5,031,813, and acknowledged that the dispute between it and Zakat Payer had ended. Therefore, it was necessary for this conclusion to be reflected in the adjustment of total amount of adjusted losses in the manner in which the dispute with ZATCA was resolved, as well as Committee's ruling, upholding Zakat Payer's argument in this regard, which came within the statement of facts and reasons in order to achieve eliminating contradiction with what was decided in its wording in this regard, and to achieve Committee's conviction and justification for what it came to within its Decision. Since it is judicially established that if the conclusion of Decision wording is inconsistent with what the facts of the Decision and its statement of reasons have established, namely its confirmation of resolution of the dispute over the issues under consideration as previously stated, and since the conclusion of the Decision is not included in Decision wording alone but rather is what achieves the adjudication of the case wherever it may be, whether it is stated in the reasons or the wording, because the judgment constitutes a single, indivisible unit, based on the aforementioned and since the reasons of the Decision included ZATCA agreement to resolve what was the subject of matter of dispute by adopting Zakat Payer's argument in this regard and the fact that the dispute with ZATCA was resolved in some of its issues, with the Committee that rendered the Decision confirming that conclusion



regarding that item, requiring deduction of such losses included in the discussion of item (Deduction of Provision for Deficit in Equity from Adjusted Losses for 2011) by an amount of SAR 5,031,813. Therefore, the Department concluded to accept Zakat Payer's appeal in approving adjusted deferred losses, taking into account the impact of ZATCA approval of what was included in the discussion of Item No. (3) in the facts and reasons of the primary Decision, and what also entails upholding of primary Decision in favor of Zakat Payer in item (4) included in primary Decision wording.

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company, C.R. No. (...), against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (14) of 1438 AH.

Second: On Merits:

- a. As for Zakat Payer's appeal against (Calculation of Zakat on Foreign Companies) item:
 1. Dismiss Zakat Payer's appeal regarding its request to exempt its foreign investments in ... Company for Distribution from zakat as a condition for deducting such investments from zakat base for 2012 and 2013 according to reasons and Grounds stated herein.
 2. Accept Zakat Payer's appeal regarding its request to deduct deferred expenses from zakat base of ... Company for 2012 and 2013 according to reasons and Grounds stated herein.
 3. Accept Zakat Payer's appeal regarding its request to calculate zakat on net Zakat base rather than on the adjusted profit of ... Company according to reasons and Grounds stated herein.
- b. Accept Zakat Payer's appeal regarding its request to calculate adjusted deferred losses for of Zakat Payer Company for 2011, 2012 and 2013, after making the following adjustments:
 1. Resolution of the dispute with ZATCA, by upholding Zakat Payer's position as included in reasons for the second clause of the primary Decision and related to Company's objection to levying zakat on profits of ... Company in the amount of SAR 12,016,875, which was accounted for twice: Once by ZATCA assessment on Zakat Payer Company and once again by ZATCA assessment for ... Company for 2012 according to reasons and Grounds stated herein.
 2. Resolution of the dispute with ZATCA, by upholding Zakat Payer's position as included in reasons for the third clause of the primary Decision titled (Deduction of Provision for Deficit in Equity from Adjusted Losses for 2011) according to reasons and Grounds stated herein.
 3. The effect of primary Decision's upholding for Zakat Payer regarding the fourth clause (Non-recognition of Company's Share in Losses of Investee Subsidiary Companies as Statutory Expenses for 2011, 2012 and 2013) according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes

Decision No. (IR-2020-41)
Delivered in Appeal No. (Z-
2018-1479)

Principle No. 153

Accounting principles establish that when the balance of financial derivatives resulting from a swap contract appears as liabilities in Company's financial statements, such balance should be offset against the losses recorded under shareholders' equity. Therefore, if financial derivative amount is added as a positive element in zakat base, the corresponding loss should be deducted as a negative element from zakat base.

Facts:

First: Accept the objection filed by Zakat Payer (... Company).

Second: On Merits:

Uphold ZATCA position by adding (Financial Derivatives) item that completed a full year amounting to SAR 4,051,330 to Zakat Payer's zakat base for 2009.

Dissatisfied with this Decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

The Committee that rendered the Decision treated the swap contract related to financial derivatives as if it were merely a loan or debt owed by the Company, considering it a financial and credit facility granted for hedging purposes. In addition, the Committee viewed it as a loan or debt owed by the Company. However, the nature of swap contract related to the financial derivatives differs from debt and loan contracts, as it has specific characteristics that distinguish it from traditional loans, particularly given its protective purpose against fluctuations in interest rates, currency exchange rates and other factors, as detailed in the statement of appeal. Moreover, Appellant asserts that even if ZATCA and committee handle the financial derivatives balance resulting from swap contract as a loan or debt owed by the Company, this would, in turn, requires deducting the corresponding losses recorded within shareholders' equity when adding loan balance to zakat base. This critical point, however, was not considered by ZATCA or the Committee when addressing Zakat Payer Company's objection.

Since ZATCA submitted an answer wherein replies to Zakat Payer's appeal and request. Since ZATCA stated that it maintains the same position previously held in the dispute with Zakat Payer Company when the Company filed its objections before the Primary Committee. In addition, ZATCA stated that Appellant's arguments in its appeal do not differ from such arguments presented before the Committee that rendered the Decision, to which ZATCA had replied at the time. Therefore, ZATCA requests the Department to dismiss Zakat Payer Company's appeal and uphold the primary Decision.

Grounds

The Department, having reviewed the case documents and statement of appeal submitted by the Appellant Company, established that the formal conditions for hearing the appeal



were met as per the relevant laws, regulations and Decisions. Therefore, it decided to grant leave to appeal in form for being submitted by a person with a capacity and within the period prescribed by law.

On Merits: Having taken cognizance of Case file, documents included therein and the statement of appeal, and after deliberation over Zakat Payer Company's appeal, and upon reviewing facts and reasons for the appealed Decision, the Department found, taking into account the statement of appeal submitted by Zakat Payer Company, that the handling of swap contract related to financial derivatives should not be treated as a loan, as stated in the appealed Decision. In addition, if it is treated as a loan, the corresponding share of shareholder's losses related to such loan (Swap Contract) should be deducted. Having taken cognizance of ZATCA answer to Zakat Payer's objections, which included a request for upholding Decision and dismissing Zakat Payer's appeal, and after reviewing documents included in Case file, the Department found that the appearance of financial derivative balance resulting from the swap contract within liabilities in Company's financial statements for 2009 corresponds to losses that were recognized in shareholders' equity in accordance with the accounting principles, i.e. entering financial derivative amount within the positive elements of zakat base requires that the corresponding loss is deducted as part of the negative elements of zakat base. In addition, the Department found that neither ZATCA nor the Committee that rendered the Decision addressed this significant accounting principle, which affects how the impacts of such contracts should be handled, despite the fact that Appellant Company raised this issue and requested deducting the corresponding loss related to such liability. Therefore, the Department concluded to accept Appellant Company's appeal regarding the deduction of loss corresponding to liabilities that ensue from the financial derivatives related to swap contract from Zakat Payer Company's zakat base for 2009.

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company, C.R. No. (...), TIN (...), against First Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (14/4) of 1439 AH.

Second: On Merits:

Accept the appeal and amend Decision wording to be read as follows: Add (Financial Derivatives) item that completed a full lunar year amounting to SAR 4,051,330, to Zakat Payer's zakat base for 2009, and deduct the corresponding debit balance in the hedging reserve recorded under shareholders' equity according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-96)
Delivered in Appeal No. (Z-1485-2018)

Principle No. 154

The decisive factor for completing a full year is the figures shown in the statement of cash flow within the audited financial statements, rather than the figures reflected in trial balance.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 02/03/1442 AH corresponding to 19/10/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Order No. (65474) dated 23/12/1439 AH in accordance with Paragraph (B) of Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 08/07/2021 AD by (... Fair), against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (18) of 1439 AH rendered in Objection No. (31/38) filed by Appellant against ZATCA, in which the primary Decision ruled as follows:

First: In form: Accept the appeal filed by ... Fair regarding zakat assessment for 2013 and 2014.

Second: On Merits:

1. Dismiss Zakat Payer's objection to (External Purchases) item.
2. Dismiss Zakat Payer's objection to (Trade Creditors for 2013) item.
3. Dismiss Zakat Payer's objection to (Owner's Current Account) item.
4. Dismiss Zakat Payer's objection to (Undeclared Revenues for 2013) item.
5. Accept Zakat Payer's objection to (Dividends for 2014) item.

Dissatisfied with this Decision, Zakat Payer (... Fair) submitted to the Departments a statement of appeal summarized as follows:

1. Zakat Payer objects to external purchase variance for 2013 and 2014. Zakat Payer is contesting ZATCA procedure outlined in comparing external purchases based on its financial statements with the purchases recorded for import by Customs Authority. The comparison respectively revealed a variance amounted to SAR 2,472,891, which was added zakat base, and SAR 26,636,641, where the difference was taxed at a rate of 10.5%. According to Zakat Payer's claim, ZATCA did not apply zakat treatment in accordance with statutory and Sharia requirements in a fair manner. ZATCA did not notify Zakat Payer of such variances, nor did it discuss the reasons for the variances with Zakat Payer. Furthermore, ZATCA did not conduct a field inspection to verify the accuracy of such variances. In addition, ZATCA asks the Enterprise to provide documents that the Enterprise does not possess to prove ZATCA error. Therefore, it



is necessary to form a team from ZATCA to examine and audit Zakat Payer's accounts to validate such variances so that the Enterprise can respond to ZATCA afterward.

2. (Trade Creditors, Other Creditors and Long-term Debts for 2013) item: Zakat Payer objects to ZATCA procedure outlined in adding such items to zakat base on the Grounds of completing a full year and disregarding prepared trial balance, considering that the trial balance showed opening balances for all such accounts. In addition, the Committee relied on the argument that Zakat Payer did not cooperate to provide evidence to prove whether the lunar year had been completed or not. However, Zakat Payer provided the trial balance to support its position and expressed willing to provide any information requested by ZATCA in this regard, as it is well known that zakat is only due on funds that completed a full lunar year.
3. (Owner's Current Account) item: Zakat Payer objects, regarding this item, to ZATCA procedure outlined in adding the following amounts (SAR 6,511,997) and (SAR 11,804,124) for 2013 and 2014 respectively. Zakat Payer argues that a lunar year had not passed for 2013. As for the amount for 2014, the Enterprise acknowledges that such amount completed a full lunar year and is ready to verify its documents and position regarding this item, in addition to levying zakat on such funds once it ensured that such funds completed a full lunar year.
4. (Undeclared Revenues for 2013) item: Zakat Payer objects to ZATCA procedure outlined in adding the amount of SAR 2,171,026 to zakat base, claiming that it is undeclared revenue. In addition, the Enterprise objects to the same, considering that its financial statements are audited by a chartered accountant and that the trial balance reflects the sale of vehicles. Accordingly, it is unclear how ZATCA reached the conclusion that there was undeclared revenue. In addition, the Enterprise is ready to allow ZATCA employees to examine its accounts in this regard.

The Department asked ZATCA to respond to the points raised by Appellant in its memorandum regarding the contested items within (10) days from the date of sending that request to ZATCA, which was dated 22/11/1441 AH. However, the Department did not receive a reply from ZATCA regarding the reasons for appeal included in Zakat Payer Company's statement of appeal in connection with the items that Zakat Payer objects to ZATCA assessment in this regard, after expiry of the granted period, and without stating a reason for the delay in ZATCA reply. Since the appeal shall bring the case back to its original state existing at the time of consideration before the appealed Decision is rendered. Therefore, the statements and answers of both parties included in the primary Decision regarding the items subject matter of appeal shall be considered.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On Merits: Having taken cognizance of Case file, documents included therein and the statement of appeal, the Department found that the Case has become ripe for consideration based on the foregoing. Therefore, the Department decided to adjudicate the appeal filed by Zakat Payer regarding the contested items as follows:

1. (External Purchase Variance for 2013 and 2014) item: Having taken cognizance of Zakat Payer's reason for appeal against the Decision regarding this item, the Department found that Zakat Payer's appeal involves objection to reliance on import data provided by Customs Authority for its external purchases based on documents adopted by ZATCA as a basis for assessing Zakat Payer in light of information included therein. since such data outlines information from an impartial party and



constitutes evidence that can be relied upon to prove what it contains. Since Appellant was given an opportunity for providing any documents to prove the contrary of its claim that such data does not accurately reflect the variances in the amounts for which ZATCA held Zakat Payer accountable for 2013 and 2014. Since this Department concluded that Zakat Payer did not provide any documents that would result in disregarding data issued by Customs Authority, and that its objection is unsubstantiated, repeating what it stated before the Primary Committee, claiming inaccuracy of the amounts of such variances without providing any credible evidence to support its claim. Therefore, the Department dismisses Zakat Payer's appeal regarding this item and upholds the primary Decision in this regard.

2. (Trade Creditors, Other Creditors and Long-term Debt for 2013) item: Having taken cognizance of the reason for Zakat Payer's appeal against the Decision regarding these items, the Department found the reason for appeal is outlined in Zakat Payer's reliance on its trial balance which showed no opening balances for such credit items. Since ZATCA asks Zakat Payer to prove that the balances reflected as zeros in of the trial balance of the opening period do not exist. Since it is established in similar disputes that it is ZATCA responsibility to prove the inaccuracy of Zakat Payer's claim that the balances shown in its trial balance are correct. The argument that Zakat Payer has not provided evidence to support what its trial balance shows is not sufficient alone to shift the burden of proof and require it to provide evidence to confirm the accuracy of its claim by negating what ZATCA arguments. As such, the Department is convinced to accept what Zakat Payer has presented and not to add credit balances of such items for 2013 as claimed by ZATCA and upheld by the Committee in its Decision regarding such items. Therefore, the Department accepts Zakat Payer's appeal, accepts data included in its declaration regarding such items when making assessment and dismisses the primary Decision in this regard.
3. (Owner's Current Account) Item: Having taken cognizance of reason for Zakat Payer's appeal against the Decision regarding this item, the Department found that Zakat Payer's reasons for appeal is outlined in requesting the Department not to add an amount of SAR 6,511,997 for 2013 to this item as it has not completed a full lunar year. Zakat Payer declared that the balance of owner's current account for 2014 has completed a full lunar year, which necessitates accepting addition of that account balance for 2014. Since the statement of cash flow showed that the entire amount of the account appearing at the end of the year 2013 in question was formed throughout that year, which means that such balance has not completed a full lunar year, since the decisive factor should be the figures shown in the audited financial statements, rather than the trial balance, which is a primary internal draft subject to adjustment before the financial statements are prepared based on the balances contained therein. As such, the Department is convinced to accept Zakat Payer's argument, and not to add (Owner's Current Account for 2013) item as claimed by ZATCA and upheld by the Committee in its Decision. Therefore, the Department accepts Zakat Payer's appeal and dismisses the primary Decision in this regard.
4. (Undeclared Revenues for 2013) Item: Having taken cognizance of reasons for Zakat Payer's appeal against the Decision regarding this item, the Department found that Zakat Payer's appeal centers on its request to accept its financial statements approved by a chartered accountant, as such statements are the final conclusion of Zakat Payer's financial position. Since ZATCA sole ground for supporting its position is based on the conclusion obtained from the information set out in the trial balance. Since the decisive factor should be the figures shown in the audited financial statements, rather than the trial balance, which is a primary internal draft subject to adjustment before the financial statements are prepared based on the balances contained therein. As such, the Department is convinced to accept Zakat Payer's argument, and not to add any



revenue for 2013 other than those declared by Zakat Payer. Therefore, the Department accepts Zakat Payer's appeal and dismisses the primary Decision in this regard.

Decision

First: In form: Accept the appeal filed by Zakat Payer (... Fair) against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (18) of 1439 AH.

Second: On Merits:

1. Dismiss Zakat Payer's appeal regarding (External Purchase Variance for 2013 and 2014) item and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Trade Creditors, Other Creditors and Long-Term Debt for 2013) item, approve Zakat Payer's declaration regarding such items when making assessment and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
3. Accept Zakat Payer's appeal regarding (Owner's Current Account for 2013) item, approve Zakat Payer's audited financial statements and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
4. Accept Zakat Payer's appeal regarding (Undeclared Revenues for 2013) item, approve Zakat Payer's audited financial statements and overturn the primary Decision in this regard according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-110)

Delivered in Appeal No. (Z-1496-2018)

Principle No. 155

Adding back unacceptable depreciation variances to the net value of fixed assets is a fundamental principle in calculating zakat.

Principle No. 156

The principal rule is to determine Zakat Payer's zakat base based on the net variance between positive and negative elements included in the calculation of zakat base, without limiting it to the adjusted profit amount.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Saturday, 21/03/1442 AH corresponding to 07/11/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Order No. (65474) dated 23/12/1439 AH in accordance with Paragraph (B) of Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 02/09/1439 AH by (... Company) against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (19) of 1439 AH rendered in Objection No. (68/38) filed by Appellant against ZATCA, in which the primary Decision ruled as follows:

First: Accept the appeal filed by Zakat Payer (... Company) regarding Zakat assessment for years from 2009 to 2014.

Second: On Merits:

1. Dismiss Zakat Payer's objection to (Amending some Provisions) item.
2. Resolution of the dispute regarding (Company's Share in Net Losses of Investee Companies Based on Equity for 2011 and 2012) item.
3. Dismiss Zakat Payer's objection to (Depreciation Variances) item.
4. Dismiss Zakat Payer's objection to (Negative Zakat Base) item.
5. Dismiss Zakat Payer's objection to (Undeclared Revenues for Years from 2009 to 2013) item.
6. Dismiss Zakat Payer's objection to (Fixed Asset Sale Profits) item.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

Zakat Payer Company objects to raising a revised assessment for some years included in the appealed Decision. Having taken cognizance of the primary Decision, the Department found that Zakat Payer Company's petition not to raise revised assessments for the years in question was not raised during consideration of the dispute before the Primary

Committee. Accordingly, this request is considered a new petition and cannot be submitted during consideration of the dispute before Appellate Department. Therefore, the Department dismisses such petition without examining its merits. In addition, the statement of appeal included Zakat Payer Company's objection to certain items in its appeal against the appealed Decision, which are summarized as follows:

1. As for depreciation variances, the Company believes that it has followed ZATCA instructions, particularly Circular No. (2574) dated 14/05/1426 AH, in addition to the subsequent circulars governing zakat years of the contested assessment. Such circulars outlined the method for calculating asset depreciation when calculating Zakat Payer's zakat base. In addition, the Company argues that ZATCA should have accounted for depreciation variances as applied in the assessments for years in question. Accordingly, if the result of this calculation results in a negative zakat base, no zakat shall be payable by the Company. In addition, the Company underscores that the indication that the equation used by ZATCA in assessing the Company was incorrect is the issuance of a table for calculating depreciation for Zakat Payers under Form (110) issued in 2016.
2. Negative Zakat Base: The Company objects to the method adopted by ZATCA in calculating zakat base to come up with the adjusted net profit and using it as the basis for zakat calculation. This method is impacted by how depreciation is accounted for and the adjustments made by ZATCA in this regard, which resulted in depreciation variances, along with other elements for calculating zakat base to come up with the adjusted net profit to form zakat base in question. In fact, ZATCA approach in calculating zakat base based on its determination of the adjusted net profit does not align with the legal principles that govern zakat, considering that Zakat Payer is required to pay zakat on the assets that Zakat Payer possess at the time zakat becomes due. In addition, the amount reached by ZATCA through assessment of Zakat Payer, by finding adjusted net profit to outline zakat base does not reflect reality, as the requirement for zakat is the net profit as a component of zakat base. Accordingly, zakat base amount should be the result of offsetting positive elements against negative ones to determine the amount subject to zakat, regardless of whether it is less than or more than the net profit. Thereupon, relying on the adjusted net profit as zakat is groundless, even when claiming that profits from revenues may not be available at the end of the year due to spending on purchasing assets or covering necessary expenses. The decisive factor is the existence of the amount derived from the method used by ZATCA to calculate zakat base as a general principle or established rule for handling assessments, without resorting to calculating adjusted profit when zakat base is negative or when that amount is less than the calculated net profit. Such an approach aligns with the established approaches in Appellate Committee's Decisions, which advocate for the principle of aggregating positive zakat base elements while deducting negative ones to come up with the total amount due for zakat, irrespective of the size of non-current assets that have no specific limit to offsetting them from the base when they are financed through internal or external sources. Accordingly, there is no legal ground that entails subjecting adjusted net profit as the base on which zakat obligation is calculated in the manner that ZATCA claims Zakat Payer as concluded by the primary Decision regarding this item.
3. Revenues undeclared by ... Company for years from 2009 to 2013. The Company objects to ZATCA procedure outlined in adding net book profit for years from 2009 to 2011. The Company argues that the Primary Committee did not resolve the dispute regarding such revenues, as it is unclear whether ZATCA agreed to deduct the amounts related to such revenues amounting to SAR 327,000,000 from the net profit. These amounts are part of total revenues declared for years from 2009 to 2013 amounting to SAR 809,375,908, and the Company informed ZATCA of the same by a letter dated 23/04/1437 AH. in addition, the Company states that it does not object



to ZATCA distribution of such revenues over the relevant years, provided that the total distributed amounts are deducted from the net profit for zakat year 2013 to avoid double taxation on such amounts.

4. (Fixed Asset Sale Profits) Item: The Company objects to subjecting profits realized from the sale of fixed assets, contrary to information stated in its declaration, where ZATCA adopted these profits within the amount of net profits. The Company calculated the depreciation and estimated profits on these assets accordingly. Since the Company declared these profits as part of its total revenues for years from 2009 to 2014, it is unjustifiable for ZATCA to add back such revenues to the adjusted net profit and zakat base when amending assessment. This approach does not reflect a correct or proper Sharia-compliant or accounting treatment in determining zakat base and calculating Company's liability. The Company's argument is that ZATCA subjected the adjusted net profit to zakat, combined with how it handled depreciation, distorts the calculation of profit from the sale of these assets.

In addition, the Company submitted a supplementary memorandum to its appeal dated 17/02/1441 AH, reaffirming the points raised in its previous memorandum. The Company asserts that zakat assessments indicate zakat obligations that are neither legally nor religiously valid. Furthermore, the Committee that rendered the Decision did not provide clear reasons for favoring ZATCA method of assessment over Company's declared figures, without explaining rationale for this Decision. This lack of clarification on the correctness of ZATCA procedure, which the Committee upheld, renders the Decision flawed by deficiency in reasoning. Therefore, the Decision should be overturned for lack of proper reasoning and for contradicting principles of zakat calculation as per Sharia, specifically in light of Fatwa No. (23408) dated 11/08/1426 AH. This fatwa states that revenues spent on purchasing assets or trading assets are not subject to zakat if they have been spent by the end of zakat year. In addition, ZATCA, when making assessments, is required to calculate zakat base by offsetting its positive and negative elements to come up with zakat base in question, without applying rules for levying zakat issued in 1438H, as it is not valid to apply such rules to years prior to its issuance.

Since the Department asked ZATCA respond to Appellant Company's statement of appeal regarding the contested items. Therefore, ZATCA submitted an answer dated 02/12/1441 AH, including merely reaffirming ZATCA stance presented before the Objection Committee when considering Zakat Payer Company's objection. In addition, ZATCA requests upholding the appealed Decision that confirms the correctness and validity of ZATCA procedure, given that Zakat Payer Company's arguments do not differ from such arguments raised upon the consideration of its objection before the Primary Committee, to which ZATCA replied at that time.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On Merits: Having taken cognizance of Case file, documents included therein and the statement of appeal; having taken cognizance of the primary Decision and ZATCA position regarding the contested items; and after reviewing all of Appellant Company's arguments regarding the above-mentioned items, the Department decided to adjudicate as follows:

1. (Depreciation Variances) Item: Having taken cognizance of Zakat Payer Company's appeal regarding this item and ZATCA stance at the time of discussing objection before the Primary Committee, the Department found that the dispute involves Zakat



Payer's claim to apply the method of asset depreciation according to ZATCA instructions in place during the years in question in order to handle their impact when determining zakat base amount and the proper method of calculation to identify its amount. The primary Decision did not observe this issue when calculating zakat base to come up with a correct estimation. Since adding back unaccepted depreciation variances to the net fixed assets is a fundamental principle in zakat calculation. Since the remaining asset value outlines acquisition asset value deducted from zakat base to ensure an accurate calculation, which is the essence of Zakat Payer's appeal, which highlights the lack of proper consideration in the primary Decision regarding this point. As such, the Department accepts Zakat Payer's appeal with regard to allowing deduction of the full value of fixed assets as reflected in the financial statements after adding back the unaccepted depreciation variances to the adjusted profit, and overturns the primary Decision regarding this item.

2. (Negative Zakat Base) Item: Having taken cognizance of Zakat Payer Company's appeal regarding this item and ZATCA stance at the time of discussing objection before the Primary Committee, the Department found that the dispute involves Zakat Payer's claim to calculate zakat base without relying on the method of adjusted net profit and consider it as a zakat base in line with ZATCA approach when calculating zakat base by offsetting positive and negative elements to estimate the base amount, or when net profit is less than the result of this offset, given that Zakat Payer claims that this method is not consistent with the principle established by Sharia and law for determining zakat base. Since ZATCA method for calculating zakat base involves offsetting positive and negative elements to come up with a zakat base; therefore, the resulting figure outlines the amount of zakat base, regardless of whether it is greater or less than the adjusted profit to calculate the amount subject to zakat payable by Zakat Payer. The primary Decision took the view that using the adjusted profit method for determining the base allows many activities to be included in zakat calculation, especially for large companies with substantial non-current assets. These assets should not be excluded from zakat calculations, as there is a valid opinion that zakat should be calculated on the yield or profit. In addition, this method applies to calculate zakat on the returns of investments outlined in the adjusted profit. In fact, ZATCA stance does not negate the lack of a valid Sharia or legal ground for calculating zakat base by using equation of subtracting negative elements from positive ones to come up with zakat base. This approach has been consistently applied by ZATCA to Zakat Payers in general, without the size of assets affecting calculation of zakat base to determine its amount and exclude the due amount, whether it be large or small. Therefore, the Department accepts Zakat Payer's appeal and overturns the primary Decision regarding this item, while determining Zakat Payer's zakat base based on the variance between the positive and negative elements involved in the calculation of zakat base, without being limited by the adjusted profit amount.
3. Revenues undeclared by ... Company for Years from 2009 to 2013) item: Having taken cognizance of Zakat Payer Company's appeal regarding this item and ZATCA stance at the time of discussing objection before the Primary Committee, the Department found that the dispute involves Zakat Payer's claim to deduct the amount of such revenues that ZATCA took into account when estimating zakat base for 2009, 2010 and 2011, as Zakat Payer recorded such revenues in full as income for 2013. Therefore, the correct handling of such revenues is determined by deducting total amount added by ZATCA for 2009, 2010 and 2011, which Zakat Payer did not record, as no revenue had been realized in such years, from total revenues that Zakat Payer included within its zakat base when being calculated by Zakat Payer for 2013. As such, responding to Appellant's request will ensure that revenue amount in question is subjected to zakat distributed over the years 2009, 2010, 2011 and 2013. In addition,



this approach avoids subjecting the same funds to zakat twice. Accordingly, zakat treatment of revenue amount should be handled as previously outlined, and the primary Decision should be amended in accordance with zakat calculation established by this Department for revenue amount in question.

4. (Fixed Asset Sale Profits) Item: Having taken cognizance of Appellant's appeal regarding this item and ZATCA stance at the time of discussing objection thereto before the Primary Committee, the Department found that the dispute involves Appellant's claim to handle such assets by accounting for their depreciation and profits realized from their sale. The appellant maintains that these profits were declared as part of total revenues for years from 2009 to 2013 in question and were reflected in the net book profit subject to zakat through the assessment. Since ZATCA did not object to this point in its answer to the statement of appeal, Appellant's claim, which remains unrefuted, stands as the principal position. It is established that these profits were already subjected to zakat once through determining zakat base for fixed assets, and this is considering repetition of adding such profits to zakat base. Therefore, the Department accepts the appeal, overturns the primary Decision regarding this item is overturned and decides adopting treatment of fixed asset sale profits as declared by Zakat Payer in its declarations for the years in question.

Decision

First: Accept the appeal filed by Zakat Payer (... Company) against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (19) of 1439 AH.

Second: On Merits:

1. Dismiss Zakat Payer Company's request to raise a revised assessment for years in question according to reasons and Grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Depreciation Variances) item by deducting the full amount of fixed assets as reflected in the financial statements after adding unaccepted depreciation variances to adjusted profit, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
3. Accept Zakat Payer's appeal regarding (Negative Zakat Base) item by calculating Zakat Payer's zakat base according to offsetting positive and negative elements included within the calculation of zakat base without limitation to the amount of adjusted profit, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
4. Accept Zakat Payer's appeal regarding (Undeclared Revenues by ... Company) item by amending primary Decision by deducting total amount added by ZATCA for 2009, 2010 and 2011 from total amount of revenues reflected by Zakat Payer in its zakat base for 2013 according to reasons and Grounds stated herein.
5. Accept Zakat Payer's appeal regarding (Fixed Asset Sale Profits) item, decide adopting treatment of fixed asset sale profits as declared by Zakat Payer in its declarations for the years in question and overturn the primary Decision in this regard according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-95)
Delivered in Appeal No. (Z-2018-1541)

Principle No. 157

Decreasing value of land by depreciation upon its sale to realize capital gains resulting from the sale of such land and the ensuing decrease in zakat due on it does not align with proper zakat calculation related to recognizing zakatable wealth in its original form along with its profits as revenue realized from sale transaction.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Monday, 02/03/1442 AH corresponding to 19/10/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Order No. (65474) dated 23/13/1439 AH in accordance with Paragraph (B) of Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 24/04/1439 AH corresponding to 11/01/2018 by ... Company, and ZATCA appeal against First Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (6) of 1439 AH rendered in Case No. (13/38) filed by both parties to the appeal against the Decision subject matter of appeal that states:

First: Accept the objection in form filed by (... Company) to zakat assessment for years from 2008 to 2011.

Second: On Merits:

1. Dismiss Zakat Payer's objection and uphold ZATCA procedure outlined in adding shareholders' current accounts to zakat base.
2. Accept Zakat Payer's objection regarding deduction of investments in full.
3. Dismiss Zakat Payer's objection and uphold ZATCA procedure outlined in disallowing deduction of investment revenues from zakat base.
4. Dismiss Zakat Payer's objection and uphold ZATCA procedure outlined in disallowing deduction of land capital gains from zakat base.
5. Accept Zakat Payer's objection to adding credit balances that completed a full year.

Resolution of the dispute between both parties with ZATCA approval of Zakat Payer's position on the following:

1. Administrative fees for 2008.
2. Recreation expenses for 2008.
3. Disallowing deduction of payment receipts for 2010 and 2011.

Since both parties, (... Company) and ZATCA, dissatisfied with this Decision, each submitted a statement of appeal, including their objections to the following items:

As for appeal filed by ... Company:

First: Regarding the fiscal year ended on 31/12/2008 AD:



- a. Zakat Payer Company appeal against dismissing its objection to adding an amount of SAR 11,600,500 related to shareholder's current account to its zakat base, claiming that this amount pertains to one of the deceased shareholders (...), and that, in ZATCA view, the amount was in Company's possession during that year and it was not distributed. The distribution to the shareholders occurred after a full year had passed. However, the shareholder's death occurred in May of that year, and thus a full year had not elapsed regarding ownership of such funds, given that the full year is interrupted by death. Accordingly, the balance on which a full year has passed only pertains to other shareholders in the company.
- b. The Company objects to disallowing deduction of capital gains resulting from the sale of land in Al-Kharj amounting to SAR 5,470,902. The Committee disallowed deducting such gains from the net book profit on the ground that they pertain to non-depreciable assets. However, the Company believes that the assessment should be amended by deducting such gains ensuing from the sale based on the net book profit.
- c. The Company objects to disallowing deduction of investment revenues amounting to SAR 1,418,879 from the net book profit, as the primary Decision incorrectly stated that the Company did not provide evidence proving that such profits were generated during the year by the investee company (... Company Ltd.). In fact, zakat declaration of investee company confirms that it paid zakat due, which necessitates amending assessment by deducting such investments.

Second: Regarding the fiscal year ended on 31/12/2009 AD:

- a. Zakat Payer Company objects to disallowing deduction of investment revenues amounting to SAR 8,650,878 on the ground that the Committee that rendered the Decision did not address Company's objection in its request to deduct such revenues from zakat base.
- b. The Company objects to adding an amount of SAR 1,245,850 related to finance leases on the ground that the Committee that rendered the Decision did not discuss the objection to this item when adding its amount to Company's zakat.

Third: The Company, regarding the fiscal year ended on 31/03/2011 AD, objects to Committee's approach outlined in discussing ZATCA approach outlined in calculating shareholders' current account amounting to SAR 12,822,798 without deducting an amount of SAR 3,450,444 from such amount calculated for shareholders' current account despite the fact that the Company objects to the amount without the claimed deduction.

2. Regarding ZATCA appeal mentioned in its memorandum dated 13/04/1439 AH, the Department found that it pertains to the following:

- a. ZATCA objects to Committee's Decision that upheld Zakat Payer's position in deducting full value of investments for years from 2009 to 2011, which outlines balances of credit current accounts with the investee companies. Therefore, in reality, these balances constitute supporting financing that must be accounted for with each company, considering the financial independence of each company. ZATCA argues that this balance should be treated as a source of financing that should be added to zakat base for both the lender and borrower, in accordance with the relevant Fatwa on in this regard as claimed by ZATCA.
- b. ZATCA objects to the Committee's Decision that disallowed adding credit balances that completed a full year, which pertain to related parties or affiliated entities, in addition to balances of external creditors, given that such balances outline elements that should be added to Zakat Payer's zakat base when making assessment.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company and the appeal filed by ZATCA, the Department found that the conditions for hearing appeal have been met in form in accordance with conditions

stipulated in the relevant laws, regulations and resolutions. Therefore, the two appeals are accepted in form for being filed by party having capacity and within the statutory period. On Merits: Since the Department found that the case became ripe for consideration; therefore, the Department decided to adjudicate both appeals filed by the Zakat Payer and ZATCA regarding the items in question as follows:

First: Regarding the contested items for the fiscal year ended on 31/12/2008 AD:

- a. As for the appeal regarding shareholders' current account and related to Zakat Payer Company's objection to the addition of SAR (11,600,500) to its zakat base: Having taken cognizance of subject matter of Zakat Payer's company appeal, the Department found that such appeal involves claim that the addition of this amount to its zakat base was invalid given that it pertains to a deceased shareholder (...), and that the cycle for this amount was interrupted by shareholder's death. Accordingly, its balance should not be included in Zakat Payer Company's zakat base for the fiscal year ended on 31/12/2008 AD. The Department, upon reviewing the attached death certificate of the deceased shareholder, found that the date of death was on 24/04/2007 AD. Since Company's appeal was based on the premise of not including deceased shareholder's balance for year in question ended on 31/12/2008 AD. Since the fact indicate that this balance had been exclusively allocated to the remaining shareholders after the death of the inheritee, and 2008 marked the completion of a full year for this amount after the new cycle began and was completed for zakat calculation. Therefore, the Department finds that Zakat Payer Company's appeal is not unsubstantial, as it is established that a full year had passed for the balance of the deceased shareholder's account after calculating the beginning of the new cycle from the date of shareholder's death. Thereupon, the Department upholds ZATCA procedure to include shareholders' current account balance in Zakat Payer Company's zakat base for the fiscal year ended on 31/12/2008 AD and dismisses Zakat Payer Company's appeal in this regard.
- b. As for the appeal regarding capital gains realized from the sale of land in Al-Kharj amounting to SAR 5,470,902, the Department, having taken cognizance of Zakat Payer's appeal, found that Zakat Payer argued that it is necessary to deduct depreciation of the land after sale to decrease the capital gains resulting from sale of such lands, thereby decreasing zakat due. Since such calculation that Zakat Payer claims to be adopted in order to calculate its zakat base regarding deduction of depreciation amounts when disposing of lands and generating capital gains resulting from sale transaction does not align with zakat calculation, which requires considering the primary capital and its profits as a revenue realized from the sale. Therefore, the Department dismisses Zakat Payer's appeal regarding this item as the appeal is not grounded on a valid reason, and consequently, the appeal should not affect the conclusion reached in the primary Decision regarding this matter.
- c. As for investment revenue for 2008 amounting to SAR 1,418,879: Since the primary Decision ruled, regarding this item, allowing deduction of such revenues from Zakat Payer Company's zakat base, given that dividends for the year of (... Company Ltd) did not clearly indicate that such amounts had been subject to zakat at the investee company. Since the investee company files its zakat declarations to ZATCA and referring to such financial statements to verify the payment of zakat is a readily verifiable matter to identify accuracy of Company's claims in its zakat declarations. Since ZATCA failed to prove that zakat was not paid on such amounts distributed as profits by the investee company; therefore, the Department accepts Zakat Payer's declaration and allows deduction of such revenues from Zakat Payer's zakat base for the year in question.

Second: As for Company's appeal for the fiscal year ended on 31/12/2009 AD regarding the two contested items: Since Zakat Payer Company objected to disallowing deduction of



investment revenue amounting to SAR 8,650,878 on the ground that the Committee that delivered the Decision did not discuss Company's claim to deduct such revenues from zakat base. Since Zakat Payer Company's second objection was outlined in objecting to the addition of an amount of SAR 1,245,850 related to finance leases to its zakat base. Given that the Committee that delivered the Decision did not discuss these two objections, as there is no evidence that the primary Decision issued by the Committee thoroughly examined such two objections when considering Company's overall objections to the assessment made by ZATCA. As such, the Department decided to refer the matter of these two contested items back to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for a final Decision, which will assess the objection submitted by Zakat Payer Company regarding these items to determine whether they should be included in Zakat Payer's zakat base in light of the conclusion reached by that Department to which the objection regarding these two items was referred and upon issuing its Decision after notifying Company and ZATCA of the session scheduled to consider these objections.

Third: As for Company's appeal for the fiscal year ended on 31/03/2011 AD outlined in Committee's failure to address ZATCA approach outlined in adding shareholder's current account balance amounting to SAR 12,822,798 without deducting an amount of SAR 3,450,444 from that amount calculated on shareholders' current account, despite the fact that the Company objects to this amount without deduction claimed. Since Zakat Payer clearly objected to this item. Since the Committee that delivered the Decision did not discuss the contested item to verify the validity of ZATCA procedure or not upon calculating Zakat Payer's zakat base under its assessment in that year. As such, the Department concluded to refer the review of the objection regarding this contested item to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for a final Decision, which will assess the objection submitted by Zakat Payer Company to determine whether it should be included in Zakat Payer's zakat base in light of the conclusion reached by that Department to which the objection regarding this item was referred and upon issuing its Decision after notifying the Company and ZATCA of the session scheduled to consider the subject matter of dispute related to this item.

As for ZATCA appeal regarding its objection to Committee's Decision that upheld Zakat Payer's position outlined in deducting full value of investments for years from 2009 to 2011 AD, ZATCA claims that these investments essentially outline financing amounts paid by Zakat Payer Company to other investee companies. Therefore, the balances of such investments should be handled as a creditor-debtor relationship, necessitating calculation of loan amount for both the lending and borrowing companies, given their separate legal accounts. The Department, having taken cognizance of ZATCA appeal and calculation of the committee that delivered the Decision of the investment balances, which outline current accounts that should be classified as equity in the investee companies, the balance of such investments would be included in zakat base of the investee company based on the current account amount. Since this zakat calculation ensures that the same funds are not subjected to zakat twice. Therefore, the Department upholds the primary Decision regarding the contested item, dismisses ZATCA appeal, which requested that the balances of such investments funded from shareholders' current accounts be handled as debts between a lender and a borrower, and upholds the primary Decision in this regard.

As for ZATCA appeal regarding credit balances which completed a full year: Since the dispute regarding this item was based on verifying creditor balances that completed a full year for each year, taking into account the relevant opening and closing balances. The Department, having taken cognizance of ZATCA stance as presented in its statement of appeal, found that it challenges the Decision of the committee that delivered the Decision, which verified Zakat Payer's declarations through Company's ledger and concluded that these balances completed a full year. Since ZATCA did not provide any evidence in its



statement of appeal to challenge the conclusion reached by the committee that delivered the Decision that it was satisfied with the accuracy of including these amounts in Zakat Payer's zakat base based on Zakat Payer's declarations. Since ZATCA arguments in the appeal regarding this item lacked a clear basis that would substantiate its claims regarding the necessity of treating amounts owed to related parties and affiliated entities in the manner it suggested. Therefore, the Department concluded to dismiss ZATCA appeal regarding this item due to its lack of a sound ground, necessitating its dismissal and ensuring that the conclusion of the primary Decision remains unaffected by ZATCA appeal.

Decision

First: Accept the two appeals filed by Zakat Payer (... Company) and ZATCA against First Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (6) of 1438 AH.

Second: Regarding the appeal filed by the Zakat Payer Company:

1. Regarding the contested items for the fiscal year ended on 31/12/2008 AD:
 - a. Dismiss the appeal filed by the Company regarding shareholders' current account in relation to Company's objection to adding shareholders' current account to its zakat base in the amount of SAR 11,600,500 and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
 - b. Dismiss Zakat Payer's appeal regarding (Capital Gains Resulting from Sale of Land in Al-Kharj) item amounting to SAR 5,470,902 and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
 - c. Accept Zakat Payer's appeal regarding (Investment Revenue for 2008) item amounting to SAR 1,418,879 as stated in Zakat Payer's declaration and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
2. As for Zakat Payer Company's appeal for the fiscal year ended on 31/12/2009 AD:
 - a. Reconsider and refer Zakat Payer's appeal regarding (Disallowing Deduction of Investment Revenues) item amounting to SAR 8,650,878 to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for a final Decision according to reasons and Grounds stated herein.
 - b. Reconsider and refer Zakat Payer Company's appeal regarding the addition of an amount of SAR 1,245,850 related to finance leases to its zakat base to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for a final Decision according to reasons and Grounds stated herein.
3. As for Zakat Payer Company's appeal for the fiscal year ended on 31/03/2011 AD: Reconsider and refer Zakat Payer's appeal regarding failure of the Committee that delivered the Decision to discuss the objection to ZATCA approach in calculating shareholders' current account amounting to SAR (12,822,798) to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for a final Decision according to reasons and Grounds stated herein.

Third: As for ZATCA appeal:

- a. Dismiss ZATCA appeal regarding Committee's Decision that upheld Zakat Payer by allowing deduction of investment value in full for years from 2009 to 2011 and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
- b. Dismiss ZATCA appeal regarding credit balances that completed a full year and uphold the primary Decision in this regard according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes

Decision No. (IR-2020-92)
Delivered in Appeal No.
(ZW-1505-2018)

Principle No. 158

The default rule is that zakat is not due on funds that have left Zakat Payer's possession.

Principle No. 159

The default rule is that current liabilities are tied to financing current assets unless evidence on otherwise is provided. If there is no evidence on their relation to fixed assets, current liabilities shall be considered commercial debts rather than loans for financing fixed assets.

Principle No. 160

It is established that reclassification or recording in the books does not constitute an actual payment.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Thursday, 22/10/1442 AH corresponding to 03/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal filed on 01/03/1439 AH by ... Company against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (26) of 1438 AH rendered in Objection No. (9/38) regarding zakat and tax assessment for years from 2009 to 2011 filed by Appellant against ZATCA, in which the primary Decision ruled as follows:

First: In Form:

Accept the objection in form filed by Zakat Payer (Company ...) to zakat and tax assessment for years from 2009 to 2011 according to Decision Grounds.

Second: On Merits

1. Zakat:

First: Resolution of the dispute over (Carried Forward Losses for 2010 and 2011) item when ZATCA accepted Zakat Payer's stance according to Decision Grounds.

Second: Resolution of the dispute over (Net Fixed Assets) item when ZATCA accepted Zakat Payer's stance according to Decision Grounds.

Third: Dismiss Zakat Payer's objection to (Derecognizing Life Insurance Expenses as Deductible Expenses) item according to Decision Grounds.

Fourth: Dismiss Zakat Payer's objection to (Derecognizing Postpaid and Prepaid Phone Costs and Reducing Adjusted Net Loss by its Amount in Declaration) item according to Decision Grounds.



Fifth: Dismiss Zakat Payer's objection to (Adding Accounts Payable for Financing Fixed Assets and Accrued Expenses for Financing Fixed Assets to Zakat Base) item according to Decision Grounds.

Sixth: Dismiss Zakat Payer's objection to (Adding Shareholder Advances, Murabaha Financing, Capital Lease Obligation, Long-Term Loans, Overdrafts, Related-Party Liabilities and Shareholder Commissions within Accrued Expenses to Zakat Base) item according to Decision Grounds.

2. Withholding Taxes:

First: Dismiss Zakat Payer's objection regarding (Amounts charged to expenses that were not included in credit balances and from which no withholding tax was deducted) item according to Decision Grounds.

Second: Dismiss Zakat Payer's objection to certain loan interest amounts that were capitalized within advances to shareholders for 2010 and 2011, and resolution of the dispute over some others according to Decision Grounds.

Third: Dismiss Zakat Payer's objection to certain related-party payables, accept others and resolution of the remaining dispute according to Decision Grounds.

Fourth: Dismiss Zakat Payer's objection regarding withholding tax on services under construction in progress for 2010 and 2011 according to Decision Grounds.

Fifth: Impose a delay penalty on the items for which Zakat Payer's objection was dismissed, and no penalty is imposed on the items for which the objection was accepted according to Decision Grounds.

Dissatisfied with this Decision, Plaintiff (... Company) submitted a statement of appeal summarized as follows:

Zakat-related Objection:

As for the appeal regarding (Life Insurance Expenses for Years from 2009 to 2011) item, Zakat Payer objects to Primary Committee's Decision that disallowed including life insurance expenses within deductible expenses. In addition, Zakat Payer maintains its position included in Grounds of the appealed Decision and asserts its right to deduct life insurance expenses for years in question, arguing that such expenses are appropriate for Company's business activity, aligned with its revenues and are necessary for that business activity. Moreover, Zakat Payer replies to the appealed Decision with regard to the fact of categorizing such expense as unrelated to the business activity, by asserting that this expense pertains to Company's employees and thus falls under salaries and employment benefits provided by the Company to motivate performance. So, how it could be considered unrelated to business activity if it directly involves Company's employees? In addition, Zakat Payer replies to the appealed Decision's reliance on Article (5) of the Implementing Regulations for the Collection of Zakat stating that this article disallows deduction of life insurance expenses and, in fact, supports its position by considering insurance expense a bona fide expenditure, supported by documents, and thus applicable under the article. Zakat Payer concluded the objection to this item by requesting the Department to accept life insurance expenses as a deductible expense and disallow adding such expense to zakat base for the aforementioned reasons.

As for appeal regarding (Postpaid and Prepaid Phone Costs) item, Zakat Payer objects to Primary Committee's Decision that disallowed handling postpaid and prepaid costs as deductible expenses. In addition, Zakat Payer maintains its position as stated in the Grounds of the appealed Decision, affirming its right to deduct an amount of SAR 359,250,237 for 2010 and SAR 259,201,338 for 2011 on the ground that such expenses are ordinary and necessary. Moreover, Zakat Payer asserts that such expenses are fully supported by documents. Zakat Payer also replies to the appealed Decision rendered by the Primary Committee that the portion not approved by the Primary Committee and ZATCA pertains to international roaming expenses, as Zakat Payer is a participant in a clearinghouse dedicated to telecom service providers that facilitate the settlement of

international roaming charges among providers worldwide when they deliver international roaming services to Company's customers outside the Kingdom. Zakat Payer asserted in the appeal that if ZATCA insists on disallowing part of this expense, ZATCA should correspondingly exclude the associated revenues. In addition, Zakat Payer concluded its objection by requesting the Department to accept such phone expenses as deductible expenses for years in question.

As for appeal regarding (Carried Forward Losses for 2010 and 2011) item, Zakat Payer stated that following ZATCA acceptance of its stance on the carried forward losses for 2010 and 2011, and the resolution of dispute in this regard as determined by the Primary Committee in the appealed Decision, Zakat Payer wish to clarify its stance on how such carried forward losses accepted by ZATCA should be calculated, taking into account its appeal regarding (Life Insurance Expenses) item and (Postpaid and Prepaid Phone Costs) item, the adjusted carried forward loss should be an amount of SAR 7,807,220,696 on 01/01/2010 AD, and SAR 11,382,312,990 on 01/01/2011 AD and SAR 14,139,109,820 on 01/01/2012 AD. Zakat Payer further asserts its right not to decrease the carried forward losses by depreciation differences according to Grounds of the primary Decision, and maintains its proposed calculation for the carried forward losses as previously outlined. As for appeal regarding (Accounts Payable for Financing Fixed Assets and Accrued Expenses for Financing Fixed Assets) item, Zakat Payer challenges Primary Committee's Decision that dismissed its objection to disallowing addition of the accounts payable for fixed asset financing to zakat base. In addition, Zakat Payer maintains its position as outlined in the objection memorandum submitted to the Primary Committee. In conclusion, Zakat Payer requests that the balances of this item are not added to zakat base. As for appeal regarding (Advances from Shareholders, Murabaha Financing, Capital Lease Obligations, Long-Term Loans, Accounts Payable and Payable Shareholder Commissions within Accrued Expenses) item, Zakat Payer challenges Primary Committee's Decision that dismissed its objection to deducting this item from zakat base. In addition, Zakat Payer insists on the arguments submitted in its objection memorandum before the Primary Committee. Furthermore, Zakat Payer asserts that ZATCA reliance on Company's declaration does not constitute a conclusive evidence, as the Company is entitled to amend its zakat declaration in accordance with the relevant Sharia guidelines for zakat matters. Accordingly, Zakat Payer objects to allowing addition of the total amounts listed under this item in ZATCA zakat assessment, even if such amounts have completed a full year, since they were not used to finance fixed assets but rather for financing Company's working capital (operating activity), which is not subject to zakat, even if a year has passed in accordance with the Fatwa that have confirmed that zakat is due on the lender and not the borrower, provided that the borrower is solvent and not in default. In conclusion, Zakat Payer requests that this item is not added to zakat base.

Withholding Tax:

As for Zakat Payer's appeal regarding (Amounts paid to residents of Gulf Cooperation Council (GCC) countries are not subject to withholding tax) item, Zakat Payer primarily objects before appealing items related to withholding tax mentioned in the Decision under consideration that ... Company is not subject to withholding tax regarding the amounts paid to GCC residents because they are treated as residents in the Kingdom of Saudi Arabia in accordance with GCC Economic Agreement, which stipulates that "The natural and juridical GCC citizens shall be treated in any of the Member States in same manner as their own citizen without any discrimination or distinction in all the economic fields, including: 8. Tax treatment". In addition, Article (3) of the Saudi Income Tax Law stipulates: "A natural person shall be considered a resident in the Kingdom for a taxable year if he meets any of the two following conditions: 1. He has a permanent place of residence in the Kingdom and resides in the Kingdom for a total period of not less than 30 days in the taxable year. 2. He resides in the Kingdom for a period of not less than 183 days in the



taxable year”. In addition, various resolutions have been issued confirming treatment between GCC nationals and Saudis, including Royal Order No. (5/506/4) dated 19/03/1405 AH directed to the Minister of Finance and National Economy by the Prime Minister regarding “The approval of tax settlement for GCC citizens in the Kingdom similar to Saudi citizens”. Zakat Payer concluded its objection to this item by requesting the Department to apply the provisions of the Agreement to the Company residing in the GCC countries, so that GCC national is not subject to withholding tax as he is considered a resident of the Kingdom.

As for Zakat Payer’s appeal regarding (ZATCA is not entitled to make assessments and claim withholding tax for 2009 due to the five-year statute of limitations) item, Zakat Payer believes that it should not be liable for withholding tax according to its arguments in light of provisions of GCC Economic Agreement. However, Zakat Payer expresses an objection as a precaution against ZATCA procedure outlined in making tax assessments for despite of expiration of the statutory period for assessment according to Article (65) of Income Tax Law. In addition, Zakat Payer confirms that this procedure is not permissible and argues that ZATCA procedure has lapsed due to the statute of limitations. As for Zakat Payer’s appeal regarding (Amounts charged to expenses that were not included in credit balances and on which withholding tax was not deducted from 2009 to 2011) item, Zakat Payer objects to Primary Committee’s Decision that dismissed its objection to non-imposition of tax on the amounts covered in this item. In addition, Zakat Payer asserts that there should be no withholding tax on amounts charged to expenses that were not included in credit balances from 2009 to 2011. Zakat Payer Grounds its objection on the fact that the nature of interconnection services relates to services that were not sourced from within the Kingdom. This service involves the ability to lease international external networks in order to provide international telephone call services to local customers, which applies directly to the interconnection services provided to the customers of ... Company in the Kingdom, as the Company obtains the service of leasing networks from foreign operators so that its local customers can make phone calls to others residing outside the Kingdom by leasing networks of foreign operators. In addition, Zakat Payer argues that according to Article (63) of the Implementing Regulations, such services are subject to withholding tax only if they are realized from source of income within the Kingdom. Since such services pertain to leasing networks from non-resident foreign operators, there is no source of income realized within the Kingdom, as the services are fully rendered outside the Kingdom. Zakat Payer further asserts its entitlement to exempt these expenses from tax in accordance with avoidance of double taxation conventions applicable to certain beneficiaries residing in countries that have tax avoidance of double taxation conventions with the Kingdom. In addition, Zakat Payer concluded its appeal regarding this item by requesting the Department not to subject such amounts to withholding tax due to the absence of a source of income within the Kingdom and in accordance with the applicable tax conventions.

As for Zakat Payer’s appeal regarding (Interests of Loans Capitalized within Advances from Shareholders in 2010 and 2011) item, Zakat Payer challenges Primary Committee’s Decision that dismissed its objection to non-imposition of withholding tax on the interests from loans capitalized within advances made by shareholders for 2010 and 2011. In addition, Zakat Payer limits its objection to the interests from ... Bank loans and interests from loans of Company’s owners. As for interests of loans from ... Bank, Zakat Payer asserts its entitlement not to subject such revenues to tax in accordance with Convention of Double Tax Avoidance between the Kingdom and France, specifically Article (7) that stipulates: “Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other Contracting State. However, such Interest may be taxed in the first-mentioned State, if the debt-claim by virtue of which the Interest is paid is effectively connected with industrial or commercial activities carried on



in that state by the recipient of the Interest – In that case, Article (14) of the Convention shall apply”. Zakat Payer affirms that under the mentioned text, the interest on loans accrued from the source country (the Kingdom) is not subject to tax in the source country (the Kingdom), but rather is only taxable in the country of residence (France). In addition, Zakat Payer mentioned in its objection that ZATCA has issued several letters regarding the non-imposition of withholding tax on interests of loans made to a resident in the Republic of French, including but not limited to Letter No. (4785/9) dated 05/09/1428 AH, which confirms that the Convention includes provisions regarding withholding taxes, contrary to Primary Committee’s claims. As for the interests on loans of Company’s owners, Zakat Payer asserts that for the interests on loans of the Saudi ... Factory in the amount of SAR 124,314,717, the dispute with ZATCA was resolved by accepting Zakat Payer’s stance in this regard. As for interests on loans related to ... in Kuwait, Zakat Payer states that ZATCA erred in classifying amounts stated in its submission to the Primary Committee amounting to SAR 376,801 as loan interests, as such amounts actually represent liabilities to related parties that will be addressed later in Zakat Payer’s appeal. However, the amount included in ZATCA assessment, which the Company appeals against, as loan interests to ... Company is an amount of SAR 312,570,565. In addition, Zakat Payer asserts that the Primary Committee neither corrected ZATCA error nor commented on it. Zakat Payer further asserts that such amounts have been recorded as payables by the Company and have not been paid or settled with any other accounts. Zakat Payer concluded its objection by requesting the Department to exclude such amounts from the amended assessment.

As for Zakat Payer’s appeal regarding (Amounts Payable to Related Parties) item, Zakat Payer objects to Primary Committee’s Decision that dismissed its objection to all related party items. In addition, Zakat Payer limits its objection to related parties as stated in its statement of appeal before the Primary Committee that (... Company in Bahrain) with a total amount of SAR 80,676,658 and an estimated tax of SAR 12,101,499. These amounts are accounting entries for unrealized gains resulting from exchange rate fluctuations, which include SAR 7,607,798, and reflected an expense of SAR 18,466,803, and a reclassification by ... in Bahrain of SAR 54,602,057, with total of SAR 80,676,658. Zakat Payer states that ZATCA and the Committee, which rendered the Decision, incorrectly considered that the reclassification is an actual payment, stressing that reclassification does not outline an actual settlement or equivalent transactions, as the accounts payable and accrued expenses to non-resident entities are still reversed in the financial statements, which confirms that no actual payment occurred. In addition, Zakat Payer argues that ZATCA procedure in this regard could result in double taxation when such amounts are actually paid in the future. Zakat Payer further states that the expense reversal is merely the reversal of an entry, not a reclassification, indicating that the reversed expense no longer exists and is thus not subject to withholding tax. Furthermore, Zakat Payer explains that the settlement entries pertain to unrealized gains, so, how unrealized gains with no actual payment event could be subject to withholding tax? Zakat Payer believes that, for the aforementioned reasons, withholding taxes should not be levied on the above items. Furthermore, Zakat Payer points out that, in any case, the Company reserves the right to apply a withholding tax rate of 5% instead of 15%, given that there is no control relationship or unified ownership structure. In addition, Zakat Payer stated in its appeal another related party that is (... Company in Bahrain for 2010), with a total amount of SAR 491,853,646 and an estimated tax of SAR 73,778,047. According to Zakat Payer’s statement of appeal, ZATCA levied tax on this loan amounting to SAR 491,853,646 twice; once in 2009 and again in 2010. However, the Primary Committee upheld Company’s objection to invalidity of ZATCA procedure for 2009 and 2010 regarding the same loan, excluding three amounts: (Payments for services from various non-resident entities made by ... Group on behalf of the Company amounting to SAR 22,772,323), (accrued services provided by ... Group but

not yet paid amounting to SAR 23,744,210), and (various debit notes issued by ... Group amounting to SAR 93,840,842. Zakat Payer then contested these three amounts individually: As for payments for services from non-resident entities, Zakat Payer clarified that these amounts outline payments made by ... Group on behalf of the Company for services received from non-local entities. In this regard, Zakat Payer states that a substantial portion of this amount has already been subjected to withholding tax by the Company. As for accrued services from ... Group and unpaid, Zakat Payer clarifies that this amount pertains to accrued services provided by ... Group to ... Company (our customer), which have not paid yet. In addition, Zakat Payer highlighted that this amount was reclassified from loan account mentioned to ... Group's account, which does not produce any tax effect. Moreover, Zakat Payer asserts that this amount remains outstanding to ... Group and has not been settled. As for various debit notes issued by ... Group, Zakat Payer asserts that this item outlines debit notes issued by ... Group to the Company in exchange for amounts paid by the former on behalf of the latter. In addition, Zakat Payer referred, in its appeal, to a third party in the contested item, namely (Company ... in Kuwait in an amount of SAR 376,800 with a tax amount of SAR 56,520). Zakat Payer states that ZATCA accepted part of the amount and requests upholding its position on excluding the remaining part amounting to SAR 188,400 from withholding tax, since this amount outlines a reclassification rather than an actual payment. Furthermore, Zakat Payer affirms its right to apply a withholding tax at the rate of 5% instead of 15%, due to the lack of affiliation or control relationship. Zakat Payer further included in its statement of appeal the remaining related parties, requesting that amounts of such parties are not subjected to withholding tax, namely: (... Group in an amount of SAR 318,185 for 2010), (... Group in an amount of SAR 19,659,247 for 2010), (... Company in Sudan in an amount of SAR 11,814,443), (... Group in an amount of SAR 88,696,985 with a corresponding tax of SAR 13,304,548 for 2011) and (... Company in Sudan in an amount of SAR 3,562,500 with a corresponding tax of SAR 534,375 for 2011), since the procedure taken with these parties are account reclassifications rather than actual payment, which makes such amounts not subject to withholding tax.

As for Zakat Payer's appeal regarding (Withholding Tax on Services Listed under Constructions in Progress in the Amount of SAR 1,518,379 for 2010 and 2011) item, Zakat Payer objects to Primary Committee's Decision that dismissed its objection to levying withholding tax on services listed under constructions in progress for years in question. Regarding advance payments made to ... Company in Switzerland, Zakat Payer confirms making several payments between 2008 and 2011 to ... Company in Switzerland. However, such payments, according to Zakat Payer's statement, outline payments for installation services and partly for the purchase of goods (supplies). Zakat Payer states that it did not withhold tax on the amounts paid for the purchase of goods, as the purchase of goods is not subject to withholding tax based on Article (68) of Income Tax Law and Article (5) of its Implementing Regulations. Article (68) Paragraph (H) stipulates "For the purposes of this Article and Article 5 of this Law, "services" shall mean any work performed for a compensation, except for the purchase and sale of goods or any other properties". Furthermore, Article (5), Paragraph (7) of the Implementing Regulations states "7. Contracts for delivery of goods to the Kingdom, including freight and insurance contracts of such goods, shall not be considered as derived from an activity in the Kingdom unless it includes associated work performed in the Kingdom, such as transportation, installation, maintenance, training and the like. In such a case, only the associated work shall be considered as derived from an activity in the Kingdom". However, Zakat Payer, as mentioned in its statement of appeal, has subjected the payments made for installation services to withholding tax according to the legally prescribed rates. In addition, Zakat Payer points out that it has attached the monthly withholding tax forms and relevant payment receipts, which prove that it has withheld tax on such payments. Therefore, Zakat



Payer believes that no additional withholding taxes should be imposed. Regarding advance payments made to ... Company in Bahrain, whose correct name that Zakat Payer indicates is ...), Zakat Payer asserts making such payments in 2008 for consulting services. Accordingly, Zakat Payer subjected such payments to withholding tax according to the legally prescribed rates. In addition, Zakat Payer points out that the Company have attached the monthly withholding tax forms and relevant payment receipts, which prove that the Company withheld tax on such payments. Therefore, Zakat Payer believes that no additional withholding taxes should be imposed. As for advance payments made to (... Company in China), Zakat Payer confirms that the Company made payments throughout 2010 and 2011 to ... Company in China. Some of such payments were for technical services (installations), while others were for the purchase of goods (supplies). In addition, Zakat Payer states that they did not withhold tax on the amounts paid for the purchase of goods, as the purchase of goods is not subject to withholding tax in accordance with Article (68) of Income Tax Law and Article (5) of its Implementing Regulations. Furthermore, Zakat Payer indicates that the Company subjected the payments made for installations to withholding tax according to the legally prescribed rates. As mentioned in its statement of appeal, Zakat Payer has subjected the payments made for installation services to withhold tax on according to the stipulated rates.

As Zakat Payer's appeal regarding (Late Payment Fine) item, Zakat Payer objects to Primary Committee's Decision that dismissed its objections to all the fines stated in its appeal. In addition, Zakat Payer asserts that ZATCA imposed a late payment fine of 1% for every 30 days of delay. Zakat Payer believes that this procedure is invalid, as the amounts subject to such fine are still under appeal. In addition, Zakat Payer objects to ZATCA procedure outlined in not calculating in withholding tax variances mentioned in the items of this appeal until several years later, after the statutory period of five years for amending assessment for 2009 had expired. Zakat Payer argues that such fines on tax variances are not valid because they arose due to a clear and genuine disagreement between ZATCA and Zakat Payer. In addition, the appellate committees have ruled in several objections not to impose late payment fine if there is an actual variance. Furthermore, Zakat Payer believes that the late payment fine should begin from the date in which the tax becomes final, which can only occur after Zakat Payer accepts the assessment or objection procedures are completed. Accordingly, the late payment fine should be imposed from the date the obligation becomes final according to the regulations.

In addition, ZATCA was addressed on 23/11/1441 AH corresponding to 13/07/2020 AD to provide the Department with its answer to the appeal filed in the Case. Therefore, an answer was received from ZATCA on 03/12/1441 AH corresponding to 23/07/2020 AD, which generally addressed the contents of Appellant's memorandum. ZATCA emphasized that the arguments raised by Appellant Company in its appeal did not differ from such arguments raised before the Primary Committee, to which ZATCA replied at that time. In addition, ZATCA reaffirmed its position outlined in the memorandum submitted before the Primary Department regarding the contested items. Moreover, ZATCA concluded its answer requesting the Department to dismiss Plaintiff's appeal and uphold Primary Committee's Decision.

On 25/03/1442 AH corresponding to 10/11/2020 AD, the Department asked Zakat Payer to submit any additional submissions to its appeal on the Decision in question within the period set by this Department or to be satisfied with its earlier submissions. The period lapsed without any further submissions by Zakat Payer.

In its session dated 13/07/1442 AH corresponding to 25/02/2021 AD, the Department decided to hold 10-day e-hearing. Therefore, Zakat Payer submitted a memorandum that did not differ from previously presented arguments, with reference to its appeal regarding the interconnection item and included a copy of Communications and Information Technology Commission (CITC) views on withholding of 5% on amounts paid by local



telecommunications companies to foreign telecommunications companies for using their networks to transmit international telephone traffic. In addition, Zakat Payer attached a copy of interconnection agreement with (...) Company. Moreover, there was no further response from ZATCA beyond what had already been submitted.

The Department, during its session held on 24/08/1442 AH corresponding to 06/04/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

As for Zakat Payer's appeal regarding (Life Insurance Expenses for Years from 2009 to 2011): Having taken cognizance of the appeal, the Department found that the subject matter of appeal regarding this item is limited to Zakat Payer's request for deducting life insurance expenses for years in question. Zakat Payer argues that such expenses are related to Company's business activity, as they pertain to Company's employees and are part of the benefits provided to incentivize good performance. On the other hand, ZATCA argues that life insurance expenses are personal expenses and are not necessary for the business activity. Therefore, such expenses should not be deductible. Having taken cognizance of the foregoing, since life insurance expenses are considered costs incurred to motivate and attract employees. Since it has been established that Zakat Payer has spent the amount in dispute. Given that the principle dictates that zakat is not required on funds that has been discharged from Zakat payer's liability. Therefore, the life insurance expense for years in question shall be deducted. The fact that ZATCA considers this expense as unnecessary does not diminish its validity, as ZATCA has not based its position on any legal or regulatory ground that can be referenced. Furthermore, primary Decision's reliance on Article (5) of the Implementing Regulations of Zakat Law issued in 1438 AH is misplaced, as these regulations were published after the years in question. Therefore, the provisions of the regulations do not apply retroactively to events that occurred prior to their enactment in accordance with the principle of non-retroactivity of laws. As such, the Department unanimously decides to accept Zakat Payer's appeal, recognizing life insurance expense as a deductible expense for years in question and overturn the primary Decision in this regard.

As for Taxpayer's appeal regarding (Postpaid and Prepaid Phone Costs) item, the Department found that the appeal involves Taxpayer's request to deduct such postpaid and prepaid phone costs from zakat and tax base for 2010 and 2011. Taxpayer contends that such expenses are related to business operations. On the other hand, ZATCA has rejected the deduction on the ground that supporting documents for such expense have not been provided. Having taken cognizance of the foregoing, and given that it is established under the regulations for deducting expenses from zakat base, the expense shall be an actual expense supported by documents or evidential matters. In addition, the dispute between ZATCA and Taxpayer is documentary in nature, which requires Taxpayer to provide all supporting documents for its claim. Having taken cognizance of documents attached to Taxpayer's statement of appeal, such documents did not reveal any supporting documents for such expenses. Furthermore, the financial statements for 2010 did not provide details or note for this item. Therefore, the Department, by majority, decided to dismiss Taxpayer's appeal regarding this item and uphold the primary Decision in this regard.



As for Taxpayer's appeal regarding (Carried Forward Losses for 2010 and 2011) item, the Department found that the appeal involves Taxpayer's request for the correct accounting of carried forward losses for the years in question. Having taken cognizance of the foregoing, and given that the consideration of this item is associated with the two contested items (Life Insurance Expenses / Postpaid and Prepaid Phone Costs), for which Appellant has requested adjusting carried forward losses as stated in its statement of appeal. Since the Department has decided to dismiss the appeal regarding (Postpaid and Prepaid Phone Costs) item, while accepting it regarding (Life Insurance Expenses) item. Therefore, the Department has, by majority, decided to accept the appeal by accepting the amount of carried forward losses after adjustment as decided by the Department regarding (Life Insurance Expenses) item.

As for Taxpayer's appeal regarding (Accounts Payable for Financing Fixed Assets and Accrued Expenses for Financing Fixed Assets) item, the Department found that the appeal involves Taxpayer's request to exclude accounts payable for financing fixed assets and accrued expenses for financing fixed assets. On the other hand, ZATCA holds that such balances were added because they funded fixed assets that were deducted from the base. Having taken cognizance of Taxpayer's financial statements, the Department found that the items in dispute are classified as current liabilities. Since the principal rule is that the current liabilities are associated with financing current assets unless evidence suggests otherwise. Since ZATCA did not provide substantial proof that associates such liabilities with fixed assets, the standard approach is to rely on Taxpayer's return and the figures reflected in the financial statements, which classify such liabilities as trade debts rather than loans for financing fixed assets. Therefore, the Department decided, by majority, to accept Taxpayer's appeal and uphold the primary Decision in this regard.

As for Taxpayer's appeal regarding (Advances from Shareholders, Murabaha Financing, Capital Lease Obligations, Long-Term Loans, Accounts Payable to Related Parties and Payable Shareholder Commissions) item, the Department found that the appeal involves Taxpayer's request to deduct advances from shareholders, Murabaha financing, capital lease obligations, long-term loans, accounts payable to related parties and payable shareholder commissions from zakat base, since such amounts were not used to finance fixed assets but rather to finance Company's working capital. Therefore, such amounts should not be subject to zakat even if they have been held for a full year. On the other hand, ZATCA believes that the amounts that completed a full year were added to the base in accordance with Fatwa No. (22665) issued in 1424 AH. Having taken cognizance of the foregoing, and since it is established by Taxpayer's own acknowledgment in its statement of appeal that such amounts were used to finance Company's working capital and were held for a full year, which mandates the payment of zakat on such amounts in line with the established principle that zakat is due on debt for both the creditor and debtor. Since Taxpayer's objection to ZATCA procedure was not based on completing a full year but rather on their use for financing working capital. Therefore, the zakat shall be due on such amounts due to the fact that they completed a full year. Since the Department did not find any requirement for correction or further response in light of arguments raised before this Department. Therefore, this Department satisfies to decide that the foregoing does not affect the primary Decision as to conclusion it had in this regard and, dismiss Taxpayer's appeal and uphold the primary Decision regarding this item.

As for Taxpayer's appeal regarding (Amounts paid to residents of Gulf Cooperation Council (GCC) countries are not subject to withholding tax) item, the Department found that the appeal involves Taxpayer's request for exemption from withholding tax on payments made to residents of GCC countries in accordance with the provisions of GCC Economic Agreement. Having taken cognizance of the foregoing and having perused the Saudi Income Tax Law, it turns out that tax liability is determined based on residency rather than nationality as stipulated in Article (68) of Income Tax Law. Accordingly, the law does



not differentiate between Saudi or GCC citizens based on nationality in applying provisions of Income Tax Law. Therefore, the Department dismisses Taxpayer's arguments that withholding tax does not apply to GCC citizens residing in their countries.

As for Taxpayer's appeal regarding (ZATCA is not entitled to make assessments and claim withholding tax for 2009 due to the five-year statute of limitations) item, the Department found that the appeal involves Taxpayer's request to nullify ZATCA tax assessment for 2009 after the deadline specified in Article (65) of Income Tax Law. Having taken cognizance of the forgoing, it turns out from provisions of the law and the nature of the withholding tax levying and collection that the statute of limitations for not hearing a claim after five years pertains to income tax rather than tax withheld on payments made to non-residents in the Kingdom, since Article (65) of Income Tax Law stipulates that the calculation of period begins at the end of the deadline for filing tax return for the taxable year, indicating its connection to income tax rather than withholding tax, for which Taxpayer is not required to file a tax return. Therefore, the Department dismisses Taxpayer's argument regarding the ineligibility of ZATCA to levy withholding tax after five years from the date of withholding tax on payments made according to the statutory provisions.

As for Taxpayer's appeal regarding (Amounts charged to expenses that were not included in credit balances and on which withholding tax was not deducted from 2009 to 2011) item, the Department found that the appeal involves Taxpayer's request not to levy withholding tax on amounts charged to expenses that were not listed in the accounts payable from 2009 to 2011. In addition, Taxpayer asserts that such amounts were in exchange for services that were fully rendered outside the Kingdom. Having perused Article (2), Paragraph (2), of the Implementing Regulations of Income Tax Law, which includes the provision of international telephone services from the Kingdom, and having taken cognizance of the subject matter of the dispute, the Department found that identifying whether the amounts paid to non-resident entities are subject to withholding tax requires understanding nature of the activities and services provided, including the fact of the income source arising in the Kingdom and the applicable withholding tax rate as stipulated in the Regulations. This necessitates reviewing the relevant facts related to the service provided. Since Taxpayer's arguments were limited to asserting that the amounts are not subject to withholding tax because the services were rendered outside the Kingdom. Therefore, having perused the Law and the Implementing Regulations, the principal rule is that the amounts paid to a non-resident are subject to withholding tax if the income is realized from the Kingdom. According to the relevant legal provisions related to the withholding tax of Income Tax Law, it turns out that the nature of the service provided by non-resident company is subject to a 5% withholding tax, as the service aims to enable customers of ... Company (...) to make international calls using networks situated outside the Kingdom. Since the source of income is the decisive factor. Since the Department found that the income is derived from a source within the Kingdom, a withholding tax of 5% shall be levied on Taxpayer. Therefore, the Department, by majority, dismisses Taxpayer's appeal and uphold the primary Decision in this regard.

As for Taxpayer's appeal regarding (Interests of Loans Capitalized within Advances from Shareholders in 2010 and 2011) item, the Department found that the subject of appeal involves Taxpayer's request to avoid levying withholding tax on the interest of loans that were capitalized within advances made to shareholders for 2010 and 2011. Having taken cognizance of the foregoing, the Department found that Taxpayer relies on the Convention of Double Tax Avoidance between the Kingdom and France regarding the interests on loans of ... Bank. The Department, having taken cognizance of Taxpayer's objection, which is based on the assertion that Taxpayer did not settle the amount due to ... Bank, and that the payment was made by ... In Kuwait, found that Taxpayer owes this loan and its interests to ... Company in Kuwait. Since ZATCA acknowledged in its stance



established in the primary Decision that Taxpayer had not repaid this loan, and that ZATCA levied withholding tax on its interests under the assumption that Taxpayer had settled the amount. Since Income Tax Law and its Implementing Regulations impose withholding tax based on the occurrence of a payment, which has not been met in the subject matter of dispute. Furthermore, the reliance of primary Decision on the Convention of Double Tax Avoidance between the Kingdom and France is unfounded, as there is no evidence presented to the Department indicating a payment of the amount in dispute. Therefore, the Department decided to accept Taxpayer's appeal and overturn the primary Decision. Regarding interests on loans of ... In Kuwait, since the primary Decision based its ruling regarding imposition of withholding tax on the presumption that the two parties were related, and that the recording and accrual of the interest constituted payment. However, both Income Tax Law and its Implementing Regulations stipulate that withholding tax is contingent upon the occurrence of an actual payment, which has not been established in this dispute. Therefore, the Department accepts Taxpayer's appeal and overturns the primary Decision in this regard.

As for Taxpayer's appeal regarding (Amounts Payable to Related Parties) item, the Department found that the appeal involves Taxpayer's request to exempt such amounts payable to related parties from withholding tax for the reasons outlined in facts of the primary Decision. On the other hand, ZATCA insists on validity of its procedure regarding this item for the reasons included in Grounds of the primary Decision and reiterates such points in its answer to Taxpayer's appeal submitted to the Department. Having taken cognizance of the foregoing, and regarding amounts payable to related party (... Company in Bahrain for 2010) in total amount of SAR 80,676,658, the Department found that Taxpayer is requesting, under the item of reclassification between related party and the account of ... in Sudan, that no withholding tax be levied on the amount of SAR 54,602,057. Taxpayer asserts that this amount does not constitute an actual payment but rather a reclassification of the nature of expense, without any offsetting or discharge of the amounts payable to non-resident entities. Regarding amounts payable to the same related party (... Company in Bahrain), the Department found that Taxpayer is also requesting exemption from withholding tax on the reversal of expense amounting to SAR 18,466,803, arguing that this reflects a reversal entry rather than a reclassification, effectively nullifying transaction. In addition, Taxpayer requests that the unrealized gain from currency revaluation adjustments, amounting to SAR 7,607,798 and recorded as an adjustment entry, be exempt from withholding tax. These amounts, which pertain to the related party (... Company in Bahrain), are claimed by taxpayer not to constitute an actual payment. Since it is established by the Department that reclassification or accounting entries do not equate to actual payments. Therefore, the amount payable by ... Company in Sudan should not be subject to withholding tax, as the event of payment, which triggers the withholding tax obligation, has not occurred as required by the applicable regulations. Regarding the reversal of expense and amounts related to unrealized revaluation gains, since the primary Decision referred to Taxpayer's position indicating that Taxpayer provided supporting documents, specifically Exhibit No. (8) attached to its objection. Since the Committee did not deny that Taxpayer submitted this exhibit nor did it clarify the nature of documents required. Given that Taxpayer provided the supporting documents for its stance. Therefore, the Department accepts Taxpayer's appeal regarding its request not to levy withholding tax on amounts payable to related party (... Company in Bahrain) in total amount of SAR 80,676,658.

Regarding amounts payable to the related party (... in Bahrain for 2010) in total amount of SAR 491,853,646, the Department found that Taxpayer is requesting to exempt the amount payable to (... Company in Bahrain for 2010) from withholding tax for three amounts: (Payments for services provided by multiple non-resident entities, paid by ... Group on behalf of the Company, amounting to SAR 22,772,323), (accrued services



provided by ... Group, unpaid to date, in total amount of SAR 23,744,210) and (various debit notes issued by ... Group, amounting to SAR 93,840,842). Having taken cognizance of the primary Decision, and since the primary Decision upheld Taxpayer's argument regarding the repeated imposition of withholding tax on several elements of the amount in dispute, the Department found that these elements are not subject to withholding tax, as such elements outline financial support provided by... Group rather than in exchange for services provided to Taxpayer. Given that the primary Decision confined the amounts subject to withholding tax to services rendered by non-resident entities, services provided by... Group and debit notes issued by ... Group. Since the primary Decision grounded its conclusion of subjecting such amounts to withholding, tax after ZATCA verified their values, on the fact that the conversion of such amounts to a loan constitutes payment, as both parties are related. Since it is established by the Department that the reclassification or recording in books does not constitute an actual payment, the amounts for which by the Primary Committee identified the dispute are not subject to withholding tax, as no actual payment stipulated by the law to trigger withholding tax occurred. Therefore, the Department accepts Taxpayer's appeal regarding its objection to levying withholding tax on amounts classified as loans by the Primary Committee and overturns the primary Decision in this regard.

Regarding amounts payable to the related party (... Company in Kuwait in the amount of SAR 376,800), it turns out that Taxpayer requests that part of this amount, specifically SAR 188,400, not be subject to withholding tax, since this amount outlines a reclassification entry (reversal of an entry). Since ZATCA based its procedure outlined in levying withholding tax on this amount on the ground that it was a reclassification, and that the reclassification pertains to the method of presentation and disclosure in the financial statements and does not alter the nature or reality of transaction. Since ZATCA has not proven that an actual payment occurred. Therefore, this amount is not subject to withholding tax. Thereupon, the Department accepts Taxpayer's appeal and overturns the primary Decision in this regard.

Regarding the remaining related parties: (Group In an amount to SAR 318,185 and its tax of SAR 47,728 for 2010, (... Group in an amount of SAR 19,659,247 and its tax of SAR 2,948,887 for 2010, (... Company in Sudan for 2010 in an amount of SAR 11,814,443), (... Group in an amount of SAR 88,696,985) and (... in Sudan in an amount of SAR 3,562,500 and its tax of SAR 534,375 in 2011), the Department found that Taxpayer argues, regarding such parties, against levying withholding tax on the amounts designated for each party, on the ground that these amounts do not constitute an actual payment, which would warrant calculating withholding tax. Since the primary Decision based its conclusion on subjecting such amounts to withholding tax, considering reclassification as an actual payment and disregarding documents provided by Taxpayer for some of such amounts. Since it is established by the Department that reclassification or recording in the books do not constitute actual payment. Accordingly, the amounts for which the Primary Committee upheld levying withholding tax do not qualify for withholding tax due to the absence of an actual payment event as required by the law. Since the primary Decision did not specify in its reasoning for dismissing Taxpayer's objection to certain amounts the reason for disregarding documents provided by Taxpayer, nor elaborated the nature of required documents. Therefore, the Department accepts Taxpayer's appeal regarding levying withholding tax and overturns the primary Decision in this regard.

As for Taxpayer's appeal regarding (Withholding Tax on Services Listed under Constructions in Progress in the Amount of SAR 1,518,379 for 2010 and 2011) item, the Department found that the appeal involves Taxpayer's request to exempt all payments made to (... Company in Switzerland), (... Company in China) and (... Company in Bahrain) from withholding tax. Having taken cognizance of documents attached regarding the items



in dispute, the Department found that, regarding the amounts paid to (... Company in Switzerland) and (... Company in China), Taxpayer did not provide documents that specify the portion allocated to services and goods. As a result, it is not possible to identify the services associated with goods. Therefore, the Department concludes to apply Paragraph (6) of Article (16) of the Implementing Regulations of Income Tax Law, which prescribes a 10% estimate of revenue for works associated with the amounts in dispute. Therefore, the Department accepts Taxpayer's appeal and subjects 10% of total amount paid to withholding tax at a rate of 5%. Regarding advance payments made to ... Company in Bahrain). Since the dispute is document-based, and Taxpayer did not provide documents that would enable the Department to verify Company's actual name or to connect the taxable amounts with the entities to which they were transferred, as claimed in Taxpayer's appeal. Since the Department did not find any requirement for correction or further response in light of arguments raised before this Department. Therefore, this Department satisfies to decide that the foregoing does not affect the primary Decision as to conclusion it had in this regard. Thereupon, the Department decided, by majority, to dismiss Taxpayer's appeal and uphold the primary Decision regarding payments made to this Company.

As for Taxpayer's appeal regarding (Late Payment Fine) item, the Department found the appeal involves Taxpayer's request not imposing late payment fine on the appealed items, arguing that the fines arose due to a difference in viewpoints. In addition, Taxpayer requests that the late payment fine is calculated starting from the date of receiving assessment notification rather than from the deadline for filing returns. On the other hand, ZATCA maintains that the fine was imposed in accordance with Article 77(1) of Income Tax Law and Article 68(1) of its Implementing Regulations. Having taken cognizance of the foregoing, the Department found that Paragraph (A) of Article (77) stipulates: "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". In addition, Paragraph of Article (68) of Income Tax Law stipulates "C. The person responsible for withholding tax under this Article is personally liable to pay the unpaid tax Responsible Person any delay fines resulting therefrom in accordance with Article 77(a) of this Law, if any of the following cases applies to him: 1. If he fails to withhold tax as required. 2. If he withholds tax, but fails to pay the tax to the Department as required". Since Paragraph (1.h) of Article (68) of the Implementing Regulations of Income Tax Law states: "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: Delay in payment of tax required to be withheld within ten days of the following month during which payment was made to the beneficiary, as stipulated in Article (68) of the Law. The payment of the same shall be the responsibility of the withholding entity". Accordingly, the Department decides that the late payment fine should not apply to withholding tax items for which Taxpayer's appeal was upheld, as the underlying tax liability has been dismissed. As for late payment fines for which Taxpayer's appeal was dismissed, the Department decided to dismiss Taxpayer's request to waive the late payment fines on such items.

Decision

First: Accept the appeal filed by Taxpayer (... Company), C.R. No. (...), against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (26) of 1438 AH.

Second: On Merits:



1. Accept Taxpayer's appeal regarding (Deducting Life Insurance Expenses for Years from 2009 to 2011 from Zakat Base) and overturn the primary Decision in this regard according to reasons and Grounds stated herein
2. Dismiss Taxpayer's appeal by majority regarding (Deducting Postpaid and Prepaid Phone Costs) item and uphold the primary Decision in this regard according to reasons and Grounds stated herein
3. Accept Taxpayer's appeal by majority regarding (Carried Forward Losses for 2010 and 2011) item, by accepting carried forward losses after adjustment as decided by the Department regarding (Life Insurance Expense) item according to reasons and Grounds stated herein.
4. Accept Taxpayer's appeal by majority regarding (Deducting Accounts Payable for Financing Fixed Assets and Accrued Expenses for Financing Fixed Assets from Zakat Base) item, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
5. Dismiss Taxpayer's appeal regarding (Adding Advances from Shareholders, Murabaha Financing, Capital Lease Obligations, Long-Term Loans, Accounts Payable and Payable Shareholder Commissions within Accrued Expenses Zakat Base) item, and uphold the primary Decision in this regard according to reasons and Grounds stated herein
6. Dismiss Taxpayer's appeal regarding (Amounts paid to residents of Gulf Cooperation Council (GCC) countries are not subject to withholding tax) item according to reasons and Grounds stated herein.
7. Dismiss Taxpayer's appeal regarding (ZATCA is not entitled to make assessments and claim withholding tax for 2009 due to the five-year statute of limitations) item according to reasons and Grounds stated herein.
8. Dismiss Taxpayer's appeal by majority regarding (Amounts charged to expenses that were not included in credit balances and on which withholding tax was not deducted from 2009 to 2011) item, and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
9. Accept Taxpayer's Appeal regarding (Interests of Loans Capitalized within Advances from Shareholders in 2010 and 2011) and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
10. Regarding (Amounts Payable to Related Parties) item:
 - Accept Taxpayer's appeal regarding the request to exempt amounts payable to related party (... Company in Bahrain for 2010), in a total amount of SAR 80,676,658, from withholding tax.
 - Accept Taxpayer's appeal regarding the related party item (... in Bahrain for 2010) in an amount of SAR 491,853,646 in its objection to levying withholding tax as determined by the Primary Committee that classified it as subject to withholding tax due to its reclassification as a loan, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
 - Accept Taxpayer's appeal regarding the related party item (... Company in Bahrain in an amount of SAR 376,800), and overturn the primary Decision in this regard according to reasons and Grounds stated herein. Accept Taxpayer's appeal regarding the remaining related parties (Group In an amount to SAR 318,185 and its tax of SAR 47,728 for 2010, (... Group in an amount of SAR 19,659,247 and its tax of SAR 2,948,887 for 2010, (... Company in Sudan for 2010 in an amount of SAR 11,814,443), (... Group in an amount of SAR 88,696,985) and ...



- in Sudan in an amount of SAR 3,562,500 and its tax of SAR 534,375 for 2011), and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
11. Regarding (Withholding Tax on Services Listed under Constructions in Progress for 2010 and 2011) item:
- Accept Taxpayer's appeal regarding the amounts paid to (... Company (... Company in Switzerland) Company in China) by and subjecting 10% of total amounts paid to withholding tax at a rate of 5%.
 - Dismiss Taxpayer's appeal by majority regarding advance payments made to (... Company in Bahrain) and overturn the primary Decision in this regard.
12. Regarding (Non-imposition of Late Payment Fine on Withheld Amounts) item, the Department decides that imposing late payment fine on the items for which the appeal was not accepted is valid, while nullifying fine for the items for which Taxpayer's appeal was upheld, as the principal amounts were nullified according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-85)
Delivered in Appeal No. (Z-1513-2018)

Principle No. 161

The entitlement to allowances and wages is contingent upon the existence of an employment relationship between a worker and an employer, rather than between shareholders.

Principle No. 162

The principle in handling zakat calculation for shareholders' current account is to add it to zakat base, while ensuring that a full lunar year is completed by adding either the beginning or ending balance, whichever is lower.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 20/02/1442 AH corresponding to 07/10/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed as per Royal Order No. (65474) dated 23/12/1439 AH in accordance with Paragraph (B) of Article (67) of Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 19/10/1438 AH corresponding to 13/07/2017 AD by ... Company, Certified Public Accountants, against Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (23) of 1438 AH rendered in Case No. (4791/22/1435) filed by the Appellant against ZATCA. The primary Decision ruled as follows:

First: Accept the objection in form filed by Taxpayer (... Company), Certified Public Accountants, regarding zakat assessment for years from 2009 to 2011.

Second: On Merits:

1. Uphold ZATCA procedure regarding the calculation of annual bonuses exceeding 5% of net profit according to Decision Grounds.
2. Uphold ZATCA procedure outlined in adding variance of social insurances and employee housing allowances to zakat base according to Decision Grounds and in the amounts specified therein.
3. Uphold ZATCA procedure outlined in adding costs of private housing rents and medical insurance to zakat base according to Decision Grounds.
4. Uphold ZATCA procedure outlined in adding ticket, travel and accommodation expenses to Taxpayer's zakat base according to Decision Grounds.
5. Uphold ZATCA procedure outlined in adding expenses of gifts, gratuities, donations and administrative fees to Taxpayer's zakat base according to Decision Grounds.



6. Uphold Zakat Payer's claim to accept the cost of health insurance for employees and their families as a deductible expense from its zakat base according to Decision Grounds.
7. Uphold ZATCA procedure outlined in adding zakat paid for 2009 and 2010 to Zakat Payer's zakat base according to Decision Grounds.
8. Resolution of the dispute between the parties regarding (Profit from sale of Fixed Assets) item according to Decision Grounds.
9. Uphold ZATCA procedure outlined in adding adjusted current balance to Zakat Payer's zakat base according to Decision Grounds.
10. Resolution of the dispute between the parties regarding (Investments) item according to Decision Grounds.

Dissatisfied with this Decision, (... Company Certified Public Accountants) submitted to the Department a statement of appeal summarized as follows:

1. (Annual Bonuses Exceeding 5% of Net Profit for 2009, 2010 and 2011) item: Zakat Payer is objecting to ZATCA procedure outlined in disallowing deduction of such bonuses for such years. ZATCA has adjusted the net profit without excluding amounts paid for such bonuses, even though they were expenses incurred under a bylaw that is applied at the Office and approved by the Ministry of Human Resources and Social Development. Zakat Payer argues that the variation in such amounts from one year to another is due to the fact that such bonuses are based on the performance appraisal of employees who carry out Office's audit-based tasks. Accordingly, there is a difference in the amount of such bonuses from one year to another depending on the effort and performance appraisal. Therefore, ZATCA procedure outlined in excluding amounts of such bonuses and adjusting net profit, without considering them as expenses incurred by the Office, does not align with the correct procedure, which requires considering such expenses as deductible.
2. (Variance of Social Insurance, Employee Salaries and Housing for Years from 2009 to 2011) item: Zakat Payer's objection involves failure to calculate the full social insurance, employee salaries and housing variance for years from 2009 to 2011 as declared in Zakat Payer's declaration, rather than the amounts of assessment, since the variance that was not included relates to wages of temporary employees in their probation period before their potential appointment to permanent positions, contingent on proven competency in the Office. This approach aligns with the approved probation period regulations. Accordingly, the variance between the contributable wages outlined in basic salary and housing allowance added as basic wages and additional amounts designated for temporary employees should be derecognized.
3. (Costs of Shareholders' Private Housing and Health Insurance for Years from 2009 to 2011) item: Zakat Payer believes that such housing rents outline actual expenses incurred by the Office, considering that such expenses are true and actual expense paid on behalf of shareholders working at the Office, including their private health insurance. Therefore, there is no valid basis for excluding such expenses that the Office incurred to run its business activities and operations. In addition, the argument that the leased properties involved transactions between non-independent parties does not change their classification as expenses.
4. (Unapproved Ticket, Travel and Accommodation Expenses for Years from 2009 to 2011) item: Zakat Payer's appeal in this regard involves assertion that such expenses are payments made for tickets purchased from travel agencies within the Kingdom, in addition to accommodation expenses related to official business trips and assignments that are necessary for Office's business activities, as shareholders and employees must visit clients across various regions of the Kingdom for auditing accounts, making them actual expenses directly associated with Office's business activity. Therefore, such



expenses should be deducted as expenses necessary for realizing Office's revenues. Accordingly, such expenses should be deducted from Office's net profit of the year, in addition to payments for tickets for families of shareholders and employees that are covered as part of contractual obligations when the Office makes contracts with employees. Thereupon, such payments related to ticket, travel and accommodation expenses become associated with realizing revenues. Accordingly, ZATCA procedure after deducting such payments from zakat base is invalid, given that we provided ZATCA with a detailed statement of costs of such travel and accommodation expenses, in addition to names of beneficiaries and their respective amounts.

5. (Gift, Gratuity, Donation and Administrative Expenses) item: Zakat Payer's objection involves ZATCA procedure outlined disallowing deduction of gratuity and donation expenses amounting to SAR 204,767 and SAR 153,693 for 2009 and 2010 respectively, in addition to gift and gratuity expenses amounting to SAR 204,167 and administrative expenses amounting to SAR 485,995 for 2011, given that such expenses comprise work-related expenses for employee lunches and group breakfasts during Ramadan, coffee and tea for employees during working hours and incentive gifts. Regarding donations, such donations were paid to aid various charities and entities. In addition, Zakat Payer maintains that Zakat Payer provided ZATCA with a detailed statement previously submitted to ZATCA that breaks down donations and gratuities paid. Accordingly, there is no valid reason for disallowing deduction of such expenses from zakat base for years in question.
6. (Zakat Provision for 2009 and 2010) item: Zakat Payer's appeal involves objection to ZATCA procedure outlined in adding an amount of SAR 101,586 and SAR 39,804 as zakat variances for 2009 and 2010, respectively. These adjustments resulted from ZATCA adjustment of zakatable net profit. However, Zakat Payer asserts that the financial statements and expenses charged during audit discussions for 2009 and 2010 were provided. In addition, the Office did not charge such amounts to the expenses for the two years in question. Accordingly, the net income included in zakat base does not include zakat provision, since zakat is calculated by adding net income before deducting its provision. Therefore, zakat variances reached by ZATCA, whereby it adjusted the net profit, were not based on actual financial records of the Office in light of the fact that ZATCA has not provided evidence to exclude amounts of such provisions, considering Office's approach to add such provisions to zakat base in line with its established handling of such provisions.
7. (Shareholders' Current Account Adjusted by Shareholders' Rent for 2011) item: Zakat Payer's appeal involves objection to the primary Decision that upheld ZATCA position outlined in adding balance of shareholders' current account for 2011 to zakat base, despite the fact such amounts did not complete a full year, since the rule for calculating zakat on shareholders' current account involves adding lower balance at either the beginning or end of the period to zakat base. Since such balances were recorded in 2011, as shown in shareholders' accounts that were submitted to ZATCA. Therefore, their addition to zakat base is invalid due to the fact that such balances did not complete a full year. Even assuming that ZATCA adjusted account balance, the lower beginning balance should have been excluded. However, ZATCA added the year-end balance instead, which is the higher balance at the beginning of the period amounting to SAR 985,586.

In addition, Appellant included within its requests a petition that the Department prompt ZATCA to implement Primary Committee's Decision that upheld Zakat Payer's objection to allowing amounts related to health insurance for families of shareholders and employees for years from 2009 to 2011. In addition, Appellant requested that the Department prompt ZATCA to amend the assessment by adding Riyadh branch's salaries and deducting such



salaries from zakat base as stated in the Decision rendered by the Primary Committee for Zakat and Tax Objections.

Since Zakat Payer's arguments, objections and requests regarding this appeal are summarized as previously outlined. Therefore, the Department asked ZATCA to reply to the objections to the items raised by Zakat Payer in the statement of appeal. Having taken cognizance of ZATCA answer dated 01/11/1441 AH regarding the subject matter of this appeal and the contested items in the statement of appeal, the Department found that ZATCA maintained its stance on such contested items, as previously presented at the time of considering Zakat Payer's objection before the Primary Committee. In addition, ZATCA insists on validity and correctness of its procedure regarding the contested items, and that Primary Committee's Decision was aligned with provisions of the law. Accordingly, ZATCA insists on the conclusion of such Decision, taking into account that Zakat Payer's arguments did differ from such arguments raised before the Primary Committee for Zakat and Tax Objections, to which ZATCA answered at that time. Therefore, ZATCA requests the Department to uphold the primary Decision and dismiss Zakat Payer's appeal regarding the contested items.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On Merits: After the Department found that the subject matter of appeal becomes ripe for adjudication after the Department determined that the statement of appeal, reply thereto and documents included in Case file are sufficient to form its conviction in order to adjudicate the subject matter of dispute over the contested items; therefore, the Department decided in this regard as follows:

1. (Annual Bonuses Exceeding 5% of Net Profit for 2009, 2010, and 2011) item: Having taken cognizance of Zakat Payer's appeal in this regard and ZATCA reply thereto, which was based on its reliance on the arguments raised during the hearing and pleading session before the Objection Committee, the Department found that such bonuses paid by Zakat Payer to its employees, which exceeds the amount accepted by ZATCA as the maximum deductible expense, do not substantially constitute a dispute over the principle of considering them as an expense. Therefore, this dispute shall not be considered a document-based dispute related to providing documents that prove the actual amounts paid as bonuses. Since ZATCA determination of a limit for deductible expenses as (5%) is not based on valid Grounds for disallowing deduction of the amounts exceeding this limit when calculating zakat base, as long as the dispute is not over the actual expense, as previously stated. Accordingly, exceeding this percentage to nearly (24%), as assessed by the Primary Department, does not justify excluding this expense from zakat base within such percent, especially when considering nature of the bonuses associated with the effort and work of the employee involved in auditing and reviewing accounts as part of office activities. Therefore, the Department concluded that this objection shall be accepted as a deductible expense based on the figures included in Zakat Payer's declaration.
2. (Variance of Social Insurance, Employee Salaries and Housing for Years from 2009 to 2011) item: Having taken cognizance of Zakat Payer's appeal and ZATCA answer to Zakat Payer's claims based on its satisfaction with the arguments raised during the hearing and pleading session before Objection Committee, the Department found that Zakat Payer does not object to the entire item; rather, the objection was based on disallowing deduction of amounts of temporary employees who were under probation



not included in social insurance contributions, considering that they are employees. In addition, the Office did not find that such employees are suitable for employment and making contracts with them except after expiry of probation period. Since the lack of social insurance contributions for such temporary employees is not sufficient to disqualify such expenses from being considered actual costs incurred by the Office for such temporary employees during the probation period, especially that the subscription with GOSI serves as an indicator, additional evidence or indication confirming these expenses as wages for temporary employees during probation that would support their validity. Since Appellant provided sufficient evidence to convince the Department that such expenses are incurred. Therefore, the Department has decided to recognize such expenses associated with wages for temporary employees as deductible expenses for years in question.

3. (Costs of Shareholders' Private Housing and Health Insurance for Years from 2009 to 2011) item: Having taken cognizance of Zakat Payer's appeal in this regard and ZATCA reply thereto, which was based on its reliance on the arguments raised during the hearing and pleading session before the Objection Committee, the Department found that the dispute over shareholders' rentals as per Zakat Payer's stance are necessary and incurred to enable the shareholders to perform their duties, similar to other expenses. However, ZATCA argues that the rental value paid by the Office is considered a dividend rather than an expense burden on the annual profit, particularly since it is allocated for the housing of some shareholders. Furthermore, Zakat Payer's recording of such rental values in its books and charging them to shareholders' current account results in disallowing addition of such amounts to zakat base for shareholder Mr. (...). Moreover, ZATCA argues that since such leased properties are owned by the shareholders themselves, the transaction is not independent and lacks impartiality in determining fair rental value. Moreover, such rent constitutes additional income for the shareholders, which shall be recognized in their zakat declaration; therefore, it cannot be considered a deductible expense. Having taken cognizance of the subject matter of dispute as previously outlined, the Department found that, in the case of companies, any payments made by a company to its shareholders are generally considered a dividend. The only payments that may be considered deductible expenses are those that can be recognized as such when paid to a shareholder who run the business, which would be treated as compensation for management services rather than as dividend. This is because such compensation could be paid to an external manager if the company outsourced its management, or when the company pays a shareholder for supplying services, materials or performing physical work of company's project. Such expenses, when paid to a shareholder for conducting Company's operations, are not treated as dividends, as they are expenses incurred for Company's requirements in conducting its activities. Any expenses beyond such situations, however, can only be considered a dividend to the shareholder, regardless of its name. Since the Office (... Company) grants a housing allowance to the shareholder, it should not be treated as an expense since this allowance is a benefit provided to the shareholder and does not relate to Company's (professional) activities, which involve auditing customers' financial statements. Accordingly, such expense cannot be considered a deductible expense from Company (Certified Public Accounts) zakat base, i.e., it does not constitute necessary expenses for realizing Company's revenues, given the nature of professional work carried out by the licensed shareholders, as Company's operation requires each shareholder to audit customers' accounts and files to enable the Office to express an opinion on such statements. Accordingly, given the nature of shareholders' professional work that their collective efforts rely on individual contributions of each shareholder, which are ultimately represented under Office's name. Since the deductible expense is defined as one that



is directly connected with the professional work that forms the core of Company's business activity in performing audits of customers' financial statements. Since the housing allowance granted to the shareholders does not meet this criterion as a deductible expense when provided to the shareholder due to the fact that it does not relate to realizing Company's revenue. An example of a deductible expense would be when the shareholder moves to examine the files and accounts of a customer outside the region in which the Company Head Office is located, as such expenses and the like are directly contingent upon realizing Company's revenue, rather than the housing allowance granted to the shareholder that outlines, by its nature, a benefit offered by the Company to the shareholder. Moreover, the amount paid in such manner cannot be considered a part of the compensation given to the shareholder who contributes to Company's business and management enable Office's shareholders to perform their professional accounting duties, based on which the Company is existing. The basis for disbursing and distributing this allowance to shareholders is not contingent upon shareholder's direct involvement in managing the Office that performs professional activities on behalf of all shareholders. Since these professional activities realizes fees from office's customers, which constitute Office's main revenue. Accordingly, Office's profits should be estimated after deducting expenses directly associated with realizing this revenue and then distributing profit among shareholders as per their mutual agreement. Therefore, the housing allowance provided to shareholders is not an expense necessary for realizing Office's revenue, but rather a benefit or benefit granted to the shareholder. Accordingly, the housing allowance shall be considered as a dividend and cannot be excluded from zakat base on the ground of being a deductible expense as stated above. In addition, the Department's conclusion outlined that the housing allowances given by the Company to shareholders should not be handled as a deductible expense is not challenged by Zakat Payer's reference to a fatwa, which states that housing allowances, salaries or transportation allowances provided to a shareholder shall be deducted from zakat base, just like employee salaries and allowances, considering what their peers receive. This is because the essence of Fatwa indicates that handling such allowances as wages and salaries, similar to what is given to employees, is contingent on shareholder's involvement in managing and running the Company. Accordingly, applying Fatwa to every amount given to the shareholders by the Company, without being related to shareholder's role in managing Company and separating it from their professional work as a shareholder, would be a misapplication. It would incorrectly compare what is given to the shareholder as if it were equivalent to employee wages, since the amounts received by shareholder in return for his professional work is considered a share of profit, given that there is no employment relationship between shareholder and the Office. Entitlement to such allowances and wages is also contingent upon existence of an employment relationship between an employee and an employer, a relationship that does not exist between the Company and its shareholders when they perform their professional duties under Company's umbrella, for which they receive fees in return for their professional work, and the resulting profit is then divided among shareholders according to their agreement. The validity of this conclusion is not undermined by discussing by the Committee that rendered the Decision of ZATCA procedure outlined in disallowing deduction of rental amounts on the ground that such amounts were either not objectively justified in their value or were paid to related parties. It is sufficient that, in their true nature, they are considered dividends from the Company to shareholders, as previously outlined. Since it is established as per rulings of the court of appeal that a Decision may be upheld in its conclusion with amendment to its reasoning. Since it is concluded that handling such allowances as dividends to the shareholders, rather than as wages comparable to those received by Office's employees, is appropriate since the



shareholder is not considered an employee when carrying out his professional duties at the Office. Therefore, the Department decides, by majority, that the validity of Decision's conclusion that the rental allowances granted by the Company to the shareholders should not be considered a deductible expense from Zakat Payer's zakat base.

As for the other element related to the contested item, namely (Health Insurance Amounts Paid by the Office to Shareholders), and Zakat Payer's claim to consider such payments as deductible expenses from zakat base. Having taken cognizance of Zakat Payer's objection in this regard, the Department found that such expenses provided as health insurance by the Company to its shareholders cannot be handled as claimed by Zakat Payer other than health insurance for workers and employees, as Office's revenue realization is not contingent upon providing health insurance to its shareholders. Since comparing such expenses to those paid to employees to attract them to work for the Office differs from such expenses paid to the shareholders, as the relationship between the Company and its shareholders does not fall under the same rules that govern the employment relationship between the (Company) and its employees. Therefore, the rules applicable to such relationship shall not apply to the relationship between the shareholders and the Office when they perform their professional duties. Accordingly, it is not appropriate to deduct health insurance amounts paid by the Office for the shareholders on the ground that such expense is deductible expense. In reality, such expense is a benefit provided by the Company to its shareholders and should be considered as a dividend rather than handled as an expense similar to health insurance paid for Company's workers and employees, as the shareholder is not an employee when performing his professional duties at the Office. Therefore, the Department decides, by majority, to uphold the Decision's conclusion that the amounts paid as health insurance by the Company to the shareholders should not be considered a deductible expense from Zakat Payer's zakat base.

4. (Unapproved Ticket, Travel and Accommodation Expenses for Years from 2009 to 2011) item: Zakat Payer provided a detailed statement of the beneficiaries of such tickets and payments made as travel and accommodation expenses. Since ZATCA argument at the time of considering Zakat Payer's objection before Objection Committee that there was a lack of detailed information regarding such expenses. Therefore, the Department, having taken cognizance of documents provided by Zakat Payer, found that the details included a statement of beneficiaries and entities to which such expenses were paid, which makes the Department convinced of the validity and reasonableness of such expenses as necessary for Office's business activity when engaging with its customers, verifying and auditing their financial statements at their various locations across the Kingdom. ZATCA objection that the statement of beneficiaries included the shareholders themselves does not undermine this conclusion, since the professional activities of the Company rely on personal efforts of the shareholders to carry out audit and review work for Office customers. Therefore, shareholders' benefit from travel tickets and accommodation expenses is justified by the nature of Office's business activity and relation of such expenses to realization of revenue arising from shareholders' professional activities. Thereupon, such expenses are considered deductible expenses.
5. (Gift, Gratuity, Donation and Administrative Expenses) item: Having taken cognizance of Zakat Payer's appeal subject matter regarding specifics of this item, particularly gift, gratuity and donation expenses, the Department found that Zakat Payer's submission did not present any credible evidence to support such expenses as deductible from zakat base, as Zakat Payer simply classified such expenses with the intention of deducting them from zakat base. Accordingly, the Department decided to dismiss Zakat Payer's claim to deduct such expenses from zakat base. However, the

Department concluded that such amounts shall be handled as a dividend and funds utilized by Zakat Payer in the manner claimed. Thereupon, such expenses shall be considered as a dividend that decrease the balance of retained gains at the end of the year, which, in turn, becomes the opening balance for the following year for the purpose of calculating zakat in each of years in question.

As for administrative expenses, the dispute between Zakat Payer and ZATCA is document-based, given that the Committee upheld ZATCA position outlined in disallowing deduction of such expenses because Zakat Payer did not provide any supporting documents. Since the Department requested Zakat Payer to provide a clear breakdown of such expenses for each year, along with supporting documents, to verify their relevance to Zakat Payer's business activities and the specific year in which they were incurred. However, Zakat Payer only submitted a statement breaking down such expenses and some documents that, in its view, support its claim. Since the Department did not find sufficient evidence to confirm that such expenses meet the criteria of deductible expenses, especially since some of them were stated as having been incurred by one of the shareholders. Since such a statement does not conclusively establish that these are traceable expenses directly related to Company's activities, as they did not follow the standard approval process within the Company itself, but rather were handled solely by one of the shareholders. Therefore, the Department concluded that these amounts shall be handled as a dividend and funds utilized by Zakat Payer in the manner claimed. Thereupon, such expenses shall be considered a dividend that decreases the retained gains at the end of the year, which then forms the opening balance for the following year for the purpose of calculating zakat in each of years in question.

6. (Zakat Provision for 2009 and 2010) item: Since Zakat Payer's appeal regarding this item, as previously outlined in the summary of arguments included in this Decision, was based on the fact that ZATCA concluded that Zakat Payer had accounted for zakat as an expense for years in question without verifying the same from various financial statements provided by Zakat Payer for the years subject matter of objection. Merely stating that zakat is not a deductible expense is not sufficient to refute Zakat Payer's claim based on its declaration. Accordingly, ZATCA did not provide any evidence to substantiate its conclusion that Zakat Payer erred in deducting amounts paid as zakat as an expense for years in question. As such, the initial stance remains valid, which is to accept Zakat Payer's submission in this regard due to the lack of evidence disproving it and insufficiency of ZATCA conclusions to overturn that stance. Therefore, the Department accepts Zakat Payer's appeal regarding the contested item, and decides not to allow adjusting profit as proposed by ZATCA and decided in the primary Decision by adding back to zakat base.
7. (Shareholders' Current Account Adjusted by Shareholders' Rent for 2011) item: Since Zakat Payer's appeal regarding this item as previously outlined within its arguments regarding this item summarized within this Decision. Since the standard principle in zakat calculation for shareholders' current accounts is to add the beginning balance or closing balance, whichever is lower, to zakat base. Since ZATCA did not add the lower balance of this account without providing a reason for deviating from this established practice in zakat assessment. In addition, such amount based on which the assessment was made has not been confirmed that a full year has completed. Therefore, the Department accepts Zakat Payer's appeal regarding this item, overturns the primary Decision's conclusion in this regard rules to adopt the lower balance at the beginning of the period as reflected in the financial statements provided by Zakat Payer for calculating zakat base.

As for the statement of appeal submitted by Zakat Payer regarding the request to prompt ZATCA to implement the primary Decision that upheld Zakat Payer's



position in certain items or specific aspects, the Department has decided to dismiss this request, considering that it does not constitute a matter of dispute, but rather it pertains to ZATCA implementation of the primary Decision, which falls beyond Department's jurisdiction given the lack of contention in this regard as previously explained.

Decision

First: Accept the appeal in form filed by Zakat Payer (.... Company, Certified Public Accountants), C.R. No. (...), against Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (23) of 1438 AH.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Annual Bonuses Exceeding 5% of Net Profit for 2009, 2010 and 2011) item, allowing such item as a deductible expense based on Zakat Payer's declaration, and overturn the primary Decision in this regard according to reasons and Grounds stated herein
2. Dismiss Zakat Payer's appeal regarding (Variance of Social Insurance, Employee Salaries and Housing for Years from 2009 to 2011) item, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
3. Dismiss Zakat Payer's appeal by majority regarding (Costs of Shareholders' Private Housing and Health Insurance for Years from 2009 to 2011) item, and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
4. Accept Zakat Payer's appeal regarding (Unapproved Ticket, Travel and Accommodation Expenses for Years from 2009 to 2011) item, and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
5. Dismiss Zakat Payer's regarding (Gift, Gratuity, Donation and Administrative Expenses) item, and determine that such expenses shall be considered as a dividend that decreases the balance of retained gains at the end of the year, which, in turn, becomes the opening balance for the following year for the purpose of calculating zakat in each of years in question according to reasons and Grounds stated herein.
6. Accept Zakat Payer's appeal regarding (Zakat Provision for 2009 and 2010) item and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
7. Accept Zakat Payer's appeal regarding (Shareholders' Current Account Adjusted by Shareholders' Rent for 2011) item, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-120)

Delivered in Appeal No. (Z-1515-2018)

Principle No. 163

The principal rule for resolving disputes regarding whether dividends are subject to zakat is governed by a Sharia-based criterion: Whether zakatable wealth is still in Zakat Payer's possession for a full lunar year, while there is no Sharia-based evidence that supports the obligation to levy zakat on wealth that Zakat Payer no longer owns, as it has been transferred to others before the completion of a full lunar year.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 03/04/1442 AH corresponding to 18/11/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Order No. (65474) dated 23/12/1439 AH in accordance with Paragraph (B) of Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 22/07/1439 AH by ... Company against First Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (22/6) of 1439 AH rendered in Objection No. (26982) of 1438 AH filed by Appellant against ZATCA, in which the primary Decision ruled as follows:

First: Accept the objection filed by (...) Company

Second: On Merits:

Uphold ZATCA procedure outlined in disallowing deduction of year's dividends from Zakat Payer's zakat base for 2014 and 2015 according to reasons and Grounds stated herein.

Dissatisfied with this Decision, (...) Company submitted to the Department a statement of appeal summarized as follows:

The Company appeals against ZATCA procedure outlined in disallowing deduction of dividends to shareholders amounting to SAR 1,080,007,800 and SAR 157,298,000 over two years, as the Company argues that the Decision was based on a Fatwa stating that factory's revenues spent throughout the lunar year on non-trading assets should not be considered as zakatable assets, considering that they are considered acquisition assets. However, the Company argues that this Fatwa does not apply to its situation, since the dispute involves dividends that are no longer in Company's possession and should not be included in Company's zakat base. Furthermore, if profits are separated into an independent account when shareholders do not claim such profits, they should not be added to zakat base. However, the fact is that dividends should be deducted from zakat base, regardless whether such dividends pertain to the current or previous years, since the decisive factor is whether such dividends are in longer in Company's possession. Since



such profits have already left Company's possession; therefore, such dividends should be deducted from Company's zakat base.

Since the Department asked ZATCA to reply to claims included in Appellant's statement of appeal regarding the contested items. Therefore, ZATCA submitted an answer dated 02/12/1441 AH, maintaining its stance presented before the Objection Committee at the time of considering Zakat Payer Company's objection. In addition, ZATCA requests upholding appealed Decision that upheld the correctness and validity of ZATCA procedure, given that Zakat Payer Company's arguments do not undermine validity of the conclusion reached by the Committee that rendered the Decision. Thereupon, ZATCA requests the Department to dismiss Zakat Payer Company's appeal and uphold the appealed Decision.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company, the Department found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits: Having taken cognizance of Case file, documents included therein and the statement of appeal, the Department, after reviewing the subject matter of dispute, found that the dispute involves Zakat Payer Company's objection to ZATCA procedure outlined in adding dividends of each year to Zakat Payer Company's zakat base. The Company argues that the decisive factor is that profits should not be added to zakat base if such profits are no longer in Company's possession and are not retained as funds that require inclusion in zakat base. On the other hand, ZATCA maintains, as stated in its position at the time of considering dispute before the Primary Committee, that its procedure outlined in disallowing deduction of dividends is valid, considering that only retained gains carried over should be deducted. Since the Department taken cognizance of the basis on which the Committee that rendered the Decision as a reason for the conclusion of adding year's dividends to zakat base for 2014 and 2015, and disallowing deduction of such dividends on the ground that year's profits are not subject to zakat due to the fact that such dividends were distributed during that year. In addition, this results that zakat should not be levied on the enterprises that distribute their profits on case by case basis to avoid zakat obligations, potentially facilitating tax evasion on substantial amounts. Having taken cognizance of the true fact of the dispute and position of the Committee that rendered the Decision, the Department found that principal rule, whether dividends are subject to zakat or not, is governed by Sharia-based criterion: Whether zakatable wealth is still in Zakat Payer's possession for a full lunar year. Since it is established that there is no dispute over the fact that the Company distributed the profits in question in the form of dividends to shareholders, which entails that Company does not possess such funds. Accordingly, the Company should not be obliged to pay zakat on such funds after leaving Company's possession before completing a full lunar year. This conclusion supported by the recognized rules that zakat is due is not undermined by what the Primary Committee states in its reasoning that such approach outlined that zakat payer enterprises distribute the profits does not refute the fact the zakat is due on their large funds, and that this is zakat evasion, since the principal rule for acquittal requires that the companies distribute their profits to shareholders without delay, so that shareholders pay zakat on their funds realized from dividends. In addition, there is no Sharia evidence for levying zakat on funds that are no longer held by Zakat Payer after transfer to others before completing a full lunar year. As such, the Department accepts Zakat Payer's appeal and overturn the primary Decision by allowing deduction of dividends for 2014 and 2015 from Company's zakat base.



Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), against First Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (22/6) of 1439 AH.

Second: On Merits:

Accept Zakat Payer's appeal regarding (Zakat Payer's Dividends for 2014 and 2015), allow deduction of dividends from Zakat Payer's zakat base for 2014 and 2015, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-115)

Delivered in Appeal No. (Z-1519-2018)

Principle No. 164

It is not valid to assume that the excess in current account is intended to finance fixed assets without a direct relation between the excess in current account and asset that is financed.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 25/03/1442 AH corresponding to 11/11/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Order No. (65474) dated 23/12/1439 AH in accordance with Paragraph (B) of Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 04/03/1439 AH by ... Company against Primary Committee for Zakat and Tax Objections in Dammam Decision No. (29) of 1437 AH rendered in Case No. (8) of 1436 AH filed by Appellant against ZATCA, in which the primary Decision ruled as follows:

First: Accept the objection in form filed by Company to ZATCA zakat assessment for years from 2007 to 2009.

Second: On Merits:

1. Uphold ZATCA procedure outlined in adding an amount of SAR 41,536,047 for financing fixed assets to zakat base for 2007.
2. Resolution of the dispute over (Lands for Years from 2007 to 2009) item.
3. Add expenses allowed by GOSI at 11% of total salaries for Saudi employees and 2% of total salaries for non-Saudi employees, and add back any excess, if any, to year's results.
4. Uphold ZATCA procedure outlined in adding an amount of SAR 5,907,952 to zakat base for 2009.
5. Uphold ZATCA procedure outlined in deducting investments amounting to SAR 250,000 from zakat base for 2009.

Dissatisfied with this Decision regarding some of its items, (... Company) submitted to the Department a statement of appeal dated 04/03/1438 AH, in addition to a supplementary memorandum dated 05/03/1442 AH after the pleadings were opened. In the latter memorandum, the Company stated that it maintains its previous position on the contested items outlined in the former one, except for Item No. (3) related to the advance payments made by customers in the amount of SAR 61,382,110 for 2009. The Company explained that such amounts are deducted from the payments made to the contractor to enable them to prepare the site and provide materials to start work in exchange for



providing bank guarantees. In addition, such amounts are deducted by the percentage of ongoing invoices over project execution period. However, due to unforeseen circumstances beyond Company's control, the projects in Jizan Region were ceased because of the outbreak of war, making it impossible to continue project implementation and preventing decreased advance payments, noting that there is a debit balance for 2019 for the same entities from whom such advance payments were received. In addition, it is assumed that ZATCA offsets the debit balance and outstanding advance payments for the same creditor, as stipulated in ZATCA Guideline for Construction Sector. Moreover, the Company concluded its supplementary memorandum by requesting amending final zakat assessment for years in question.

Since the Department asked ZATCA to reply to claims included in Zakat Payer Company's statement of appeal. Therefore, ZATCA submitted an answer dated 02/03/1442 AH corresponding to 06/11/2020 AD wherein ZATCA reiterated that Company's arguments in its appeal do not differ such arguments raised before the Primary Committee, to which ZATCA answered at that time. In addition, ZATCA maintains that its procedure aligns with the relevant provisions, instruction and resolutions that support validity and correctness of its procedure. Moreover, ZATCA requests the Department to uphold the primary Decision due to the fact that there are not any arguments that undermine such conclusion in light of Zakat Payer Company's appeal, while ensuring that Zakat Payer Company did not submit new petitions at the time of considering appeal, which should be dismissed in accordance with Article (186) of the Law of Civil Procedure.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company, the Department found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits: Having taken cognizance of Case file, documents included therein, statement of appeal and ZATCA answer, the Department found that the supplementary memorandum included Zakat Payer's objection to (Advance Payments Made by Customers in the Amount of SAR 61,382,110 for 2009) item. Having taken cognizance of the primary Decision, it turned out that Zakat Payer Company had previously filed an objection to this item, which was considered when the Primary Committee discussed the dispute over this item regarding another assessment that included this item and for which a primary Decision other than the Decision appealed by Zakat Payer was rendered. Since Zakat Payer did not deny, regarding this item, when objecting it within another assessment for which a primary Decision was rendered including adjudication on such item as outlined in facts of the appealed Decision; therefore, this requires that Zakat Payer's appeal should not be discussed regarding this item, as its Decision is unrelated to the Decision against which Zakat Payer filed the appeal regarding its items included in its wording, which does not include the contested item, i.e. (Advance Payments Made by Customers in the Amount of SAR 61,382,110 for 2009). In addition, Zakat Payer is entitled to appeal, as stipulated by the law, regarding this item included in the separate primary Decision and render a Decision in this regard according to its wording. Similarly, this applies to Zakat Payer's objection regarding (Overstated Social Insurance for 2009) item, which was also resolved in a separate primary Decision regarding its relation to zakat base for that year. Therefore, this Department decided not to consider the dispute over such items, while reserving Zakat Payer Company's right to appeal the conclusion of that separate primary Decision in light

of the requirements for considering appeal against the primary Decision whose wording includes adjudication on the contested item in that separate primary Decision. This Decision will instead focus on discussing items that are subject matter of appeal, as follows:

1. (Funding by Shareholders for Asset Purchase in the Amount of SAR 41,536,047) item: Since the Department found that Zakat Payer's appeal involves claim to disallow adding (Shareholders' Current Account Amounting to SAR 41,536,047 for 2007) to zakat base. Having taken cognizance of the primary Decision and ZATCA stance on this item, the Department found that the Committee had previously upheld ZATCA assumption that the amount in dispute amounting to SAR 41,536,047 was used in full to fund fixed assets based on the statement of cash flow that reflects asset purchases amounting to SAR 46,879,985. On the other hand, Zakat Payer asserted that only SAR 17,392,000 of shareholders' current account funds were allocated specifically for land acquisitions in 2007, with the remaining amount added to the current account aimed at financing Company's operating activity. Having taken cognizance of the nature of dispute between Zakat Payer and ZATCA as previously outlined, and given that ZATCA has not demonstrated a direct relationship between the increased amount in shareholders' current account in dispute and increased amount of fixed assets, the Department found that it is not reasonable to rely solely on the statement of cash flow to conclude that the added fixed assets were funded through the current account, as the statement of cash flow does not necessarily provide a direct relation between financing sources and their uses. In addition, Zakat Payer could finance asset from multiple sources, including cash on hand from the sale of other assets, annual revenues, bank financing, shareholders contributions, etc. Thereupon, it is not valid to assume that the excess in current account is intended to finance fixed assets without a direct relation between the excess in current account and asset that is financed. Therefore, the Department accepts Zakat Payer Company's appeal and overturns the primary Decision regarding this item, by disallowing addition of the amount of SAR 41,536,047, which was included in Primary Committee's analysis at the time of considering that objection, to Zakat Payer's zakat base based on the ground that the amount did not complete a full lunar year, and that there was no evidence of its use for items deductible from zakat base.
2. (Overstated Social Insurance for 2009 Amounting to SAR 409,257 and SAR387,825 for 2008) Item: Having taken cognizance of Zakat Payer's appeal regarding this item and facts of the primary Decision, subject matter of appeal, the Department found that Primary Decision No. (11) of 1435 AH had previously addressed the issue of overstated social insurance variances for 2009, and the assessment was made based on the conclusion reached in that Decision. Zakat Payer argues that this Decision was appealed. Accordingly, the Department concluded that Zakat Payer's appeal shall be limited to (Overstated Social Insurance for 2008) item, as this is the specific dispute associated with Decision No. (29) of 1437 AH subject matter of the Case. Zakat Payer objects to the amount of such social insurance variances that ZATCA added to Company's zakat base, contesting primary Decision's conclusion, which upheld ZATCA position outlined in calculating and adding back such variances and to Zakat Payer's zakat base. Zakat Payer claims that GOSI Certificate was submitted, showing paid subscriptions and penalties that were actually paid by the Company. Therefore, ZATCA position outlined that the excess arose after calculating wages and salaries according to the deducted rates for both Saudi and foreign employees, and adding the excess amounts to Zakat Payer's base to adjust the results of that year, is invalid. Since the primary Decision was based on the fact that Case file did not include GOSI Certificate. Since ZATCA should have elaborated its position on Zakat Payer's claim that it had submitted the relevant certificate. Since there is no indication from Decision facts that ZATCA denied Zakat Payer's claim. Since the principal rule is considering



information provided by Zakat Payer in its declaration, and there is no reason to disregard this principal rule based on the review of Case facts when validating Zakat Payer's claim at the time of considering dispute. Since there is no evidence from appeal review to affirm that ZATCA disproved existence of GOSI Certificate verifying disbursement of such amounts. Therefore, the Department accepts Zakat Payer's appeal, overturns the primary Decision and determines relying on data included in Zakat Payer's declaration, by considering wage and salary expenses as deductible expenses for that year without adding any additional amounts for 2008, which contradicts the conclusion reached in the primary Decision.

3. (Advance Payments from Customers - Completed a Full Lunar Year - in the Amount of SAR 62,383,110 for 2009) Item: Having taken cognizance of Zakat Payer's appeal regarding this item, and after reviewing the primary Decision subject matter of appeal, the Department found that the wording of the primary Decision stated that this item was already subject to objection by Zakat Payer in a prior primary Decision No. (11) of 1435 AH. Since the appeal filed by Zakat Payer is unrelated to this primary Decision, as it was previously adjudicated in the aforementioned primary Decision; therefore, the Department has decided not to address the subject of this item within this appeal that pertains specifically to primary Decision No. (29) of 1437 AH rendered by the Primary Committee in Dammam.
4. (Short-Term Loans - Completed a Full Lunar Year - Amounting to SAR 5,907,953 for 2009) Item: Since Zakat Payer objects to ZATCA approach that was upheld by the Committee, which outlines adding balance of short-term loans to zakat base for that year, while such loan amounts had left Company's possession and have been fully spent. Since it is established that the Fatwa is based on the assumption that the borrower is only liable to pay zakat on the amount if it remains in his possession and has not been fully or partially expended. In this case, zakat shall be due when such amounts complete a full lunar year. This requirement does not apply in this case, as the Company no longer holds the loan amount. Having taken cognizance of short-term loan movement, the Department found that the Committee thoroughly traced account's movement and repayments, in addition to the balance at the end of the period of that account, which was equivalent to zakat base amount in question. Thereupon, Zakat Payer's appeal is unsubstantiated, as zakat principles and rules cited do not align with the actual situation of the loan, as they reveal the existence of closing balance, despite claims that loan funds were fully expended and are no longer existing. Therefore, the Department dismisses Zakat Payer's appeal and upholds the primary Decision regarding the item in question.
5. (Investments for 2009) Item: Zakat Payer Company objects to ZATCA procedure outlined in adding only investment amount paid to the investee company by Zakat Payer's ownership percentage in the primary capital and disallowing deduction of investment amount recorded under shareholders' current credit account. Zakat Payer argues that any calculation other than this approach when handling such investments would result in double payment of zakat if the amount is included in zakat base of both the investee company and Appellant Company that has investments in investee company. On the other hand, ZATCA believes that only the portion that outlines Zakat Payer's share in the statutory capital of investee companies (... Company) should be deducted. Therefore, shareholders' current account balance is excluded from investment balance at year-end, as it is handled as a loan. Accordingly, zakat on loan amount is borne by both the lender and borrower, given that there are two separate financial entities, which prevents any double payment of zakat. Having taken cognizance of ZATCA approach in handling amount of such investment, the Department found that ZATCA only deducted Zakat Payer's share in the capital of investee company, while disallowing deduction of the amount recorded in



shareholders' current account on the ground that it did not outline an investment paid by Zakat Payer but rather a loan provided to the investee company. However, in dealing with calculation of zakat on investments paid by Zakat Payer and reflected in shareholders' credit account, such amounts should be considered as equity and not limited solely to documented equity shares in the primary capital or documented increases. This is particularly relevant as Zakat Payer's financial statements reflect such payments as actual investments, rather than loans made to the investee company. Therefore, it is appropriate to deduct such investments from zakat base to avoid double payment of zakat, especially given that the investee companies file their zakat declarations to ZATCA, where shareholders' current account balance is included in their zakat base. In addition, this is not undermined by the claim that such amounts constitute a loan, unless it is not supported by evidence that there is a lending agreement or repayments. Accordingly, the Department accepts Zakat Payer's appeal, by allowing deduction of investment amount from zakat base, and overturns the primary Decision in this regard.

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company) against Primary Committee for Zakat and Tax Objections in Dammam Decision No. (29) of 1437 AH.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Funding by Shareholders for Asset Purchase in the Amount of SAR 41,536,047) item, overturn the primary Decision in this regard and allow adding such amount to Zakat Payer Company's zakat base according to reasons and Grounds stated herein.
2. Dismiss Zakat Payer's appeal regarding (Overstated Social Insurance for 2009) item according to reasons and Grounds stated herein.
3. Accept Zakat Payer's appeal regarding (Overstated Social Insurance Amounting to SAR 387,825 for 2008) item, overturn the primary Decision in this regard and determine relying on Zakat Payer's appeal by considering that wage and salary expenses are deductible for that year without charging any excess amounts for 2008.
4. Dismiss Zakat Payer's appeal regarding (Advance Payments from Customers - Completed a Full Lunar Year - in the Amount of SAR 62,383,110 for 2009) item according to reasons and Grounds stated herein.
5. Dismiss Zakat Payer's appeal regarding (Short-Term Loans Completed a Full Lunar Year Amounting to SAR 5,907,953 for 2009) item, and uphold the primary Decision in this regard according reasons and Grounds stated herein.
6. Accept Zakat Payer's appeal regarding (Investments for 2009) item, overturn the primary Decision in this regard and allow deduction of investment amount reflected in the financial statements from its zakat base according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-86)
Delivered in Appeal No. (Z-2018-1533)

Principle No. 165

The excess in loans throughout the fiscal year shall be verified to ensure that it has neither completed a full lunar year nor been used to finance fixed assets, so as to avoid being added to zakat base for that year.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Saturday, 23/02/1442 AH corresponding to 10/10/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Order No. (65474) dated 23/12/1439 AH in accordance with Article (67.b) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened in Riyadh to consider the appeal filed on 04/05/1439 AH by/ ... Company, and ZATCA's appeal filed on 13/04/1439 AH, against Decision No. (5) of 1439 AH issued by First Primary Department for Zakat and Tax Objections in Riyadh rendered in Case No. (38/12) filed by both parties to the appeal against the Decision under consideration which ruled as follows:

First: Accept the objection in form filed by (... Company) to zakat assessment for years from 2005 to 2013.

Second: On Merits:

1. Uphold Zakat Payer's stance outlined that ZATCA is not entitled to claim Zakat Payer to pay zakat variances for 2005 and 2006, and dismiss Zakat Payer's objection for 2007, 2008 and 2009.
2. Establish resolution of the dispute when Zakat Payer accepted ZATCA stance outlined in deducting fixed asset balance included in the financial statements.
3. Establish resolution of the dispute when Zakat Payer accepted ZATCA stance outlined in deducting spare part inventory, consumables, other materials and lease inventory from zakat base.
4. Dismiss Zakat Payer's objection and uphold ZATCA stance outlined in calculating end-of-service provision.
5. Dismiss Zakat Payer's objection and uphold ZATCA stance in adding loans that completed a full year to zakat base.
6. Establish resolution of the dispute when ZATCA accepted Zakat Payer's request regarding advance payments.

Dissatisfied with this Decision, both parties, ... Company and ZATCA, submitted a statement of appeal to the Department that included their objection to the following items:

1. ZATCA's appeal filed on 13/04/1439 AH:



ZATCA appeals against Decision conclusion in which the Primary Department upheld Zakat Payer Company's stance outlined that ZATCA is not entitled to claim Zakat Payer to pay zakat variances for 2005 and 2006, as ZATCA deems that Committee's inference that there is an error when making zakat assessment after expiry of statutory period as concluded by the Committee does not align with the instructions, ministerial resolutions and fatwas concerning zakat collection, considering that the religious obligation of zakat is not prescribed by the passage of time, no matter how long it takes, as zakat remains a debt on those upon whom zakat is due. This is because the debt of Allah deserves its payment as stated by the Prophet Muhammad (peace be upon him).

2. Appeal filed by Company On 06/05/1439 AH:

The Company appeals against Primary Committee's Decision that upheld ZATCA procedure of adjusting Zakat assessment for the years from 2007 to 2009, considering that the period set under the instructions for levying Zakat have set a five-year period for examining and reviewing declarations with Zakat Payer from the deadline for filing Zakat declaration. Since the Department found that ZATCA only issued the final assessment on 06/10/1436 AH corresponding to 23/07/2015 AD, taking into account that ZATCA started addressing Zakat Payer to discuss its account on 12/06/2011 AD. Accordingly, the five-year period calculated from the deadline for filing Zakat declaration expires on 30/04/2015. Therefore, ZATCA shall be entitled to claim Zakat Payer with Zakat for the years from 2005 to 2009.

In addition, Zakat Payer Company's appeal involves the primary Decision that upheld ZATCA stance in the method of calculating end-of-service provision, as ZATCA relied, in proving validity of its position in this regard, on the statement that there is no effect of the method used in determining zakat base when calculating end-of-service provision, while the fact is that there an excess in Zakat base, which resulted from disallowing deduction of end-of-service dues payable to Company's employees, as Zakat Payer's accounts reflect a total amount for the years in question from 2005 to 2012 amounting to SAR 28,302,665 that resulted in increasing Zakat amount by SAR 735,869.

Moreover, Zakat Payer's appeal involves primary Decision that increased loans added to zakat assessment without completing a full year and related to loans in years from 2010 to 2012, as such loans were held by the Company and were not used in financing fixed assets, as evidenced by their classification as short-term investments amounting to SAR 40,000,000 in 2012, SAR 35,000,000 in 2011 and SAR 11,500,433 in 2010. ZATCA, in its assessment, added the total amount of such loans amounting to SAR 50,801,341. However, the Company argues that the total amount that completed a full lunar year during the years in question was SAR 24,914,150, while the amount that did not complete a full year is SAR 25,877,191.

Since the Department asked ZATCA to answer to claims included in Appellant's memorandum regarding the items, subject matter of objection, within (10) days from the date of sending such application to ZATCA dated 22/11/1441 AH. Since the Department did not receive any answer by ZATCA regarding reasons of appeal included in Zakat Payer Company's statement of appeal regarding the contested items related to ZATCA assessment after expiry of the time-limit and without expressing reasons for delay in providing answer. Given that the appeal shall bring the case back to its original state existing at the time of consideration when hearing appeal. Therefore, ZATCA statements and answers included in primary Decision regarding the subject matter of appeal shall be considered.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted by both Appellant Company and ZATCA, the Department found that the conditions for hearing



appeal have been fulfilled in form in accordance with conditions stipulated by the relevant laws, regulations and resolutions. Therefore, both appeals are accepted in form due to the fact that they were filed by parties having capacity and within the statutory period.

On Merits: Since the Case became ripe for hearing both appeals filed by the Company and ZATCA regarding the items subject matter of their respective appeals as follows:

1. As for ZATCA's appeal and request to uphold its approach in recalculating Zakat variances for 2005 and 2006 for which the primary Decision ruled that ZATCA is not entitled to claim Zakat variances under ZATCA procedure by correcting any error that ZATCA deems appropriate after expiry of the five-year period calculated from the deadline for filing zakat declaration for each year: Having taken cognizance of reasons provided by ZATCA and its ground for correcting such assessment in view of observations to Zakat Payer's declaration. Since ZATCA did not dispute the apparent that ZATCA notified Zakat Payer of such observations to introduce amendment and correction as ZATCA deems appropriate to Zakat assessment after expiry of the five-year period specified under the instructions for levying Zakat, but rather its objection was based on the fact that the religious obligation of due zakat is not prescribed by lapse of the specified period by which Zakat Payer claims that ZATCA right is forfeited after expiry of the statutory period for making amendments. Since the dispute does not involve the obligation of Zakat owed by Zakat Payer, but rather the dispute involves ZATCA entitlement to introduce amendments after expiry of the statutory period. Since the instructions for levying zakat that were based on determining five-year period from the deadline for filing Zakat Payer's declaration for each year have been established in order to maintain transaction stability and prevent instability of Zakat Payers' financial positions in case of lack of a timeframe that ensures maintaining their financial positions. Since this matter does not result in releasing Zakat Payer from its legal obligation if Zakat Payer is already concerned with fulfilling such obligation but rather outlines a procedural issue with relation to ZATCA entitlement to reopen assessments after expiry of statutory period during which ZATCA was enabled to amend the assessment and inform Zakat Payer thereof throughout the five-year period without extending such right behind such period established by the instructions for levying Zakat. Therefore, the Department concluded to consider what included in Zakat Payer's declaration for 2005 and 2006 in question, and that ZATCA approach of making amendment to add Zakat variances for the two years after expiry of the statutory period for issuing final assessment is invalid.
2. As for Zakat Payer Company's appeal against Primary Committee's Decision regarding the items contested by Zakat Payer Company: After the Department asked ZATCA to answer to claims included in Appellant's memorandum regarding the items, subject matter of objection, within (10) days from the date of sending such request to ZATCA dated 22/11/1441 AH. Since the Department did not receive any answer by ZATCA regarding reasons of appeal included in Zakat Payer Company's statement of appeal regarding the contested items related to ZATCA assessment after expiry of time-limit and without expressing reasons for delay in providing answer. Given that the appeal shall bring the case back to its original state existing at the time of consideration when hearing appeal. Therefore, ZATCA's statements and answers included in primary Decision regarding subject matter of appeal shall be considered.

As for Zakat Payer Company's appeal regarding primary Decision that upheld ZATCA procedure in reassessing zakat variances for years from 2007 to 2009, and since it is apparent from facts of the primary Decision regarding this item and documents included in Case file that ZATCA had notified the Company of such observations in order to make the necessary adjustment and correction of zakat assessments as ZATCA deems appropriate after expiry of five-year statutory period according to instructions for levying zakat. Since it was found that ZATCA only issued final assessment on 06/01/1436 AH



corresponding to 23/07/2015 AD. Since the instructions for levying zakat are based on determining five-year period from the deadline for filing Zakat Payer's declaration for each year. Since such instructions are established to maintain the stability of transactions and prevent instability of Zakat Payers' positions in case of absence of a timeframe that ensures maintaining their financial positions not jeopardized. In addition, this is proven against ZATCA. Therefore, the Department concluded to consider information included in Zakat Payer's declaration for years in question from 2007 to 2009, not to uphold ZATCA in making correction by adding zakat variances for years in question after expiry of the period stipulated for issuing final zakat assessment and to overturn primary Decision in this regard.

As for Zakat Payer Company's appeal regarding its dispute over calculating end-of-service gratuity provision according to primary Decision. Having taken cognizance of Primary Committee's conclusion that upheld ZATCA stance in proving validity of its position in this regard, the Department found that there was no impact on the method used to determine zakat base when calculating end-of-service gratuity provision. Since the core dispute was not over the method used but rather over the discrepancy in the amounts added to Zakat Payer Company's Zakat base, which differed from Company's calculation of what should be added to or deducted from Zakat base concerning the end-of-service gratuity provision. The Company argued that Zakat base had been inflated due to non-deduction of the end-of-service dues for its employees. ZATCA assessments had shown an additional total amount of SAR 28,302,665 for the disputed years from 2005 to 2012, resulting in an increased Zakat amount by SAR 735,869. Since the dispute over the claimed variance was not addressed when considering dispute regarding Company's objection to ZATCA assessment for the disputed years. Neither ZATCA nor Primary Committee clarified their stance on this dispute over the variance that the Company incurred its Zakat based on ZATCA assessment. Since Primary Committee's reasoning was based on the assertion that the unused portion of the provision did not impact Zakat base was insufficient to prove the matter disputed by the Company regarding such excess amounts incurred by the Company, considering that Zakat Payer, according to Decision facts, did not dispute the method of calculating the remaining unused portion of provision to add such portion to Zakat base for each year. Accordingly, the Department did not find clear evidence to deviate from what included in Zakat Payer's declaration when adding amounts related to end-of-service provisions for years in question, in contrary to what included in primary Decision with regard to considering ZATCA assessment by calculating amount of such provisions within Zakat base as concluded in primary Decision in this regard. Therefore, the Department accepts Zakat Payer's appeal, by calculating amount of such provisions and adding it to Zakat Payer's Zakat base based on its declarations for such years, and overturns primary Decision that upheld ZATCA stance on calculating amount of such provisions within Zakat Payer's Zakat base based on ZATCA assessment.

As for Company's dispute over loans added to its zakat base for years from 2010 to 2012 without having completed a full year, as Zakat Payer's appeal was related to the increased amount resulted from adding loans to its zakat base for years from 2010 to 2012, without taking into account that such amounts did not complete a full year and did not finance fixed assets. Since ZATCA stance was that the balance of such loans was used in financing fixed assets, as reflected in Grounds of the Decision regarding loans for 2010, 2011 and 2012 that such loans were used in financing fixed assets according to notes to the financial statements of such three years. Having taken cognizance of field inspection report, Primary Committee found that the loans were used in purchasing fixed assets that had been already deducted from zakat base. Since ZATCA did not support its claim that such loans financed fixed assets with a credible evidence to deviate from Zakat Payer's zakat base. Thereupon, the Department concludes that ZATCA procedure outlined in adding such loans to zakat base is invalid. Therefore, the Department accepts Zakat Payer's appeal regarding Zakat



Payer's petition to adopt Zakat Payer's declaration regarding loan amounts when being added to zakat base for years from 2010 to 2012, and overturns the primary Decision regarding this item.

Decision

First: Accept appeal filed by Zakat Payer/ Company, and appeal filed by ZATCA against Decision No. (5) of 1439 AH issued by First Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Dismiss appeal filed by ZATCA regarding recalculation of zakat variance for 2005 and 2006, and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
2. Accept appeal filed by Zakat Payer regarding reassessment of zakat variances for years from 2007 to 2009, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
3. Accept appeal filed by Zakat Payer by calculating end-of-service provision as reflected in Zakat Payer's declarations for years in question, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.

Accept appeal filed by Zakat Payer regarding non-addition of loans added to zakat assessment without having completed a full year for years from 2010 to 2012 and adopting Zakat Payer's declarations when calculating its zakat base, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.

Similar Decisions:

First Appellate Department for Income Tax Violations and Disputes

Appellate Decision (IR-2021-444)

Appellate Decision (IR-2022-53)

Appellate Decision (IR-2022-22)



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-137)

Delivered in Appeal No. (Z-1539-2018)

Principle No. 166

Government grants take on the characteristic of acquisition assets, and consequently, their equivalent value must be recognized in equity at fair value, similar to tangible capital. Zakat Payer does not acquire ownership of them, especially if they are land, until they are developed.

Principle No. 167

There is no specific limit on the size of non-current assets to be deducted from the base when they are financed by internal or external sources.

Principle No. 168

There is no legal basis that necessitates subjecting the adjusted net profit as the base upon which the obligatory Zakat is calculated. Rather, it is a positive item within Zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Saturday, 11/05/1442 AH, corresponding to 26/12/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, in accordance with Paragraph (B) of Article (67) of Income Tax Law, promulgated under Royal Decree No. (M/1) of 15/01/1425 AH, as amended under Royal Decree No. (M/113) of 02/11/1438 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 18/03/1439 AH, by/ Company, against Decision No. (2/1) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (201) of 29/06/1437 AH, filed by Zakat Payer against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept Zakat Payer's objection in form for being submitted by a person with legal capacity and within the statutory prescribed period.

Second: On Merits:

1. Uphold ZATCA Decision with regard to adding the amount of (SAR 22,338,280) to the net accounting profit for the year 2013 AD.
2. Uphold ZATCA Decision with regard to calculating legal zakat based on Zakat Payer adjusted net profit for the year 2013 AD.
3. Uphold ZATCA Decision with regard to calculating legal zakat based on Zakat Payer adjusted net profit for the year 2013 AD, and thus disallow deduction of investments, in accordance with Grounds mentioned in the Decision.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

1. Item (Capital gains resulting from sale of the Third Ring Road lands): Zakat Payer filed its appeal to challenge ZATCA action of adding the amount of (SAR 22,338.000) to the net accounting profits and derecognize the government grant estimated for the land with the amount of (SAR 21,090.000). Zakat Payer believed that capital gains resulting from the land sale are essentially a government grant, are not recognized in zakat base as equity as stipulated by the accounting standard related to government subsidies, and are classified as a statutory reserve that cannot be distributed annually. Zakat Payer also claimed that ZATCA considered such capital gains as a capital financing source when imposing zakat thereon. Moreover, Zakat Payer recognized capital gains as part of other income for the year 2013 AD, and such gains are disclosed in the income statement with the amount of (SAR 31,538,051), which represents the value of the land minus its book value. Therefore, ZATCA amendment to the overall net profit of the capital gains is invalid.
2. Item (net fixed assets and their equivalent within the limits of equity): Zakat Payer filed its appeal to challenge ZATCA action of deducting the net fixed assets and their equivalents within the limits of equity with the amount of (SAR 21,090.000) from zakat base. Moreover, Zakat Payer claimed that ZATCA ignored the government capital grant that was transferred to the statutory reserve by Zakat Payer/Company as evidenced by the financial statements of the year ending on 31/12/2013 AD, although Zakat Payer confirmed that the government capital grant was recognized as equity throughout previous years in line with the accounting standard related to dealing with government subsidies and grants.
3. Item (long-term investments): Zakat Payer filed its appeal to challenge ZATCA action of non-deduction of long-term investments from zakat base. Zakat Payer confirmed that this investment is by nature an 8% shareholding in a closed joint-stock company called Co.

The Department decided to open pleadings for both litigants. On 17/11/1441 AH, Zakat Payer/Company provided its response confirming that it adheres to its appeal on the three items and provided an explanation of its viewpoint on the contested items, which did not differ from its previously submitted statements considered by the Primary Committee in Zakat Payer objection. The Department was satisfied with making a reference to the content of that Decision for avoidance of repetition.

In response to Zakat Payer appeal regarding the disputed items, ZATCA presented its response confirming its perspective previously presented in its letter dated 29/03/1442 AH before the Primary Committee when considering the objection of Zakat Payer/Company. ZATCA called for upholding the appealed Decision, which confirmed the validity and integrity of ZATCA action, given that all allegations raised by Zakat Payer/Company did not go beyond its previous ones presented in its objection before the Primary Committee, which were responded to by ZATCA at that time.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company, the Department found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On merits, after considering the overall defenses presented by Appellant concerning the aforementioned items, the Department decided as follows:

1. Item (Capital gains resulting from sale of the Third Ring Road lands): Upon considering the dispute subject matter concerning this item, it turned out that Zakat

Payer filed its appeal to challenge ZATCA action of adding the amount of (SAR 22,338,000) to the net accounting profit and derecognize the value of the government grant estimated for the land with the amount of (SAR 21,090,000). Zakat Payer believed that capital gains resulting from the land sale are essentially a government grant, are not recognized in zakat base as equity as stipulated in the accounting standard related to government subsidies, and are classified as a statutory reserve that cannot be distributed annually. Zakat Payer also claimed that ZATCA considered such capital gains as a capital financing source when imposing zakat thereon. Moreover, Zakat Payer believed that it had recognized the capital gains as part of other income for the year 2013 AD, and such gains are disclosed in the income statement with the amount of (SAR 31,538,051), which represents the land value minus its book value. Therefore, ZATCA amendment to the overall net profit of the capital gains is invalid. On the other hand, ZATCA contended that Zakat Payer obtained a land by means of a government grant, and such land was estimated at (SAR 21,090,000), then Zakat Payer incurred development costs with the amount of (SAR 2,393,860), and as a result the land value was recognized in Financial Statement No. (7) for 2010 AD with the amount of (SAR 23,483,860) as a part of Zakat Payer fixed assets. After that, the land was sold with the amount of (SAR 56,240,197) as disclosed in Financial Statement No. (15) for 2013 AD, and the calculated gains realized from such sale were estimated at (SAR 31,508,057) and were recognized in the 2013 Financial Statement with the net profit of (SAR 37,800,450). ZATCA deducted the actual fieldwork costs incurred for land development as recognized by Zakat Payer. Moreover, ZATCA argued that the land value, as assessed by Zakat Payer upon receipt of the government grant, was solely for financial reporting purposes. Consequently, when selling the land and receiving its value, its original cost basis, which was never actually paid, should not be deducted from the capital gains realized on the sale. Upon careful consideration of both Zakat Payer and ZATCA situations with regard to this disputed item, the Department found that zakat estimation in such cases requires a distinction between government grants and subsidies. Government grants are considered acquisition/fixed assets, and therefore, their fair value should be recognized in the equity section, similar to in-kind capital. The ownership of such grants, in the case of lands, is only transferred to Zakat Payer after land development. On the other hand, government subsidies are considered income, as they are received in cash, increasing the total (cash) assets subject to zakat and owned by Zakat Payer. Based on the above, the land was sold as a fixed asset by Zakat Payer, and its estimated value and development costs were deducted from the land sale value, and the Company subjected the difference to zakat as capital gains. Moreover, the Company included the land value in its reserves when estimating zakat, taking into consideration that ZATCA deducted the costs of development works, which means that amount in question has already been subject to zakat as part of the annual profits. Therefore, ZATCA amendment of the net profit for that year with relation to capital gains is considered a double taxation imposed on the same funds that have already been subject to zakat previously, given the way adopted by Zakat Payer to estimate such capital gains as the difference between the estimated land value plus its development costs and its sale value. Therefore, the Department decided to accept Zakat Payer appeal, reject amendment of net profit by the land cost as recognized in Zakat Payer financial statement for the year ending on 31/12/2013 AD, and overturn the primary Decision reached in this regard.

2. Item (net fixed assets and their equivalent within the limits of equity): The dispute between ZATCA and Zakat Payer concerning this item happened as a result of Zakat Payer objection to ZATCA action of deducting the net fixed assets and their equivalents within the limits of equity, with the amount of (SAR 21,090,000) from zakat base. Zakat Payer claimed that ZATCA ignored the government capital grant



that was transferred to the statutory reserve by Zakat Payer/Company as evidenced by the financial statements of the year ending on 31/12/2013 AD, although Zakat Payer confirmed that the government capital grant was recognized as an equity throughout previous years in line with the accounting standard related to dealing with government subsidies and grants. On the other hand, ZATCA believed that the Company has the right to deduct net fixed assets, investments, and undistributed losses if the positive elements added to the zakat base exceeded the negative elements deducted therefrom. However, if the sum of the negative elements deducted from zakat base exceeded the positive elements added thereto, then Zakat Payer shall be obligated to pay Zakat based on the adjusted net profit, considering it as a return on capital, as per Sharia, since Zakat on such returns is due in the same year as the original capital. This action is usually taken by ZATCA when estimating zakat imposed on adjusted profit in similar cases and is applicable to all Zakat Payers. Since fixed assets are deducted within the limit of equity, i.e., if the zakat base is less than the net annual profit, then the entire annual profits shall be subject to zakat. This action adopted by ZATCA was supported by various Decisions issued by many appeal committees and was endorsed by virtue of ministerial Decisions. Therefore, deductions from the Zakat base elements were within the limits of equity, which were estimated at (SAR 56,107,938) in the assessment, resulting in a net adjusted profit of (SAR 60,471,290) being subject to zakat. ZATCA clarified that the statutory reserve balance was taken into consideration when making the assessment after deducting the government grant with the amount of (SAR 279,407) at the beginning of the period. Therefore, there is no basis for the objection filed by the Company because the aforementioned amount was not included in zakat base. It is established that funds are only subject to zakat when they remain the same in the possession of Zakat Payer for a full year without being spent. ZATCA calculated zakat base based on its conclusions concerning the net adjusted profit, which is inconsistent with Sharia rules, as Zakat Payer is obligated to pay zakat based on the funds available at its possession the time zakat becomes due and payable. So, the zakat amount concluded by ZATCA based on adjusted net profit to represent the zakat base is far away from reality, as it is established to impose zakat based on net profit as a component of zakat base; therefore, zakat base amount is calculated through offsetting positive and negative elements to determine the due zakat amount, regardless of whether it is less/more than the net profit. Therefore, using adjusted net profit to calculate zakat base is not valid because profits resulting from revenues may not exist at the end of the year if they are spent by Zakat Payer to purchase an asset deducted, or used to pay any expenses or expenditures required by Zakat Payer business activity. Therefore, the lesson here is adopting a general and fundamental principle that could be applied for calculating zakat base amount by ZATCA when making zakat assessments without using a method for extracting the adjusted profit when zakat base is negative or when that amount is less than the net profit calculated when determining Zakat Payer's zakat base. This approach is in line with many rulings reached by the Appeal Committee based on the principle of summing up positive elements and deducting negative elements to conclude the amount that shall subject to zakat, regardless of the value of non-current assets that can be deducted from the taxable base, regardless of whether they are financed by internal or external funds. Accordingly, there is no legal basis for imposing the adjusted net profit as the base on which the zakat obligation is calculated as demanded by ZATCA and confirmed by the primary Decision reached in this regard.

3. Item (long-term investments): Zakat Payer filed its appeal with regard to this item to challenge ZATCA action of non-deduction of long-term investments from zakat base. Zakat Payer confirmed that this investment is by nature an 8% shareholding in a closed joint-stock company called Co. While ZATCA confirmed the validity of its



assessment, in which zakat was imposed on the adjusted net profit for the year, as previously stated in the second item of this appeal. This approach applies to all Zakat Payers; consequently, there is no scope for deducting any other items of the adjusted net profit. It is worth noting that several Decisions issued by the Appeal Committee confirmed the validity of ZATCA action, which requires that zakat base shall not be less than the adjusted annual profits, unless Zakat Payer has carried-forward losses. Therefore, the adjusted net profit is considered the Zakat base. It was evidenced that the Committee issuing the Decision reviewed Zakat Payer declaration for the relevant fiscal year being disputed and found that Zakat Payer calculated Zakat based on the net result after adjusting Item No. (20500) and ignored the negative net balance in Item No. (20800). Consequently, the Committee validated ZATCA action, which requires that Zakat base of Zakat Payer shall not fall below the adjusted net profit for Zakat purposes as a minimum. ZATCA calculated zakat base based on its conclusions concerning the net adjusted profit, which is inconsistent with Sharia rules, as Zakat Payer is obligated to pay zakat based on the funds available at its possession the time zakat becomes due and payable. So, the zakat amount concluded by ZATCA based on adjusted net profit to represent the zakat base is far away from reality, as it is established to impose zakat based on net profit as a component of zakat base; therefore, zakat base amount is calculated through offsetting positive and negative elements to determine the due zakat amount, regardless of whether it is less/more than the net profit. Therefore, using adjusted net profit to calculate zakat base is not valid because profits resulting from revenues may not exist at the end of the year if they are spent by Zakat Payer to purchase an asset deducted, or used to pay any expenses or expenditures required by Zakat Payer business activity. Therefore, the lesson here is adopting a general and fundamental principle that could be applied for calculating zakat base amount by ZATCA when making zakat assessments without using a method for extracting the adjusted profit when zakat base is negative or when that amount is less than the net profit calculated when determining the zakat base of Zakat Payer. This approach is in line with many rulings reached by the Appeal Committee based on the principle of summing up positive elements and deducting negative elements to conclude the amount that shall subject to zakat, regardless of the value of non-current assets that can be deducted from the taxable base, regardless of whether they are financed by internal or external funds. Accordingly, there is no legal basis for imposing the adjusted net profit as the base on which the zakat obligation is calculated in the manner demanded by ZATCA. This approach is affirmed by the primary Decision regarding the item under consideration.

Decision

First: Accept, in form, the appeal filed by Zakat Payer/..... Company against Decision No. (1/2) of 1439 AH issued by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding item "Capital gains from the sale of Third Ring Road land", confirm amendment of the net profit by the difference in capital gains as determined by ZATCA, and overturn the primary Decision reached on this matter, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer's appeal regarding the item "Net Fixed Assets and Their Equivalents Within the Limits of Equity", confirm deduction of the relevant amounts as stated in Zakat Payer's declaration for that year, and overturn the primary Decision reached on this matter, in accordance with Grounds and merits mentioned herein.



3. Accept Zakat Payer's appeal regarding item "Long-Term Investments", confirm deduction of the relevant amounts as stated in the Zakat Payer's declaration for that year, and overturn the primary Decision reached on this matter, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-138)

Delivered in Appeal No. (Z-1540-2018)

Principle No. 169

The criterion for classifying investments for accounting purposes and considering them as trading securities or available-for-sale securities is based on the intention to hold those investments until maturity.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Saturday, 11/05/1442 AH, corresponding to 26/12/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, in accordance with Paragraph (B) of Article (67) of Income Tax Law, promulgated under Royal Decree No. (M/1) of 15/01/1425 AH, as amended under Royal Decree No. (M/113) of 02/11/1438 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 01/08/1439 AH, by/ Company, against Decision No. (4/1) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in Objection dated 16/02/1438 AH, filed by Zakat Payer against the General Authority of Zakat and Tax “GAZT” (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept Zakat Payer’s objection in form for being submitted by a person with legal capacity and within the statutory prescribed period.

Second: On Merits:

1. Uphold ZATCA’s Decision to deduct realized investment gains amounting to (SAR 2,379,991) from Zakat Payer’s zakat base for 2014 AD.
2. Uphold ZATCA’s Decision not to deduct deferred agricultural expenses from Zakat Payer’s zakat base for 2014 and 2015 AD.
3. Uphold ZATCA’s Decision not to deduct item investments in Islamic Murabaha transactions (short-term investments) from Zakat Payer’s zakat base for 2014 and 2015 AD.

All of the above is in accordance with the Grounds stated in the Decision.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

1. Item (Deferred Agricultural Expenses (Biological Assets) for 2014 and 2015 AD): Zakat Payer appeals against ZATCA’s action regarding this item, specifically its failure to deduct deferred agricultural expenses from Zakat Payer’s zakat base for the two years in question. Zakat Payer argues that these expenses should be deducted as they represent agricultural costs for the fruitful palm trees for the agricultural period from July 1 to June 30 of each calendar year. Furthermore, such expenses are transferred to inventory costs at the harvest season on June 30 of each calendar year. Therefore, they



should be considered as deductible expenses, contrary to the primary Decision which upheld ZATCA's contested action.

2. (Investments) Item: Zakat Payer challenges ZATCA's action in excluding investments in Islamic Murabaha transactions amounting to (SAR 45,000,000) and (SAR 35,000,000) from the negative elements of the final assessment. Zakat Payer states that it provided ZATCA with the Islamic Murabaha agreements between Zakat Payer Company and ... Bank, along with the bank statements for each Murabaha transaction. Zakat Payer argues that these investments are not short-term and therefore should not be included in the Company's zakat base. According to Zakat Payer, the criterion for classifying investments as trading securities or available-for-sale securities is based on the holding period until maturity, which aligns with the standard issued by SCOPA. Therefore, these investments should be treated as deductions from the zakat base, contrary to the primary Decision which upheld ZATCA's contested action.

Since the Department decided opening of pleadings for both parties to the appeal, Zakat Payer Company was asked to provide any additional comments regarding its appeal on the Decision under consideration. In response, Zakat Payer Company confirmed on 17/11/1441 AH its commitment to its appeal concerning the two items and provided an explanation of its viewpoint on the contested items, which did not differ from its position during the review by the Primary Committee regarding the company's objection. This division refers to the content of that Decision to avoid repetition.

ZATCA's response regarding the Appellant's memorandum related to the two contested items included a reaffirmation of its position presented before the Primary Committee during the consideration of the company's objection, in its reply dated 29/03/1442 AH. ZATCA, during consideration of Zakat Payer's objection, requested upholding the appealed Decision, confirming the validity and soundness of its actions and noted that the issues raised by Zakat Payer did not differ from those previously articulated during the review of its objection before the Primary Committee, to which ZATCA had already responded at that time.

The Department, having taken cognizance of memorandums of appeal and responds thereto, and having reviewed documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing Case documents and statement of appeal submitted by Zakat Payer, the Department found that conditions of appeal 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 statutory prescribed period.

As for the merits of case, after considering the overall defenses presented by the Appellant concerning the aforementioned items, as well as ZATCA's position on these issues as reflected in the primary Decision, the Department concluded the following:

1. Item (Deferred Agricultural Expenses (Biological Assets) for 2014 and 2015 AD): The dispute between Zakat Payer and ZATCA regarding this item revolves around Zakat Payer's challenge to ZATCA's Decision not to deduct deferred agricultural expenses from Zakat Payer's zakat base for the two years in question. Zakat Payer argues that these expenses should be deducted as they represent agricultural costs for the fruitful palm trees for the agricultural period from July 1 to June 30 of each calendar year. Furthermore, such expenses are transferred to inventory costs at the harvest season on June 30 of each calendar year. Therefore, they should be considered as deductible expenses, contrary to ZATCA's Decision not to accept them as such. ZATCA, on the other hand, contends that Zakat Payer is seeking to deduct deferred agricultural expenses that appeared under current assets in its financial position statement. It



argues that these expenses do not qualify as biological assets, as stated in Zakat Payer's declaration for the amounts of (SAR 47,151,213) for 2014 AD and (SAR 50,091,334) for 2015 AD, as well as Note No. (7) in the financial statements and Note No. (6) for 2015 AD. The Committee's Decision not to deduct these deferred agricultural expenses from Zakat Payer's zakat base for the two disputed years is based on the observation that the zakat assessment conducted by ZATCA already included the deduction of net fixed assets and equivalent assets, as well as the entire amount of biological assets as reflected in Zakat Payer's financial statements for the two years in question. Zakat Payer's appeal, on the other hand, is based on the argument that these expenses benefit the Company's production processes over multiple seasons, leading the Company to classify these costs as deferred expenses eligible for deduction from the Zakat base, as they relate to production processes each year. The Department, upon careful consideration, found that the elements associated with these deferred agricultural expenses include depreciation of fixed assets, salaries, wages, fertilizers, pesticides, insurance, rents, travel tickets, and social security contributions, which relate to products that are not ready for sale and specifically concern fruits that have not been harvested during the two years in question. Furthermore, Fatwa No. (219) dated 09/07/1425 AH, upon which ZATCA relies to support its position against deducting these disputed deferred agricultural expenses, pertains only to the deduction of agricultural input inventories not other production inputs. Given that the nature of the production is linked to the existence of these costs and that these costs are essential to the annual production process of Zakat Payer's business, the Department concluded that there is no valid justification to prevent Zakat Payer from deducting these costs from its zakat base as indicated in its declaration for the two years in question. Therefore, the Department accepted Zakat Payer's appeal to deduct these deferred agricultural expenses as deductible expenses from zakat base for the disputed two years and to overturn the primary Decision regarding the item under consideration.

2. (Investments) Item: The dispute between ZATCA and Zakat Payer centers on Zakat Payer's challenge regarding the exclusion of investments in Islamic Murabaha transactions amounting to (SAR 45,000,000) and (SAR 35,000,000) from the negative elements of the final assessment. Zakat Payer states that it provided ZATCA with the Islamic Murabaha agreements between Zakat Payer Company and (...) Bank, along with the bank statements for each Murabaha transaction. Zakat Payer argues that these investments are not short-term and therefore should not be included in the company's zakat base. According to Zakat Payer, the criterion for classifying investments as trading securities or available-for-sale securities is based on the holding period until maturity, which aligns with the standard issued by SCOPA. Conversely, ZATCA maintains that the Islamic Murabaha investments, as indicated in its investment agreements, are short-term investments with a duration of 90 days, thus classifying them as current investments (trading assets), which do not qualify for deduction from the zakat base. The Department, after reviewing both parties' viewpoints regarding the contested item, emphasized that the zakat treatment of investments related to fund employment in Murabaha contracts necessitates an examination of the nature of the investments linked to those agreements. In Islamic Murabaha transactions, the results typically appear as cash at the investing entity, intended for investment and employment per the agreement between Zakat Payer and the entity (Bank). Alternatively, they may manifest as a debt owed by the buyer of the goods subject to the Murabaha. Consequently, the Department concluded that the amount of these investments, in both forms, constitutes zakatable wealth upon which zakat is due. Zakat Payer's claim that the Murabaha agreement constitutes a long-term investment through the agreement with the bank where the funds were deposited for investment purposes, as alleged, does not negate this conclusion, as the essence of the Murabaha



transaction requires the existence of cash owned by the investing entity at the bank or the resultant debt owed by the beneficiary of that cash intended for Murabaha after purchasing the goods per the agreement. Therefore, this Department concluded to dismiss Zakat Payer's appeal and uphold the primary Decision concerning the exclusion of Murabaha investments from Zakat Payer's zakat base for the two years in question.

Decision

First: Accept, in form, the appeal filed by Zakat Payer/..... Company against Decision No. (1/4) of 1439 AH issued by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding item deferred agricultural expenses (biological assets) for the years 2014 and 2015 AD, confirm deduction of such deferred costs as deductible agricultural expenses from zakat base for the two years in question, and overturn the primary Decision on this matter, in accordance with Grounds and merits mentioned herein.
2. Dismiss Zakat Payer's appeal regarding item investments in Islamic Murabaha transactions for the years 2014 and 2015 AD and uphold the primary Decision on this matter, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-40)
Delivered in Appeal No. (Z-1544-2018)

Principle No. 170

If the investment is in acquisition assets (i.e., non-current assets not intended for sale), then it is deducted from zakat base, and only its revenue is added to zakat base. However, if the investment is in trading assets (i.e., current assets intended for sale or trade for profit), then it is not deducted from zakat base and is subject to zakat. The existence of a documented, prior intention by the authorized person at the time of acquisition, which determines whether the assets are non-current or current, as well as the extent of any transactions (movement) during the year on these investments, will prove this.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Sunday, 21/11/1441 AH corresponding to 12/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH based on Article 67(b) of the Income Tax Law Promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened at its headquarters in Riyadh to consider the appeal filed on 19/07/1438 AH, corresponding to 16/04/2017 AD by/ Company, against Decision No. (13) of 1437 AH of the Second Primary Zakat and Tax Objection Committee in Jeddah delivered in Case No. (1544-2018-Z) filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept, in form, the objection submitted by Zakat Payer/ Company, regarding Zakat assessment conducted by ZATCA for the years from 2010 to 2012 AD.

Second: On Merits:

Uphold ZATCA's Decision to reject Zakat Payer's request to deduct these investments from its zakat base.

Dissatisfied with this Decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

The Company does not agree with ZATCA's calculation of item long-term investments. This is because Zakat Payer's intention in acquiring these shares was for the purpose of investment and its associated profits, and not for the purpose of sale and speculation as claimed by ZATCA. The changes occurring in the balances of these investments are due to the accounting standards requiring measurement of such investments at fair value, and this change in value does not signify a change in the intention to invest in these shares and convert it into an intention to speculate and sell.

The Department received a Reply from ZATCA regarding the submitted appeal, in which ZATCA concluded by being satisfied with what its viewpoint contained regarding the calculation of those investments and considering them as trading investments subject to



Zakat in the manner concluded in the appealed Decision, especially since what the Appellant Company mentioned was not new statements, contrary to what was stated in the appealed Decision.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having reviewed the case documents and statement of appeal submitted by the Appellant Company, established that the formal conditions for hearing the appeal were met as per the relevant laws, regulations and Decisions. Therefore, it decided to grant leave to appeal in form for being submitted by a person with a capacity and within the period prescribed by law.

On Merits Having reviewed the Case file, its contents, and the statement of appeal, and upon considering all of the Appellant's arguments, regarding the contested items, the Department found that the Appellant insists on the necessity of two conditions for investments to be considered long-term investments: 1. Intention of the authorized person before issuance of the investment Decision. 2. Absence of any trading activity during the year on those investments. Therefore, determining whether investments are subject to Zakat does not depend on whether the investment is long-term or short-term, but rather on the nature of the investment and not the duration of its acquisition. It is established that if the investment is in acquisition assets (i.e., non-current assets not intended for sale), then it is deducted from zakat base, and only its revenue is added to zakat base. However, if the investment is in trading assets (i.e., current assets intended for sale or trade for profit), then it is not deducted from zakat base and is subject to zakat. The existence of a documented, prior intention by the authorized person at the time of acquisition, which determines whether the assets are non-current or current, as well as the extent of any transactions (movement) during the year on these investments, will prove this. By referring to the accounting standard for investment in securities, it is clear that investment in securities is classified for presentation in the statement of financial position according to its nature into current investments and non-current investments. As for its measurement, Paragraph (112) requires that investment in trading securities be measured in the statement of financial position at fair value, and unrealized gains and losses are recognized in the income statement. Paragraph (113) requires that investment in available-for-sale securities be measured in the statement of financial position at fair value, and unrealized gains and losses are recognized in a separate component of equity. Upon reviewing the financial statements for the years from 2010 to 2012, it appears that the movement in these investments was the result of revaluing the investments at fair value at the date of the financial statements as required by the accounting standard. The origin of the change in the balance of the entry was not due to trading transactions, but rather it was merely an accounting entry that shows the losses or profits upon revaluation of these investments in question. As for the existence of a documented intention from the authorized person before the issuance of the investment, Zakat Payer submitted the Decision of the major shareholder of the Company (...), dated 14/07/1431 AH, which stated that it was agreed that the investment period would be at least one year. Zakat Payer also submitted certificates of the value of the investments, which stated that the Company does not intend to dispose of or trade them in the short term. Upon reviewing Paragraphs (3) and (4) of the board of directors' minutes of (... Company), it was stated that "3- It is important to focus on companies with high returns and companies with expected future growth. 4- Sale of purchased shares is timed after the company has achieved a satisfactory return, or in the event that the company needs liquidity to finance its due obligations". Based on the foregoing, and given the verification of the fulfillment of the basic conditions for



considering the investment as an investment that can be deducted as previously stated, which leads the Department to conclude that these investments should be considered as acquisition assets, and therefore cannot be treated as trading assets and included in Zakat Payer's Zakat base as concluded in the Decision that supported ZATCA's approach to dealing with these investments. Therefore, the Department has decided to accept Zakat Payer's appeal and overturn the primary Decision by excluding the balance of these investments from Zakat Payer's Zakat base.

Decision

First: Accept, in form, the appeal filed by Zakat Payer/ Company, C.R. No. (...), against Decision No. (13) of 1437 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

Accept Zakat Payer's appeal regarding its request to exclude the balance of investments for the disputed years from 2010 to 2012 AD from Zakat Payer's Zakat base, and overturn the primary Decision in this respect, for the reasons and merits stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-17)
Delivered in Appeal No.
(ZI-1549-2018)

Principle No. 171

The existence of a relationship between a branch and its head office during the audit of the branch's transactions does not justify disregarding the branch's accounts, especially considering the nature of the branch's activities in KSA, which complement the activities of the head office in KSA.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday, 28/12/1441 AH corresponding to 18/08/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) dated 23/12/1439 AH and Paragraph (B) of Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 14/10/1439 AH corresponding to 28/06/2018 AD, by ... Company's Branch against Decision No. (24) of 1439 AH rendered by the Second Primary Committee for Zakat and Tax Objections in Riyadh in Objection No. (16/39) filed by the Appellant against General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the Primary Decision stated as follows:

First: Accept, in form, the objection filed by ... Company's Branch to tax assessment for the years from 2012 to 2015 AD.

Second: On Merits:

1. Dismiss Taxpayer's objection to item (Making assessment on basis of estimated profit by 25%).
2. Resolution of dispute regarding the item of disregarding tax paid when filing declaration.
3. Dismiss Taxpayer's objection to item (Late payment fine).

Since this Decision was not accepted by the Plaintiff (Company Branch ...), the Plaintiff filed a statement of appeal that can be summarized as follows:

Taxpayer Company's Branch objects to the primary Decision that upheld ZATCA stance outlined in making assessment on basis of estimated profit by 25%, considering ZATCA claim for Taxpayer's failure to comply with provisions of laws applicable in the Kingdom with regard to keeping accounting books, recording Branch's transactions as stipulated by such laws and provisions thereof and maintaining documents that validate data recorded therein. In addition, ZATCA argues that keeping soft copies of such books and accounts shall not exempt the Branch from keeping and controlling such books and accounts as stipulated by the law in this regard, including having terminals in the Kingdom to validate data and accounting entries. Accordingly, the law does not prohibit keeping Branch's transactions in such manner, even if its business is connected with the central computer



existing at the parent company outside the Kingdom. Since it is found from examination works that Company's Branch sends a summary (Excel) sheet that includes expenses and documents that are sent to the Head Office via e-mail, so that the Head Office audits and approves such expenses, while adding a profit margin that outlines revenue. Thereupon, the unavailability of a terminal, as stated by the Branch, to validate all data and entries related to its business activity entails failure of Company's Branch to meet the requirements for keeping accounting books based on which ZATCA can make assessment according to Branch's date as stipulated by Article (58) of Income Tax Law and Article (56) of the Implementing Regulations thereof. Therefore, ZATCA made estimate assessment for Taxpayer (non-resident Company's Branch). Taxpayer affirms, in its appeal in this regard, that it is committed to keeping the required books in Arabic, and it provides ZATCA with financial statements in Arabic audited by its accountant. Assuming that there are violations related to bookkeeping as stipulated by the law, this matter falls within the jurisdiction of a government agency (Ministry of Commerce) that is responsible for investigating failure to comply with bookkeeping requirements. The existence of such violation does not justify disregarding such books and making estimate assessment for the Branch, particularly when there are financial statements for years in question audited by the chartered accountant. As for generating and sending information on (Excel) sheet to the Head Office, the aim of this procedure is to compare and settle accounting information with the accounting software used by the Head Office, so that such data is validated, while ensuring that there are not variances, and to verify Branch's accounts accordingly. To demonstrate Branch's compliance with keeping accounting books in Arabic within the Kingdom, the Branch has appointed a local company to keep accounting books and records on behalf of the Branch as stated above.

In addition, Taxpayer objects to disregarding tax paid when filing its declaration for years from 2012 to 2015. In this regard, Taxpayer also requests directing ZATCA to make amended assessment that considers the tax paid by the Branch when filing tax return for the above-mentioned years. Moreover, Taxpayer's appeal included dissatisfaction with imposing late payment fines resulting from adding other amounts to tax after ZATCA had made assessment, particularly that the dispute involves difference in opinions regarding interpretation of the laws and their proper application by ZATCA or Primary Committee. Accordingly, there is no valid ground for imposing late payment fine for errors that may occur when there is difference in technical opinions between the Branch and ZATCA.

Since the Department asked ZATCA to answer to claims included in the statement of appeal regarding the items in question, and since ZATCA submitted an answer wherein satisfied with maintaining its position submitted before Objection Committee at the time of considering Taxpayer Company's objection. In addition, ZATCA requested upholding appealed Decision that upholds validity and soundness of ZATCA procedure, considering that Taxpayer's arguments do not differ from such arguments raised when its objection was being considered before the Primary Committee, to which ZATCA answered at that time. Furthermore, ZATCA added in its supplementary answer that all amounts stated in Taxpayer's statement of appeal and related to tax paid for years from 2012 to 2015 were included in Taxpayer's account with ZATCA, which makes the dispute in this regard is resolved as stated in the primary Decision subject matter of appeal.

Having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions.



Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On Merits: Having taken cognizance of Case file, documents included therein and statement of appeal: As for Taxpayer's appeal regarding (Disregarding accounting records and books and levying tax based on estimated profits by (25%)), ZATCA levied tax based on estimated profits by (25%) on total revenues for years from 2012 to 2015. Since ZATCA disregarded tax returns submitted based on the accounting books for the above-mentioned years. Since ZATCA did not provide any substantial reasons for levying tax based on estimated profits and disregarding accounting books, other than those supported by the Second Primary Committee Zakat and Tax Objections. ZATCA based its procedure on the claim that the Branch failed to meet the statutory requirements for keeping accounting records in accordance with Article (58) of Income Tax Law. Since the violations claimed against Taxpayer were not substantiated in the manner that ZATCA claimed in its Case against Taxpayer in this regard. Accordingly, ZATCA estimated Appellant's tax base based on such claims. In addition, ZATCA reasoning for disregarding Taxpayer's accounts, specifically Branch's submission of an Excel sheet to the Head Office, concluding that the Branch does not keep its accounts in the Kingdom, is not a valid ground for discarding the fact that Taxpayer appointed a local accounting office to keep its accounting books (as allowed by Article (56.1) of the Implementing Regulations of Income Tax Law) in order to affirm Branch's compliance with requirements stipulated by the law in this regard, which is a common matter performed by many branches of foreign companies in the Kingdom. Moreover, Taxpayer's compliance with keeping its accounts is further reinforced by the fact that its financial statements are prepared with the confidence that such financial statements have been audited by one of the chartered accounting offices in the Kingdom. Therefore, ZATCA reliance on the relationship between the Head Office and the Branch to justify disregarding Branch's accounts is not valid, particularly that the Branch in the Kingdom serves as the non-resident company's instrument for implementing contracts of installation, calibration, operation, maintenance and management of computer systems and software, in addition to exporting them directly to customers in the Kingdom in such manner in which the Branch engages in business activity in light of its relationship with the Head Office. As such, this relationship between the Branch and the Head Office is understandable when accounting for all expenses to come up with profit margin for such services. Thereupon, the Department concluded that ZATCA did not have valid Grounds for disregarding Taxpayer's accounts in order to make estimate tax accordingly, by making an estimate tax assessment. Therefore, the Department accepts Taxpayer's appeal by calculating tax based on Taxpayer's returns and dismisses ZATCA approach outlined in making estimate assessment.

As for the request included in Zakat Payer's appeal regarding the calculation of tax amounts paid by Zakat Payer for years in question as stated in the primary Decision with regard to considering dispute between Zakat Payer and ZATCA as resolved in this regard. Since ZATCA affirmed in its reply to the Department that such amounts paid for the years in question were added to Zakat Payer's account with ZATCA. Since the matter was as stated, the aim of Zakat Payer from its request is achieved when ZATCA declared that Zakat Payer had paid the amounts for the years in question, and such amounts were included in Zakat Payer's account. Accordingly, ZATCA shall consider the same when assessing Zakat Payer's zakat base according to this Decision.

As for Taxpayer's appeal regarding late payment fines, since ZATCA claim for imposing late payment fine for tax ensues from variance between the amounts paid by Taxpayer as stated in its returns and ZATCA procedure outlined in levying tax on estimate basis that demonstrated variance in the amount of unpaid tax after disregarding Taxpayer's accounts. Since the Department concluded to consider Taxpayer's returns for the years in question, not to uphold ZATCA position outlined in disregarding Taxpayer's accounts and making



assessment on estimate basis as detailed, and to consider the appeal regarding this item within Grounds of this Decision with regard to the first item of appeal. As such, the variance of paid tax is no longer existing and payable by Appellant after this Decision had upheld calculating tax in light of Taxpayer's returns filed for the years in question. Therefore, the Department decided to cancel late payment fine adjudged in the primary Decision, as the conditions for imposing it on Taxpayer are no longer applicable due to the reasons for nullifying original fine claim.

Decision

First: Accept, in form, the appeal filed by Taxpayer (... Company's Branch), C.R. No. (...), against Decision No. (24) of 1439 AH rendered by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Accept the appeal filed by Taxpayer by considering Taxpayer's returns for the years from 2012 to 2015 and overturn the primary Decision in this regard according to reasons and merits stated herein.
2. Uphold calculating tax amounts paid by Taxpayer for the years from 2012 to 2015 when completing assessment under this Decision according to reasons and merits stated herein.
3. Cancel late payment fines for the years from 2012 to 2015 due to nullification of their basis and origin according to reasons and merits stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-102)

Delivered in Appeal No. (Z-102-2018)

Principle No. 172

The fact that the balances constituting the accounts payable did not arise from loans or debts, but rather represented trade accounts arising from transactions for services and the purchase of other materials, does not preclude the consideration of the balances of these accounts as constituting money in the possession of Zakat Payer, which is subject to Zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 24/04/1442 AH corresponding to 09/12/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened in Riyadh to consider the appeal filed on 07/07/1438 AH, by/ Institution against Decision No. (11) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah in Objection No. (1436/24/2146) filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept, in form, the objection submitted by/... Institution regarding Zakat assessment for the years ending on 30/04/2012 and 30/04/2013, in accordance with the reasons stated in the Decision.

Second: On Merits:

1. Uphold ZATCA's Decision to include import differences for the years 2012 and 2013, as per the merits stated in the Decision.
2. Uphold ZATCA's Decision to include partners' current accounts for 2013, as per the merits stated in the Decision.
3. Uphold ZATCA's Decision to include the accounts payable for the years 2012 and 2013 in Zakat Payer's Zakat base, as per the merits stated in the Decision.
4. Uphold ZATCA's procedure in handling the losses for the year 2012, as per the merits stated in the Decision.

Since Zakat Payer (... Institution) was dissatisfied with this Decision; it submitted a statement of appeal that can be summarized as follows:

1. Item (Import differences for the years 2012 and 2013): The Institution objects to the calculation of these differences, arguing that the Committee relied on data from Customs to prove these differences without considering the Institution's justifications for the existence of these amounts and without verifying the reasons for their existence. The Committee's justification for rejecting the reasons presented by the Institution was that it is difficult to accept them, even though these reasons are related to the pricing of the Ministry of Health, the cost of the imported goods, and



- commission differences when paying for the goods, which are factors that can affect the existence of these differences.
2. Item (Partners' current accounts): The Institution objects to the Committee's Decision to uphold ZATCA's viewpoint on including the highest balance of the Owner's current account of (SAR 12,997,113). The Institution argues that it has already provided data detailing the movement and specifics of this balance for the year ending on April 30, 2013. The Institution's accounting records show transfers and cash withdrawals from this account. Therefore, the balance of the Owner's current account that should be included in Zakat base is the amount that has completed a full lunar year after deducting the withdrawals during the year. According to Zakat Payer's statement, this amount is (SAR 3,557,117). This amount should be added to Zakat base after deducting the withdrawals. This is in accordance with ZATCA's circular dated 29/01/1432 AH regarding the treatment of partners' current accounts, which stipulates that the initial balance of the period should be taken after deducting withdrawals during the year. This amount is considered to have completed a full lunar year. As for additions, they are not considered to have completed a full lunar year unless they originate from funds that have completed a full lunar year, such as retained earnings, etc.
 3. Item (Accounts payable to suppliers for the years 2012 and 2013): Zakat Payer objects to the inclusion of the balances of these accounts in Zakat base, as the Committee has upheld ZATCA's position on this matter. ZATCA argues that these balances represent debts that are subject to Zakat calculation if the due date has passed, but in reality, these amounts do not constitute debts or loans. Rather, they are trade accounts arising from transactions for services and the purchase of other materials, and therefore should not be classified as loans. Supporting this argument are numerous rulings from the Board of Grievances that have concluded that Zakat should be calculated on the principal amount of a debt, and the debtor should not be required to pay Zakat on it to avoid double taxation on the same money. Since loans are not subject to Zakat for the debtor, according to these rulings.
 4. Item (Net carried forward losses for 2012): Zakat Payer objects to the Committee's Decision to uphold ZATCA's viewpoint on deducting the balance of carried forward losses in 2012 amounting to (SAR 2,884,841), as adjusted by the deductions and expenses that Zakat Payer disputed. Therefore, from Zakat Payer's perspective, the balance of these carried-forward losses should have been deducted according to the Company's financial statements, not according to the final assessment, because the Company's financial statements represent the correct basis for calculation, not the adjustments made by ZATCA to the loss calculation method. The amounts by which the carried forward loss was adjusted actually represent amounts that have left Zakat Payer's possession and no longer belong to it; therefore, they should not be added to Zakat base, contrary to ZATCA's calculation which was approved by the primary Decision.

The Department requested ZATCA to respond to the Appellant's memorandum with regard to the disputed items. Consequently, the Department received a Reply Memorandum from ZATCA dated 11/04/1442 AH, regarding Zakat Payer Institution's appeal memorandum which included the items Zakat Payer is contesting their assessment by ZATCA. In its Reply, ZATCA affirmed its viewpoint regarding the appeal submitted against the subject of the appeal, including a response regarding the import differences item, stating that the import differences were calculated and added to the profit due to Zakat Payer's failure to submit supporting documents for its objection, after comparing the value of the foreign purchases submitted by Zakat Payer with the foreign purchases issued by the Saudi Customs. Therefore, the correct calculation of these differences is to add them to Zakat Payer's Zakat base as ruled by the primary Decision. This approach is



confirmed by several rulings and Decisions issued by administrative courts and appeal committees. With respect to item (Owner's current account), ZATCA believes that its assessment conducted to Zakat Payer is consistent with the information provided in the statement of changes in equity, and therefore, it should be included in Zakat base at the end of the year. As for item (Accounts payable to suppliers), ZATCA believes that it has taken the correct action by adding the balance of these accounts that has completed a full lunar year to Zakat base. With regard to Zakat Payer's appeal on item (Carried forward losses for 30/04/2012), ZATCA affirms the correctness of its action in adjusting the account for that period ending with the import differences and considering the result as profits. Therefore, there are no losses that have not been deducted from the previous period, as the regulations stipulate that the losses that can be deducted are the losses for the year or years adjusted according to ZATCA's assessment. Previous disputes regarding these losses are still under consideration by the Appeal Committee.

Having taken cognizance of the appeal submissions as well as the case document, the Department established that the case has become ripe for adjudication.

Grounds



Upon reviewing Case documents and statement of appeal submitted by the Appellant Institution, the Department found that conditions of appeal 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 period prescribed by law.

On merits: Having reviewed the Case file, its contents, and the statement of appeal, and upon examining the Appellant's arguments on the aforementioned items, the Department finds the following:

First: Item (Import differences for the years 2012 and 2013): Upon careful consideration of the appeal filed regarding this item, ZATCA's response included in its Reply Memorandum, and the primary Decision that resulted in the appealed outcome, it has become clear to the Department that the Decision-making committee relied on the import differences proven by the data issued by Saudi Customs and did not investigate the reasons provided by the Appellant for the existence of these differences, as mentioned in relation to the import being linked to the Ministry of Health's pricing, the cost of the imported goods, and exchange rate differences when paying for the goods. The Decision-making committee merely rejected these reasons on the basis that it is unreasonable for the importer to sell at prices lower than the import value based on the instructions issued by the Ministry of Health regarding the determination of the selling price, and that the exchange rate differences cannot reach the level claimed by the Appellant before the committee. The data issued by Saudi Customs should be considered as evidence that can be compared with other evidence and indications, which does not necessitate relying on the conclusions it shows. It has not been established to this Department that ZATCA or the committee has taken steps to verify the truth or validity of the Appellant's claims in light of its failure to inquire from the Ministry of Health about the Appellant's claims, especially since the entity associated with these imports at that time was Saudi Customs, and both ZATCA and Saudi Customs were under the Ministry of Finance, and it would have been possible for ZATCA to verify the accuracy of the Appellant's claims in light of the supplemental memorandum submitted by the Appellant on 08/09/1439 AH, in which it confirmed its communication with Saudi Customs to confirm its claims, but Saudi Customs refused to provide it with what supports its viewpoint and requested that it be done through an official channel. ZATCA and the committee did not verify the exchange rate at which the alleged differences were based, claiming that it had changed, and it would have been possible for them to confront the Appellant with these proven rates, which contradict what it claimed before ZATCA and the committee when discussing its objection



to that item. The defenses presented by the Appellant make the presumption based on relying solely on the import data shown by Saudi Customs to calculate the differences from its Zakat base uncertain as to the accuracy of the assessment of these differences as decided in the primary Decision, in view of what is available to the conviction of this Department of reasons to disregard this presumption and not rely solely on Saudi Customs data and ignore what the Appellant presented to ZATCA as reasons that were not discussed as it should have been to refute the non-acceptance thereof. Given the aforementioned circumstances, it is necessary to consider as the basis the amount declared by the Appellant in its Zakat statement for the calculation of foreign import amounts within its Zakat base for assessment. Therefore, the Department has decided to accept Zakat Payer's appeal and overturn the primary Decision in this regard.

Second: Item (Owner's current account for 2013): Upon careful consideration of the Appellant's arguments regarding the calculation of the balance of this item as determined in the primary Decision, and considering that Zakat Payer stated that the actual and movement details of the balance of this item show a much smaller amount than the higher amount added by ZATCA to its Zakat base, and considering that Zakat Payer claims that the movements in this account during the year, including withdrawals and additions, resulted in a balance of (SAR 3,557,117), and that this amount is the balance that has completed a full lunar year, and after reviewing the audited financial statements, particularly those related to changes in equity, the Department has not found anything that contradicts what these statements show regarding the determination of the amount of the Owner's current account that has completed a full lunar year for the calculation of Zakat, in light of Zakat Payer's failure to challenge these financial statements, and considering that the primary committee's investigation to arrive at the amount to be added to Zakat Payer's Zakat base regarding this item is correct based on what these financial statements show. As such, it is concluded that Zakat Payer's appeal against the calculation of the balance of the Owner's current account and its dispute over it are not based on sound evidence, and therefore, it must be rejected and the primary Decision upheld.

Third: Item (Accounts payable to suppliers for 2012 and 2013): Upon careful consideration of all the arguments presented by the Appellant in its statement of appeal regarding this item, the Department found that they are a repetition of what the Appellant previously raised before the Primary Committee when considering the dispute regarding this item. There is no fault with the appeal's position in accepting the outcome reached by the Decision regarding the disputed item, as the Department has not found in the arguments directed towards that outcome anything that deserves a response beyond what was included in the primary Decision when discussing Zakat Payer's objection. The Department has not found anything that requires a correction or comment on the outcome reached by that Decision regarding the objection to the disputed item, it has concluded that Zakat Payer's appeal should be rejected and the primary Decision upheld. This is not affected by Zakat Payer's statement that these amounts, which constitute the balance of accounts payable, were not the result of loans or debts but rather represented commercial accounts arising from transactions of services and the purchase of other materials, because such a matter does not change the fact that the balances of these accounts constitute existing money with Zakat Payer on which Zakat is due. Also, the results reached by the Decisions of the Board of Grievances regarding the consideration of Zakat on debt are not relevant to the matter at hand and do not affect the classification of accounts payable to suppliers as constituting existing money with Zakat Payer in the end, so Zakat is due on it through the balance shown by these amounts when they complete one full lunar year.

Fourth: Item (Net carried forward losses for 2012): Upon careful consideration of Zakat Payer's appeal regarding this item, ZATCA's response included in its Reply Memorandum, and the primary Decision that resulted in the appealed outcome, it has become clear to the Department that its handling requires consideration of whether there is any adjustment



that could affect the calculation of the balance of carried forward losses in the previous year, 2011. The Department has previously ruled on the differences regarding the accuracy of Zakat Payer's declaration for that year (2011), and since the carried forward losses in that year will be carried over to the following year, 2012, this will necessitate an adjustment of the net carried-forward losses for the year 2012, based on the Decision of the Department when calculating the item import differences for the years from 2009 to 2011, so that the carried forward losses are adjusted accordingly. Based on the above, the Department has decided to accept Zakat Payer's appeal and order an adjustment of the balance of carried-forward losses deducted from the base, which is specific to the year 2012, based on the outcome of calculating the item import differences for the years from 2009 to 2011, in accordance with the Department 's Appellate Decision No. (IAR-2020-101).

Decision

First: Accept, in form, the appeal filed by Zakat Payer/... Institution, C.R. No. (...), against Decision No. (11) of 1438 AH, issued by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Accept the appeal filed by Zakat Payer regarding item import differences for the years 2012 and 2013, overturn the primary Decision, and use Zakat Payer's declaration to calculate import differences in its zakat base, as per the reasons and merits stated in this Decision.
2. Reject the appeal filed by Zakat Payer regarding item owner's current account for 2013, and uphold the primary Decision on this matter, as per the reasons and merits stated in this Decision.
3. Reject the appeal filed by Zakat Payer regarding item accounts payable to suppliers for the years 2012 and 2013, and uphold the primary Decision on this matter, as per the reasons and merits stated in this Decision.
4. Accept the appeal filed by Zakat Payer regarding calculation of carried-forward losses for 2012, and approve Zakat Payer's declaration on this matter, as per the reasons and merits stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-100)

Delivered in Appeal No. (Z-1567-2018)

Principle No. 173

The imposition of Zakat on the same money twice is only considered when Zakat has been levied on that money twice within the same lunar year.

Principle No. 174

A full lunar year must pass on the advance payments before they can be added to Zakat Payer's Zakat base during the fiscal year.

Principle No. 175

The correct Zakat treatment for calculating investments necessitates a precise verification of the investment percentage in investee companies to determine the amount of the investment as it appears in Zakat Payer's financial statements.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Monday, 22/04/1442 AH, corresponding to 07/12/2020, the First Appellate Department for Income Tax Violations and Disputes, established pursuant to Royal Order No. (65474) dated 23/12/1439 AH in accordance with Article 67(b) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened in Riyadh to consider the Appeal submitted on 17/12/1439 AH by/ ... Company against Decision No. (30) of 1439 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Riyadh, in Case No. (38/36), filed by the Appellant against General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept, in form, the objection submitted by/ ... Company regarding Zakat assessment for the year 2013 AD.

Second: On Merits:

1. Dismiss the objection filed by Zakat Payer and uphold ZATCA's Decision not to reduce the adjusted net profit by unbilled revenues.
2. Dismiss the objection filed by Zakat Payer and uphold ZATCA's Decision confirming that the provision for late payment fine is subject to zakat.
3. Add the matured portion of advance payments amounting to (SAR 125,980,496) to Zakat Payer's zakat base.
4. Dismiss the objection filed by Zakat Payer and uphold ZATCA's Decision not to deduct investments amounting to (SAR 18,125,149) from zakat base based on the specified investment calculation method.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

1. Item (Unbilled Revenues): The Company objects to the addition of (SAR 175,363,800) to the adjusted net profit, arguing that the statement of financial position notes for 2013 AD indicated that the correct amount for those unbilled revenues is (SAR 294,264,575), which, in reality, represents incomplete work-in-progress and, therefore, cannot be considered a fully realized debt. Since these revenues were collected in 2014 AD, adding them to the negative side of zakat base for 2013 AD ensures that zakat is not paid on the same funds twice. Moreover, supporting this argument is the fact that no invoices were issued for those revenues, and no approval was obtained from the government entity, precluding their classification as fully realized debts. As these are incomplete work-in-progress, their inclusion in zakat base, as ruled by the primary Decision, is unjustified.
2. Item (Late Payment Fine amounting to (SAR 119,961,285)): The Company objects to adding this amount to zakat base, noting that these fines cannot be confirmed for deduction until they are communicated by the government entity. Their final amount is only confirmed after a thorough review of the final interim invoices. If there are no recognized fines, the Company reallocates thereof to the revenue account and pay the relevant zakat. Therefore, ZATCA's Decision, as upheld by the Committee, to include the provision for these fines in the Company's zakat base does not reflect a correct zakat calculation, as it risks subjecting the amount to double payment of zakat.
3. Item (Advance Payments amounting to (SAR 125,980,496)): The Company objects to adding this amount to zakat base, arguing that it has not completed a full year. As the amount was received from the client between May 2013 AD and December 2013 AD, there is no basis for imposing zakat on it.
4. Item (Investments amounting to (SAR 18,125,149)): The Company objects to ZATCA's Decision not to reduce the investment by adding this amount to the deductible investments, which were limited to SAR (74,604,402) and asserts that the total value of these investments is SAR (92,729,551). ZATCA's claim that there is insufficient documentation to justify including the difference in the amount of these investments as deductible from zakat base is unfounded, given the amounts of these investments are reflected in the financial statements certified by the chartered accountant, which confirm the existence of these investments amounting to SAR (92,729,551) in full, thereby justifying the deduction of the full amount from zakat base, contrary to the primary Decision.

The Department requested ZATCA to respond to the points raised in the Appellant's memorandum regarding the contested items. In response, ZATCA provided a Reply dated 11/04/1442 AH addressing the issues raised in Zakat Payer Company's statement of appeal concerning the items assessed by ZATCA and objected to by Zakat Payer. The Reply affirmed ZATCA's stance that all unbilled contracts are connected to government entities, and most of these revenues were collected in 2014 AD, thus representing fully realized debts, rendering them subject to zakat. Regarding provisions, ZATCA stated that these do not qualify as deductible expenses because they are not actual expenses. The Implementing Regulations for Zakat Collection stipulate that all provisions are not considered expenses that can be deducted from zakat base. Moreover, ZATCA, with regard to advance payments, stated that it had taken action only after reviewing the Company's response to the discussion letter and determining that the full year had elapsed on these account balances, necessitating their inclusion in zakat base. As for the investment item, ZATCA indicated that it accepted the deduction of investments in associated companies for which the necessary documents and declarations were submitted. However, for other investments amounting to SAR (18,125,149), Zakat Payer failed to provide the required documentation to allow for their deduction from zakat base.



Grounds



Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company, the Department found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On merits: Having taken cognizance of the case file, its contents, as well as the statement of appeal and ZATCA's Reply, and after considering all of the Appellant's overall arguments regarding the previously mentioned items, the Department reached the following conclusions:

First: Item (Unbilled Revenues): Zakat Payer's appeal was based on the assertion that the amounts related to these revenues represent incomplete work-in-progress and therefore should not be considered a realized debt, which, from its perspective, warrants their exclusion from zakat base for 2013 AD. However, these amounts indeed represent financial obligations in the form of debts owed by the Company's clients as a result of Zakat Payer's execution of the contracted project. Therefore, they are recognized as financial rights, which means they fall within zakat base of Zakat Payer as debts owed by its clients. Zakat Payer's argument that these revenues were collected in 2014 AD and including the same in the negative side of zakat base for 2013 AD, thus preventing double payment of zakat, is not valid. Double payment of zakat is only considered if zakat is levied on the same funds twice within the same year, which is not evident in ZATCA's calculation of these unbilled revenues when calculating zakat, contrary to Zakat Payer's claim regarding double payment of zakat on such amount according to ZATCA's treatment. Therefore, the Department concluded to dismiss Zakat Payer's appeal and uphold the primary Decision delivered in this regard.

Second: Item (Late Payment Fine amounting to (SAR 119,961,285)): Since the dispute between Zakat Payer Company and ZATCA, as detailed in the Decision under consideration, pertains to the nature of these fines and whether the amounts allocated should be included in Zakat Payer's zakat base, considering ZATCA views them as provisions or as amounts whose entitlement by clients were not confirmed until deductions are verified based on the procedures for obtaining the interim invoices related to the projects. It became clear, upon the Department's examination of the essence and nature of these fines, delay payment fines are ordinary expenses arising from the nature of commercial activities, which lead to a reduction in Zakat Payer's revenues. Therefore, these fines are, per se, deductible expenses for the purposes of calculating the profit subject to zakat. However, since they are considered a non-cash expense, the balance of the provision for these fines reflected in the statement of financial position must be added to the zakat base. Given that the amounts allocated for this purpose do not represent a decrease in cash flows for the fiscal year in question but rather represent a reduction in future cash flows to be received against contracts whose execution was delayed. As such, the Department concluded to amend the primary Decision as follows: Zakat Payer shall be accounted for late payment fines by adding the balance reflected in the statement of financial position to the zakat base, without amending the profit for late payment fines.

Third: Item (Advance Payments amounting to (SAR 125,980,496)): The dispute between Zakat Payer and ZATCA centered on this item and the validity of adding the relevant amount to Zakat Payer's zakat base, and given that ZATCA's perspective, as outlined in the primary Decision and Reply to Zakat Payer's Appeal, was based on the completion of full year for those amounts after tracing the movement of their balances. In contrast, the Appellant denied completion of a full year for these amounts and application of zakat. After the Department investigated whether a full year completed for this amount by reviewing the available documents related to the case, it was determined that the amount



of SAR (115,922,064) had not completed a full year during the disputed zakat year. However, for the remaining amount of SAR (10,058,431), Zakat Payer failed to provide sufficient evidence to prove that it had not completed a full year by the end of the disputed year. Therefore, the Department concluded to amend the amount related to the advance payments added to the zakat base for that year to be SAR (10,058,431), excluding any other amounts from Zakat Payer's zakat base due to the lack of completion of a full year.

Fourth: (Investments) Item: Zakat Payer's appeal was based on the claim that the entire investment amount of SAR (92,729,551) was not deducted, as ZATCA only accounted for SAR (73,604,402) from the total investments as the amount that could be deducted from Zakat Payer's zakat base. The Committee upheld ZATCA's stance of not accepting the deduction for the difference in investments, asserting that ZATCA provided evidence of the movement of these investments, the financial statements of the investee companies, and how those investments were calculated. Consequently, the Committee acknowledged the correctness of ZATCA's calculations for these investments without accepting the full amount of investments submitted by Zakat Payer in its declaration. ZATCA clarified in its Reply that deductions were made for investments in associated companies for which the necessary documents and declarations were submitted. However, for other investments, Zakat Payer failed to provide the required documentation for deductions, resulting in ZATCA's failure to deduct a portion of those investments totaling SAR (18,125,149). The Department, after reviewing the perspectives of both the Zakat Payer and ZATCA regarding the deduction or non-deduction of the disputed investments, noted that the correct zakat treatment for calculating investments requires verifying the percentage of investments in the investee companies accurately to determine the investment amount reflected in Zakat Payer's financial statements. This amount is affected by fluctuations in profits and losses of the investee companies and dividends, along with any financing added to these investments, which appears in the current accounts of the investee companies. The primary Decision did not clarify the reasons for its acceptance of the basis for not excluding the remaining investments from Zakat Payer's zakat base, other than a brief justification by the Committee affirming the correctness of ZATCA's calculations for these investments. Additionally, there was no explanation provided for the change in considering these investments as deductible investments. Moreover, the treatment of investments in the context of zakat is not limited to mere ownership reflected in the capital. ZATCA and the Committee that issued the Decision did not present a valid reason for not excluding those investments from Zakat Payer's zakat base, especially considering that ZATCA failed to provide evidence suggesting that the investee companies were exempt from zakat. Consequently, this situation indicates that there is no basis to reject Zakat Payer's declaration for the full deduction of those investments from its zakat base. Therefore, the Department concluded to accept Zakat Payer's appeal for the full deduction of the investment amount of SAR (92,729,551) from its zakat base, overturn the primary Decision regarding non-deduction of the investment difference of SAR (18,125,149).

Decision

First: In form, Accept the appeal filed by Zakat Payer/Company. C.R. No(...), against Decision No. (30) of 1439 AH, delivered by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Dismiss Zakat Payer's appeal and uphold the primary Decision regarding the item of unbilled revenues amounting to SAR (175,363,680), in accordance with Grounds and merits mentioned herein.
2. Amend the Primary Committee's Decision regarding the item of late payment fines amounting to SAR (119,961,285), to be as follows: Zakat Payer shall be accounted for late payment fines by adding the balance reflected in the statement of financial



position, amounting to SAR (119,961,285), to the zakat base, without amending the profit for late payment fines, in accordance with Grounds and merits mentioned herein.

3. Amend the advance payments amount added to the zakat base for the disputed year to be SAR (10,058,431), in accordance with Grounds and merits mentioned herein.
4. Accept Zakat Payer's appeal to deduct the full investment amount of SAR (92,729,551) from its zakat base by adding the investment difference of SAR (18,125,149) to the amount already deducted as per the primary Decision, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-132)

Delivered in Appeal No. (Z-1568-2018)

Principle No. 176

If there is a trading activity on investee shares in a manner that clearly indicates an intention to trade and speculate, then those investments are considered trading assets, not acquisition assets.

Principle No. 177

The general rule for calculating investments in land shares is to consider whether a sale has actually taken place in a manner that confirms the intention to sell. This intention is evident when there are clear indicators that can be used to definitively classify these contributions as trading assets, thus subjecting them to Zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 01/05/1442 AH corresponding to 16/12/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Order No. (65474) dated 23/12/1439 AH in accordance with Paragraph (B) of Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to consider the appeal filed on 07/08/1438 AH by ... Company against Primary Committee for Zakat and Tax Objections in Dammam Decision No. (12) of 1438 AH rendered in Case No. (7) of 1437 AH filed by Appellant against ZATCA, in which the primary Decision ruled as follows:

First: Accept the objection in form filed by Company to ZATCA zakat assessment for years from 2011 to 2013.

Second: On Merits:

1. Uphold ZATCA's Decision not to deduct investments in joint-stock companies for the period from 2011 to 2013 AD.
2. Uphold ZATCA's Decision not to deduct land contributions for the period from 2011 to 2013 AD.
3. Uphold ZATCA's Decision not to deduct dividend distributions of joint-stock companies for the period from 2011 to 2013 AD.
4. Uphold ZATCA's Decision not to deduct projects under development from zakat base for 2013 AD.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

1. Item (Non-deduction of Investments in Joint-Stock Companies for the period from 2011 to 2013 AD): The Company's position is that its letter submitted to the Primary



Objections Committee in Dammam regarding the recognition of unrealized losses in the income statement was based on the application of Paragraph (120) of Accounting Standard No. (9) (Accounting Standard for Investment in Securities), issued by SCOPA, which states: "It is necessary to recognize the temporary decline in the cost of securities held to maturity and available for sale for each security individually as soon as it occurs and to record the losses in the income statement for the fiscal period...". The Committee stated in its reasoning as follows: "This condition was not realized in this case because the investment portfolio shows an increase in the value of shares during the objection period". Zakat Payer Company indicates that the increase in share value was not due to a rise in share prices but rather the result of the increased number of shares the Company purchased during the years in question. It is evident that the value of the shares decreased in the first year the Company owned those shares in 2011 AD, resulting in (unrealized losses) amounting to SAR (1,191,534). Similarly, the value of the shares declined in 2012 AD, leading to (unrealized losses) of SAR (1,490,758). The value of the shares then increased in 2013; therefore, the unrealized losses were recognized and recorded in the income statement. Even if there was an error in applying the accounting standard or a misunderstanding on the part of Zakat Payer, this does not change the nature of long-term investments. Other evidence suggests that the Company intended to hold and increase these investments rather than for trading purposes. Among these indicators is that the number of shares did not decrease during the years in question or afterward; rather, it remained stable or increased. Additionally, the Company presented the shares in its records and financial statements as long-term investments. As for ZATCA's statement that the field examination report included the response that the Company's intention regarding investments in shares was to benefit from price increases and sell the same upon realizing profits, this was not reflected in the field examination report. According to ZATCA's letter No. (3324/16/1437) dated 09/05/1437 AH (Page 2), it was stated: "...in accordance with the field examination report, the Company was asked regarding its intention regarding the shares. Zakat Payer's representative stated that such shares were intended for investments and retention to seek dividend distributions, and any sale, if made, would be for the purpose of portfolio rebalancing based on an analysis of each share and its projected revenues".

2. Item (Non-deduction of Land Contributions for the period from 2011 to 2013 AD): The Company appeals this item by stating that one of the objectives agreed upon by the partners at the establishment of the company was long-term investment through purchasing land and contributions to develop these lands in order to generate returns from the properties after development, not the sale of the land after development. This is evident from the Company's accounts in the years following the objection period, where it did not sell any land but instead developed it and leased the completed portions to third parties to generate rental income. Therefore, the Company's contributions to raw land development projects are not considered trading assets, as stated by the Committee in its Decision. Consequently, these contributions are not subject to zakat in their original form but rather their subsequent returns as reflected in the Company's income statements and operational results.
3. Item (Non-deduction of Dividends of Joint-Stock Companies for the period from 2011 to 2013 AD): The Company, in its appeal, reiterates that the response to the first point in its argument, which established that the investments were non-current and long-term, is applicable to this item as well.
4. Item (Non-deduction of Projects Under Development for 2013 AD): The Company appeals this item by stating that the Committee mentioned that the purpose of projects under development was either to resell in their purchased condition or to develop, finish, and then lease the same. This aligns with the nature of the Company's activity



according to the amended articles of association. Why does the Committee choose a specific classification that reclassifies those items from long-term investments to short-term current investments intended for sale? The Committee stated in its Decision that Zakat Payer failed to provide supporting evidence for its viewpoint or demonstrate the intent for (personal use) investment, despite the Committee's statements implying such intent, such as: The classification of projects under development as non-current assets in the financial statements, and the inclusion of the company's purposes in the amended articles of association related to leasing and benefiting from the proceeds of properties after development, suggests that these projects are investments held for personal use rather than for resale.

The Department requested ZATCA to respond to the Appellant's memorandum regarding the contested items. As such, ZATCA's Reply was received on 26/04/1442 AH. The Department, upon reviewing ZATCA's overall responses to the appeal concerning the items in question, determined that they reaffirmed its statements and stance regarding the contested items when the dispute was considered by the Primary Committee.

Grounds



Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company, the Department found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On merits: Having taken cognizance of the case file, its contents, as well as the statement of appeal and response, and after considering all of the Appellant's overall arguments regarding the previously mentioned items, the Department reached the following conclusions:

1. Item (Non-deduction of Investments in Joint-Stock Companies for the period from 2011 to 2013 AD): After considering the reasons for Zakat Payer's appeal and ZATCA's response regarding that item, it became evident that the dispute between both parties lies in Zakat Payer's assertion that these investments were intended to be retained by the company as acquisition assets, and that the company's ownership thereof was not for trading purposes. Therefore, they were reflected in its records and financial statements as long-term investments to obtain dividends. In contrast, ZATCA believes that owning shares through investment portfolios constitutes engaging in trading activities, which classifies them as trading assets, regardless of how they are classified in Zakat Payer's financial statements. The critical factor when calculating the zakat base is the substance of the transaction rather than its form. It was determined, upon reviewing Zakat Payer's appeal regarding this item, that it is limited to investing in acquiring shares in Saudi companies. The Department did not find evidence of any trading activity involving those shares, indicating an intent for trading and speculation that would categorize those investments as trading assets rather than acquisition assets. Furthermore, documents showed an increase in the number of shares acquired, which supports the belief that Zakat Payer had the intention of investment when acquiring those shares. Therefore, the Department concluded to accept Zakat Payer's appeal, allowing the consideration of investments in shares of Saudi joint-stock companies as deductible elements from Zakat Payer's zakat base and overturn the primary Decision delivered regarding that investment.
2. Item (Non-deduction of Land Contributions for the period from 2011 to 2013 AD): The crux of the dispute between both parties regarding this clause lies in Zakat Payer's assertion that its contributions to the land reflect the purposes agreed upon by the partners at the establishment of the company, including long-term investment through the purchase of land for development and contributions to land development, aiming



to generate returns from the property after development, rather than for the purpose of selling and trading the land. The Company did not sell the land in the years following the objection period; instead, it was involved in the development process. Therefore, these contributions should not be subject to zakat in their original form; however, the derived returns, as reflected in the income statements and operational results of the Company, is subject to zakat. Therefore, contributions for developing raw land should not be included in the Company's zakat base. On the other hand, ZATCA maintains that the land should be considered inventory, even if it remains in the Company's records for more than a year, as they are current assets intended for sale. The review of the cash flow statement for 2012 AD revealed proceeds from the sale of land contributions amounting to SAR (3,000,000). Therefore, these investments should be regarded as current assets prepared for sale and trading, which subjects them to zakat. ZATCA further argues that the nature of land contributions is to purchase for the purpose of development and resale, indicating that the intention to sell was present from the outset of the investment, which is corroborated by the actual sale that occurred in 2012 AD. Since the general rule for calculating these contributions is to assess the occurrence of sales that indicate a confirmed intent to sell, which can be inferred from clear manifestations that allow for the classification of these contributions as trading assets subject to zakat, it has been established that the sales activity was limited to only one transaction. Such a situation does not sufficiently confirm the existence of a genuine intent to offer the lands included in the contributions for sale, especially since there were no other indicators suggesting a continued intent to sell on the part of Zakat Payer following that transaction. Given these circumstances, the Department concluded to accept Zakat Payer's appeal, and to allow the deduction of investments in land contributions for the disputed years from the zakat base, thereby overturning the primary Decision regarding this item.

3. Item (Non-deduction of Dividends of Joint-Stock Companies for the period from 2011 to 2013 AD): The dispute between both parties lies in Zakat Payer's assertion that the investments in those companies were long-term, and that the dividends from those joint-stock companies should be treated as previously clarified in the primary Decision regarding the objection to the item of the deduction of investments in joint-stock company shares, thereby exempting from zakat to avoid double payment of zakat upon calculation for zakat purposes, as it would lead to taxing the profits from these shares both at the level of the joint-stock company itself and Zakat Payer, given that these profits pertain to shares of joint-stock companies registered on the stock market. In contrast, ZATCA views these dividends as related to investments in trading assets, consistent with its position during the discussion of this item when the dispute was considered by the Primary Committee. The Company failed to provide evidence to prove that these dividends resulted from profits realized in the same year from the investee companies, rather than from retained dividends of these companies. Thus, ZATCA confirms the validity of not deducting these dividends, as they are considered part of the Company's operational results. It became clear, upon reviewing both parties' positions regarding this item and the basis for the primary Decision in this regard, that the committee that delivered the Decision considered the investment in shares as trading investment, meaning that the revenues generated from such investment are classified as trading income. Consequently, it supported ZATCA's position in not deducting these profits from Zakat Payer's zakat base. The inclusion of these dividends from joint-stock companies in Zakat Payer's zakat base is contingent upon the prior verification of their zakat status by the distributing joint-stock companies. Given that these companies were zakat payers subject to zakat by ZATCA during zakat assessments and Zakat Payer's appeal, regarding the first item, was limited to Saudi joint-stock companies only, this Department decided to consider



these investments as deductible elements from Zakat Payer's zakat base, as previously indicated in the first item of this Decision. The dispute between both parties did not center on the issue of whether the holding period for these profits had elapsed while they held by Zakat Payer during the years in question, but rather stems from the addition of those profits to Zakat Payer's zakat base and the failure to deduct the same merely because they are considered revenue and yield derived from what ZATCA and the Committee view as investments in trading assets when processing Zakat Payer's investments in these joint-stock companies. However, given the circumstances, the requirement to subject those profits to Zakat, as upheld by the primary Decision in support of ZATCA's position that they are profits from joint-stock companies, does not automatically result in their zakat liability based solely on that classification. This is particularly true as ZATCA did not prove that these profits remained with Zakat Payer for a complete full year under its ownership and liability. Therefore, the Department concluded to accept Zakat Payer's appeal, allow the deduction of profits from joint-stock companies for the period from 2011 to 2013 AD from Zakat Payer's zakat base, and overturn the primary Decision in this regard.

4. Item (Non-deduction of Projects Under Development for 2013 AD): The Company appeals this item, emphasizing that the purpose of these projects was to prepare the land after acquisition and development for leasing or sale and arguing that the intention was not to resell the land in its purchased state. However, ZATCA maintained that Zakat Payer failed to provide sufficient evidence to prove that these projects, consisting of five buildings in Al Ahsa Province valued at SAR (6,350,000). Therefore, ZATCA considers these buildings as inventory, even if they remained in Zakat Payer's books for more than a year. The Department, upon reviewing the positions of both ZATCA and Zakat Payer concerning the appealed item, and considering the primary Decision that supported ZATCA's view of not deducting projects under development from the zakat base for 2013 AD, finds that there is no evidence proving that such projects were intended for sale during the construction phase. Given the common practice and custom for such projects to be prepared for sale upon completion, and in the absence of any credible evidence indicating the Company's intention to sell these projects in their current state or any actual sales transactions, Zakat Payer's position is strengthened for excluding these projects under development from its zakat base for 2013 AD. Therefore, the Department concluded to accept Zakat Payer's appeal to deduct the amount related to such projects for 2013 AD and overturn the primary Decision in this regard.

Decision

First: In form: Accept the appeal filed by Zakat Payer/ Company ..., C.R. No.(...), against Decision No. (12) of 1438 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding non-deduction of investments in joint-stock companies for the period from 2011 to 2013 AD, consider investments in Saudi joint-stock companies as deductible elements from Zakat Payer's zakat base, and overturn the primary Decision in this regard, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer's appeal regarding non-deduction of land contributions for the period from 2011 to 2013 AD, consider Zakat Payer's investments in land contributions for the disputed years as a part from its zakat base, and overturn the primary Decision in this regard, in accordance with Grounds and merits mentioned herein.



3. Accept Zakat Payer's appeal regarding non-deduction of dividends in joint-stock companies for the years 2011 to 2013 AD, limiting this deduction to Saudi joint-stock companies only, and overturn the primary Decision in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Zakat Payer's appeal regarding non-deduction of projects under development for 2013 AD, deduct the relevant amount for 2013, and overturn the primary Decision in this regard, in accordance with Grounds and merits mentioned herein.

Similar Decisions:

**First Appellate Department for Income Tax
Violations and Disputes
Appellate Decision (IAR-2020-133)**



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-60)
Delivered in Appeal No. (Z-1569-2018)

Principle No. 178

The fact that the establishment lacks a license or that there is no land available for the activity does not negate the obligation of Zakat on the capital amount allocated, provided that Zakat Payer does not present evidence to refute the apparent indication that the capital remains in the possession of the establishment.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 09/01/1442 AH, corresponding to 07/09/2020, the First Appellate Department for Income Tax Violations and Disputes, established pursuant to Royal Order No. (65474) dated 23/12/1439 AH in accordance with Article 67(b) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to review the Appeal submitted on 27/02/1439 AH, corresponding to 16/11/2017 AD by/..... Enterprise, and ZATCA's appeal, against Decision No. (27) of 1438 AH delivered by the Primary Committee for Zakat and Tax Objections in Dammam, issued in Case No. (18), filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: In form: Accept the appeal filed by ... Enterprise, regarding Zakat assessment conducted by the General Authority of Zakat and Tax "GAZT" (Currently ZATCA) for the period from 2006 to 2014.

Second: On Merits:

1. Impose assessment on Zakat Payer for 2006 without including current accounts, accounts payable, and accrued expenses due to lack of evidence of completion of a full year for these items.
2. Uphold ZATCA's Decision that all expenses and costs, including rent expenses, were taken into account when calculating Zakat Payer's Zakat for the period from 2010 to 2014.
3. Uphold ZATCA's Decision to include the capital amount of SAR (560,000) in Zakat base for the years 2008 and 2009.
4. Uphold ZATCA's Decision that Zakat Payer's Zakat for 2010 should be calculated based on Zakat base computed using the audited financial statements of the previous year.
5. Uphold ZATCA's Decision to raise a revised assessment for the period from 2011 to 2014.

Since this Decision was not accepted by Zakat Payer (... Enterprise), Zakat Payer filed a Statement of Appeal before the Appeal Committee on 27/02/1439 AH, which can be summarized as follows:



1. Zakat Payer is objecting to the assessment of accounts payable, suppliers, customers, and advance payments on the Grounds that a lunar year has passed over them. It argues that these balances are fluctuating and are used or paid on a continuous basis, and therefore a full lunar year has not passed over them for the period from 2007 to 2010.
2. Zakat Payer is objecting to Zakat assessment for the period from 2010 to 2014. It argues that the registered capital for the factory was included in Zakat base, even though the factory was neither constructed nor initiated. The capital was completely withdrawn in 2009 due to the unfeasibility of establishing the factory. Consequently, there are no systematic accounts for the period from 2010 to 2014. The evidence of the factory's actual existence or non-existence can be confirmed by the fact that we did not receive any land for the factory's construction in the industrial zone, and there is no license for it. Therefore, this necessitates the exclusion of the factory's capital amounting to SAR (425,000) from Zakat assessment for the period from 2010 to 2014.

Zakat Payer attached a supplemental memorandum dated 23/04/1440 AH, reiterating its objection to the estimated assessment for the period from 2010 to 2014. It also objected to the estimated assessment for 2006. Additionally, the supplemental memorandum stated that it was also appealing the assessment for the period from 2007 to 2009. However, this supplemental memorandum was vague in its subject matter and lacked supporting documents related to the objections raised, making the reasons for the appeal unclear. Therefore, the Department decided to disregard the contents of the supplemental memorandum and to limit its consideration to the original appeal, which specifically disputed items (1 and 2) as previously stated.

Furthermore, ZATCA appealed the primary Decision, requesting the cancellation of the part of the Decision related to Zakat Payer's assessment for the year 2006. Specifically, the appeal seeks to reverse the Decision's exclusion of items that should have been included in Zakat Payer's Zakat base, such as current accounts, accounts payable, and accrued expenses. The Primary Committee excluded these items from Zakat base, despite Zakat Payer's failure to provide evidence supporting its claim that a lunar year had not passed for these balances.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted by both Appellant Company and ZATCA, the Department found that the conditions for hearing both appeals have been fulfilled in form in accordance with conditions stipulated by the relevant laws, regulations and resolutions. Therefore, both appeals were accepted in form due to the fact that they were filed by parties having capacity and within the statutory period.

On merits: Having reviewed the Case file, its contents, and the Statement of Appeal filed by Zakat Payer, and upon considering all Zakat Payer's defenses, particularly regarding the first item of appeal concerning (objection to the assessment of accounts payable, customer accounts, and advance payments on the Grounds that a full lunar year has passed over them), the Department has determined that this item was not included in the disputed items when the matter was initially heard by the Committee that issued the Decision. Therefore, this is considered a new claim. Article 186 of the Law of Civil Procedures stipulates that: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion". This ruling is also provided for under Article 40 of the Law of Civil Procedures before the Board of Grievances. As such, the Department has decided to disregard this part of the appeal.

Regarding Zakat Payer's appeal on the second item related to (objection to Zakat assessment for the period from 2010 to 2014), the Department has determined the following: Zakat Payer's objection centered on its claim that the capital for the factory did



not exist during the disputed years and that operation had not commenced, citing lack of an industrial license and land for the factory in the industrial zone. However, Zakat Payer's claim does not negate the obligation to pay Zakat on the capital allocated, regardless of whether the actual operation has started or not. Furthermore, Zakat Payer has not provided any evidence to refute the apparent continuation of the capital during those years for which the assessment was conducted and the inclusion of the capital amount in Zakat base. While Zakat Payer's claim that the operation did not start is not affected by this, the other documents provided by the Appellant to prove the cessation of operations pertained to years subsequent to the disputed years. The primary Decision adequately addressed all other defenses raised by the Appellant regarding the objections, and this Department finds no reason to modify or comment on the conclusion reached by that Decision in light of the Appellant's objections and supporting documents. Therefore, the Department has decided to reject Zakat Payer's appeal and uphold the primary Decision regarding this item. Regarding the appeal filed by ZATCA, requesting the addition of current accounts, accounts payable, and accrued expenses to Zakat Payer's Zakat base for the year 2006, on the Grounds that Zakat Payer has not provided evidence to refute the completion of a full lunar year for these items, the Department has considered the following: Zakat Payer is presumed to possess the books, records, and supporting documents that show the date of the initial entries for all financial transactions during 2006. After carefully reviewing ZATCA's appeal and the primary Decision, the Department has concluded that the primary Decision regarding this item is correct. The Department has found that the primary Decision adequately addressed ZATCA's objections and sees no reason to modify or comment on it. Therefore, the Department has decided to reject ZATCA's appeal and uphold the primary Decision, which assessed Zakat Payer for the year 2006 without including current accounts, accounts payable, and accrued expenses due to lack of evidence that a full lunar year had passed.

Decision

First: In form, Accept the appeal filed by Zakat Payer/ Enterprise, C.R. No.(...), and ZATCA's appeal against Decision No. (27) of 1438 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

1. Not accept Zakat Payer's appeal regarding item (Assessment of accounts payable, suppliers, customers, and advance payments), considering that a lunar year has passed over them, and disregard it as a new request, for the reasons and Grounds stated in this Decision.
2. Reject Zakat Payer's appeal regarding item (Zakat assessment for the period from 2010 to 2014), and uphold the primary Decision on this regard, for the reasons and Grounds stated in this Decision.
3. Reject ZATCA's appeal regarding the request to add items (current accounts, accounts payable, and accrued expenses) to Zakat Payer's Zakat base for the year 2006, and uphold the primary Decision regarding these specific items, based on its reasoning.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-133)

Delivered in Appeal No. (Z-1571-2018)

Principle No. 179

The reason for subjecting investee companies' profits to Zakat, by considering them as profits of joint-stock companies, does not entail subjecting their amounts to Zakat by limitation to such description solely as long as it is not proven that such profits were maintained by Zakat Payer and completed a full year in Zakat Payer's possession.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Saturday, 04/05/1442 AH corresponding to 19/12/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/05/1425 AH, as amended by Royal Decree No. (M/113) of 20/11/1438 AH convened in Riyadh to consider the Appeal filed on 03/06/1439 AH by/ ..., and the Appeal filed on 03/03/1439 AH by the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), against Decision No. (29) of 1438 AH delivered by Zakat and Tax Objection Committee in Dammam in Case No. (2) filed by Zakat Payer against the Decision under consideration which ruled as follows:

First: Accept in form the objection submitted by regarding Zakat assessment made by ZATCA for the year 2014.

Second: On Merits:

1. Uphold Zakat Payer's request to deduct investments in local joint-stock companies shares, and uphold ZATCA's Decision for not deducting investments in foreign companies shares for the year 2014.
2. Uphold ZATCA's Decision to not deduct land contributions from Zakat base for the year 2014.
3. Uphold ZATCA's Decision to not deduct the dividends of joint-stock companies for the year 2014.
4. Uphold ZATCA's Decision not to deduct projects under development from zakat base for 2014 AD.

Dissatisfied with the Decision, each party, namely and ZATCA filed with the Department an appeal challenging the conclusions reached by the primary Decision. The summary of two appeals is as follows:

First: Appeal:

1. Item (Uphold ZATCA's Decision to not deduct land contributions from Zakat base for the year 2014): The Company argued that its activity and purpose is related to investment, whether by holding shares and stakes in other companies, or purchasing and developing real estate for the purpose of investment, and that was the purpose intended by the partners at the time of establishment, namely long-term non-tradable

investment to generate profits, or rental proceeds. The Appellant added that as for the sale of land in the amount of (SAR 2,000,000) included in 2014 cash flow statement, the company was owning that land with other partners and the sale was for transferring its share in that land to the partners confirming that it was a single case. The Department, having referred to the Company's financial statements until 31/12/2014 AD, found that the value of assets not prepared for sale or trading was (SAR 17,600,000), and only one emergency and non-recurring sale took place, and that's why the Company requested to deduct the contributions to the lands from its zakat base for the year 2014, as the conditions of non-traded and long-term investments apply to them.

2. (Not deducting the dividends of listed joint-stock companies for the year 2014, which amounted to SAR 4,129,682, and zakat applicable to it is SAR 103,242): The Company submitted that whilst the primary department approved the Company's request to deduct the investments in shares of local joint-stock companies, it should also deduct the dividends of those shares from zakat base.
3. (Not deducting projects under implementation for the year 2014 AD in the amount of SAR 6,539,970, and zakat applicable to it is SAR 163,499): The Company argued that according to its articles of association and commercial registration, its activity and purpose is the purchase and development of real estate for investment purposes, and other activities related to purchasing and developing lands for the purpose of sale or rent for the benefit of the Company. Accordingly, the Company's activity is confined in development for sale and development for lease and generate profits in both cases as a long-term (non-tradable) investment. In this respect, the fatwas of the Permanent Committee for Scholarly Research and Ifta emphasized that having irresolute intention should not give rise to zakat obligation on properties in the event of not being certain about the sale.
4. (Not deducting investments in fully-owned subsidiaries and associates): The Company submitted that ZATCA approved the deduction of investments in subsidiaries and associates, and there was no dispute between ZATCA and the Company regarding this issue. However, the modified assessment by ZATCA didn't include the deduction of an investment in an associate company, in which the company holds a capital share of SAR 2,000,000, which is 30% according to the articles of association of the associate company (.....) and the Company holds share in its equity valuing SAR 480,504 according to the financial statements.
5. (Not deducting investments in shares of companies listed on Bahrain capital market): In its appeal regarding the non deduction of these investments, the Company argued that GAZI's request to be provided with the external financial statements of the investment companies is a request that cannot be practically met since the investment is in a stock portfolio, but its revenues are included in the company's financial statements; therefore, its revenues are subjected to zakat within the zakat payable by the Company.

Second: ZATCA's Appeal:

ZATCA appeals against the primary Decision, specifically Paragraph 1 of item Second, where the Decision approved the Zakat Payer request to deduct investments in shares of local joint-stock companies for the year 2014 AD, claiming that the investments in shares of local companies amounting to SAR 58,251,872 are investments in shares of joint-stock companies (Saudi shares). ZATCA maintained its Decision as to refusing to deduct these investments being trade assets and not acquisition assets and because these investments are considered merchandise even if they remain in Zakat Payer's books for more than a year. In this case, they are current assets prepared for sale, and the period of holding them by the Company is affected by supply and demand in the market. Therefore, they cannot be considered as claimed by Zakat Payer as investments intended for possession for



generating dividends, even if there is a sale process. Rather, these investments are made in order to adjust the position of the portfolio based on a study of each share and the revenues dependent on it. ZATCA adds that, given the nature of Zakat Payer's activity as stated in its articles of association, owning shares through investment portfolios is considered a business and hence the owning of shares through investment portfolios becomes holding of trade assets, regardless of the formal categorization of it in the financial statements, as the assessment of zakat is dependent upon the essence of the transaction rather than its form. ZATCA also argued that its view is validated by the presence of sale of one of the investments (bank shares...), which is a response to Zakat Payer's claim that the shares have not changed, but in fact they have been increased indicating that they are trade assets that are subject to Zakat. Also, there was no documented intention from the authorized person to confirm that the aforementioned investment was for the purpose of acquisition and not trade. ZATCA also claimed that Zakat Payer's argument that that among the Company's activities in its articles of association is owning shares and stocks in companies, whether through establishment or purchase from the market, is not evidence of the existence of an intention for acquisition by the Company, because trading in stocks is at the core of the Company's activity and purposes. Furthermore, the primary department has contradicted its verdict, as it had previously issued the Primary Decision No. (12) of 1438 AH, for the same Zakat Payer and for the same subject and with the same Grounds, for the years from 2011 to 2013, upholding ZATCA's procedure. In light of this conflict in the Committee's Decisions and in the absence of real Grounds for these changes, ZATCA maintains the validity and soundness of its procedure as per the law and requests that the primary Decision be overturned in this regard.

The Department requested ZATCA to respond to Zakat Payer's claims regarding the items subject matter of the appeal. ZATCA responded on 26/04/1442 AH with a reply maintaining ZATCA's statements and arguments raised before the objection committee requesting that the appealed Decision be upheld in this respect for the validity and soundness of its procedure, indicating also that the arguments submitted by Zakat Payer are mere reiteration of its arguments raised before the primary department which were refuted by ZATCA at that time. ZATCA also indicated that the item of not deducting investments in fully-owned subsidiaries and associates was not challenged by Zakat Payer and it is a new claim, which should be dismissed.

The Department also received Zakat Payer's reply regarding ZATCA's appeal on 21/10/1441 AH. That reply was based on arguments that the primary department was convinced that there was no sale of those shares during the taxable year, and that Zakat Payer processed the investments in accordance with the financial statements that showed that the shares of joint-stock companies remained in the local market without sales operations, and that the change was limited to the distribution of dividends of those shares. That was the opinion adopted by the primary department on which it based its Decision. Zakat payer also submitted that ZATCA's argument of the lack of documented intent of the authorized person to confirm that the investment is for the purpose of acquisition and not for the purpose of trade and ZATCA's claim that the Company's articles of association are not evidence of the existence of that intent, contradicts the findings of the field examination that confirmed the existence of that intent, and that there is nothing more truthful than the articles of association that confirms that the purpose of the Company is to hold shares and stocks in companies, and if ZATCA was not satisfied with the articles of association, commercial records, official documents, field examination, and if the primary department was not satisfied with the existence of the documented intent for long-term investment so on which bases does ZATCA base its convictions and procedures?! Therefore, the Company insists on Zakat Primary Committee's Decision that upholds deducting investments in shares of local joint-stock companies from zakat base and considering such investments as long-term investments in contrary to ZATCA claim in



appeal against the item that ZATCA requests to be overturned, in addition to not considering such investments as elements that are deductible from zakat base.

Having taken cognizance of the two statements of appeal and answer of either party to other party's statement of appeal, and having reviewed documents included in Case file, the Department found that the Case becomes ripe for adjudication on its merits.

Grounds



Upon reviewing Case documents and statements of appeal submitted by Appellant Company and the appeal filed by GAZT, the Department found that conditions of both appeals have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, both appeals were accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

On Merits: Since the Case became ripe for hearing both appeals filed by Zakat Payer and ZATCA regarding the items subject matter of their respective appeals. Therefore, the Department decided to render a Decision on such two appeals as follows:

As for appeal filed by Zakat Payer Company:

1. Item (Uphold ZATCA's Decision to not deduct land contributions from zakat base for the year 2014): The dispute between the parties regarding this item involves Zakat Payer's claim that their contributions to such lands outline the purposes intended by shareholders when establishing Company, which is long-term investment by purchasing lands for the purpose of development and contributing to developing lands, in order to realize revenues from real estate properties, rather than for the purpose of land sale and trade. In addition, the Company did not sell lands in the years following the years in question, and it was developing such lands. Therefore, these contributions, in their essence, are not subject to zakat; only their returns, as reflected later in Company's statements of income and business results, are subject to zakat. Accordingly, the contributions made for developing raw land should not be included in Company's zakat base. On the other hand, ZATCA considers the lands as goods, even if such lands remain in Company's books for more than a year, considering them as current assets intended for sale. A review of cash flow statement for 2014 shows revenues from sale of land contributions amounting to SAR 2,000,000. Accordingly, such investments should be considered as current assets intended for sale and trade, making them subject to zakat. In addition, the nature of land contributions is to purchase for development and resale purposes, implying intention to sell existed from the beginning of investment. The occurrence of a sale transaction in 2014 further confirms this intention. Moreover, ZATCA asserts that investments are only deducted from zakat base after two conditions are met for them to be considered as long-term investments: The documented intention of the authorized person before making investment Decision and there are no trading operations (transactions) during the year. In this case, these conditions were not met by the Company. ZATCA bases its Decision on the realization of a sale, which suggests a clear intention of sale in a manner that clearly manifests definite signs, allowing for certainty in considering such investments as trading assets to be subject to zakat. However, since the sale transaction involved only one transaction, this does not confirm a genuine intention to continuously offer the contributed land for sale. Furthermore, there are no other evidence that would reinforce the presumption of an ongoing intention to sell after such transaction. As such, the Department accepts Zakat Payer's appeal, upholds deduction of land contributions from zakat base for years in question and overturns Primary Department's Decision regarding this item.
2. (Not deducting the dividends of listed joint-stock companies for the year 2014, which amounted to SAR 4,129,682, and zakat applicable to it is SAR 103,242): The dispute between the parties involves Zakat Payer's claim that investments in such companies



were long-term. In addition, the dividends of such joint-stock companies shall be subject to the details elaborated in Primary Department's Decision regarding objection to (Deducting Investments in Shares of Joint-Stock Companies) item, which requires not making them subject to zakat to avoid double payment of zakat since such dividends are already subject to zakat at the Company and at Zakat Payer later due to the fact that such dividends are generated from shares in joint-stock companies listed on the Saudi Exchange. On the other hand, ZATCA maintains that such dividends pertain to investments in trading assets as maintained by ZATCA at the time of discussing this item when considering the dispute before Primary Committee. In addition, the Company failed to prove that such dividends were realized from profits earned in the same year by the companies in which the investments were made, rather than from retained earnings. Therefore, ZATCA insists that non-deduction of dividends is valid, considering them as part of Company's business activity results. Having taken cognizance of both parties' positions regarding the item in question and the basis of Primary Committee's Decision, the Department found that the Primary Committee considered the investment in shares as trade investments. In addition, the resulting revenues were considered as trade revenues. Therefore, the Primary Committee upheld ZATCA position outlined in not deducting such dividends from Zakat Payer's zakat base. However, the basis for adding such dividends from joint-stock companies to Zakat Payer's zakat base rests on verifying whether such dividends had already been subject to zakat at the companies that disbursed such dividends. Since these companies were Zakat Payers who are subject to zakat under ZATCA supervision, Zakat Payer's appeal only focused on Saudi joint-stock companies. Since the Department considered that such investments should be deducted from Zakat Payer's zakat base. Since the dispute between the parties did not center on whether such dividends completed a full year in the possession of Zakat Payer for years in question, but the reason for adding such dividends to Zakat Payer's zakat base and not deducting them is the fact that they are revenues and proceeds generated from investments that both ZATCA and Primary Committee consider as investments in trading assets when handling Zakat Payer's investments in such joint-stock companies. Since the matter was as stated, the reason for subjecting such profits to zakat, as stated in Primary Committee's Decision that upheld ZATCA position by considering them as profits of joint-stock companies, does not entail subjecting their amounts to zakat by limitation to such description solely as long as ZATCA did not prove that such profits were maintained by Zakat Payer and completed a full year in Zakat Payer's possession. Therefore, the Department accepts Zakat Payer's appeal, upholds deduction of joint-stock companies' profits for 2014 from zakat base and overturns primary Decision in this regard.

3. (Not deducting projects under implementation for the year 2014 AD in the amount of SAR 6,539,970, and zakat applicable to it is SAR 163,499): The Company appeals against this item, asserting that the purpose of such projects is to prepare and develop the land after acquisition for leasing or selling, rather than reselling land in its original condition at the time of purchase. On the other hand, ZATCA argues that Company's business activity involves purchasing and developing real estate properties for the purpose of investment, which means that such buildings are considered as goods, even if they remained in Zakat Payer's books for more than a year. In this case, such buildings are considered as current assets intended for sale, and their retention period depends on market supply and demand. In addition, ZATCA argues that for such projects to be considered as long-term investments, it is required that there is a documented intention of the authorized person before making investment Decision, and there must be no trading activity (transactions) during the year on such investments. However, these two conditions were not met by Zakat Payer Company



in order to consider such projects as long-term investments. Having taken cognizance of both positions of ZATCA and Zakat Payer Company on the appealed item, in addition to the primary Decision that upheld ZATCA stance outlined in not deducting projects under construction from zakat base for 2014, the Department found no evidence that such projects were intended for sale while still under construction. Customarily, such projects are prepared for sale only after completion. Since there was no credible evidence that Zakat Payer intended to sell such projects in their unfinished state, the Department found all the above-mentioned reasons uphold Zakat Payer's position outlined in not calculating such projects under construction within Zakat Payer's zakat base for 2014. Accordingly, the Department considers such projects as long-term investments. Therefore, the Department accepts Zakat Payer's appeal by deducting the amount of projects under construction for 2014 and overturns primary Decision in this regard.

4. (Not deducting investments in fully-owned subsidiaries and associates): Having taken cognizance of Zakat Payer's appeal regarding this item, the Department found that this item was not among the items included in the operative part of primary Decision and was not considered when the objection was heard before the Primary Committee. However, Zakat Payer claims that the basis of appeal involves the fact that during the amended assessment, this item was included, contrary to what was agreed upon in the primary assessment, which did not involve this item in the dispute with ZATCA as alleged by Zakat Payer. As such, the Department decided not to consider this appeal on merits, as it was not a subject of dispute during the proceedings before the Primary Committee. Accordingly, Zakat Payer shall be entitled to raise the dispute regarding this item before ZATCA to amend or settle such assessment with Zakat Payer, while maintaining Zakat Payer's right to request considering dispute in this regard in the event of failure to agree with ZATCA on resolving dispute regarding this item in question.
5. (Not deducting investments in shares of companies listed on Bahrain capital market): The Company appeals against ZATCA procedure outlined in not deducting such investments, as ZATCA asked the Company to provide the external financial statements of the companies in which the investments were made. The Company deems that this request is unachievable since the investment is made through a stock portfolio, and its revenues are included in Company's financial statements, which makes its revenues subject to Company's zakat. Having taken cognizance of Company's appeal and primary Decision regarding this item, the Department found that the investment pertains to investment funds in financial securities at (...). Since Zakat Payer did not provide evidence in its zakat declaration to indicate that such investments were subject to zakat in the country of investment, nor did Zakat Payer submit audited accounts by a chartered accountant from that country and certified by the official authority. Therefore, the Department concluded that these investments should not be deducted from zakat base because the necessary documents were not provided to support their deduction from zakat base. Since this was Company's position during the consideration of objection before the Primary Committee and the appeal before this Department. Therefore, the Department upholds the primary Decision regarding the appealed item, as Appellant's claim do not affect the conclusion in this regard.

As for ZATCA appeal:

Having taken cognizance of ZATCA appeal, the Department found that it pertains to primary Decision in (Second), Paragraph (1). The Decision upheld Zakat Payer's stance in deducting investments in shares of local joint-stock companies for 2014. ZATCA claims that investments in such shares, amounting to SAR 58,251,872, outline investments in shares of joint-stock companies (Saudi stocks). In addition, ZATCA insists on its position



by rejecting deduction of such investments, as such investments are intended for trading purposes, rather than acquisition. Therefore, such investments shall be considered as goods, even if they remained in Company's books for more than a year. In this case, such investments shall be considered as current assets intended for sale, which means that such investments should not be deducted from Zakat Payer's zakat base, contrary to the primary Decision in this regard. Since the Department may persuade reasons for appealed 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 further response beyond what those reasons contained. As such, and since it is established that the appealed Decision regarding the dispute regarding items subject matter of appeal was consistent with valid reasons on which it was based and sufficient to support its ruling, as the Primary Committee conducted a thorough examination of the dispute and concluded to the facts reached in its wording. Since the Department found that Primary Committee's conclusion in its Decision is valid, 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 this Department. Therefore, this Department finds nothing in the presented defenses to warrant a change in this conclusion. In addition, ZATCA argument, that the Primary Committee contradicted itself by rendering a different Decision for the same Zakat Payer on the same subject matter without any significant changes, is invalid. The Department deems that this argument as a challenge to the Committee's discretionary authority to assess the situation in each case individually. The Committee's assessment of the facts and circumstances in each dispute is within its jurisdiction, and the fact that it changed its stance on a particular matter does not undermine the validity of its Decision as long as the Decision is based on sound reasoning. Therefore, the Department concludes that ZATCA appeal does not present a valid reason to challenge the primary Decision. Accordingly, the Appellate Department dismisses ZATCA appeal and upholds the primary Decision regarding the item subject matter of ZATCA appeal.

Decision

First: In form, Accept the appeal filed by Zakat Payer/ C.R. No.(...), and ZATCA's appeal against Decision No. (29) of 1438 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

- a. As for the Appeal filed by ...:
 1. Accept Zakat Payer's appeal regarding the item of upholding ZATCA's Decision of not deducting land contributions from zakat base for 2014, and overturn primary Decision in this regard according to reasons and Grounds stated herein.
 2. Accept appeal filed by Zakat Payer regarding the item of not deducting dividends of joint-stock companies listed on the Saudi Exchange from zakat base for 2014, and overturn primary Decision in this regard according to reasons and Grounds stated herein.
 3. Accept appeal filed by Zakat Payer regarding (Non Deduction of Projects under Construction for 2014) item from zakat base, and overturn primary Decision in this regard according to reasons and Grounds stated herein.
 4. Dismiss considering merits of the dispute regarding (Disallowing Deduction of Investments in Affiliated Companies and Associates in Full) item according to reasons and Grounds stated herein.
 5. Dismiss appeal filed by Zakat Payer regarding (Disallowing Deduction of Investments in Shares of Companies listed on Bahrain Bourse) item, and uphold primary Decision in this regard according to reasons and Grounds stated herein.



- b. As for ZATCA Appeal:
- c. Dismiss appeal filed by ZATCA regarding (Deducting Investments in Shares of Local Joint-Stock Companies for 2014) item, and uphold primary Decision in this regard according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-37)
Delivered in Appeal No.
(ZW-1576-2018)

Principle No. 180

Zakat base for Zakat Payers is calculated using a specific method, one of its core elements being the deduction of net fixed assets and their equivalents regardless of their size or type, as long as they represent non-current assets that contribute to current and future production.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday, 08/09/1442 AH corresponding to 20/04/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal filed on 21/07/1436 AH by/ ... Company and the appeal filed by ZATCA on 26/06/1436 AH, against Decision No. (19) of 1436 AH issued by First Primary Committee for Zakat and Tax Objections in Riyadh in Case No. (41/34) regarding zakat and tax assessment for 2008 and 2009 filed by both Appellants against the Decision under consideration which ruled as follows:

First: Accept the objection in form.

Second: On Merits:

1. Settle the dispute with ZATCA's approval of Zakat Payer's position.
2. Uphold Zakat Payer's position to deduct commercial service fees from the profit subject to Zakat for the years 2008 and 2009.
3. Uphold Zakat Payer's position to deduct these fees from the profit subject to Zakat.
4. Uphold ZATCA's position to not deduct loans granted to employees from the Company's Zakat base for the disputed years.
5. Uphold ZATCA's position to subject adjusted net profits to Zakat for the years 2008 and 2009.
6. Uphold ZATCA's position to subject amounts paid by the Company for the use of satellites, leased internet services, and leased cable capacities to withholding tax.

Dissatisfied with this Decision, both parties, (... Company and ZATCA), submitted a statement of appeal to the Department, including their objection to the following items: Regarding item (Employee Housing Loans for 2008 at (SAR 615,491,000) and 2009 at (SAR 717,750,704)), the Company is objecting to the Primary Committee's Decision supporting ZATCA's viewpoint that the loans granted to employees should not be deducted from Zakat Payer's Zakat base for the disputed years. Zakat Payer asserts its right to deduct these amounts from Zakat base, considering them as cash amounts granted by the Company to its employees as interest-free loans secured by the properties purchased by the Company's employees. Zakat Payer states that ZATCA's Decision to not deduct employee housing loans for 2008 and 2009, on the Grounds that they are debts likely to



be re-paid and are fully recoverable. The Company has the right to sell the properties purchased by the employees using these loans, which contradicts the principle of these benevolent loans, as no interest or revenue is generated from them for the Company. Additionally, these loans are not capable of growth and are incompletely owned, meaning that the Company cannot dispose of or grow these loans since they are in the hands of the borrowing employee. Therefore, it is evident that these loans are among the withheld funds that are not subject to Zakat. This is further supported by the Decision of the board of directors of... which approved the Company management's recommendation to grant interest-free housing loans to Company employees and adopted an employee housing loan program with an allocated value of SAR 800 million, to be funded by installment payments collected from employees. The selection of employees applying for the loan will be based on the prepared mechanism. Zakat Payer also states that the homeownership program for Company employees is a benefit granted to them to ensure their job stability and as a contribution from the Company to economic development. Therefore, it is an acquired right of the Company's employees that cannot be relinquished, and it has not been granted to non-employees to avoid violating the Company's AOA. The Company has the right to grant any suitable benefits to its employees in accordance with the labor law, which ensures the employee's continued loyalty to the Company. At the same time, these benefits do not represent commercial debts but are long-term assets owned by the Company and are, therefore, a negative element of Zakat base. Zakat Payer also responds to ZATCA's objection citing Fatwa No. (3077/2) dated 08/11/1426 AH, stating that its reference to this Fatwa is incorrect because it pertains to commercial debts that generate profit and not to benevolent loans. Zakat Payer states that SOCPA' standards confirm the Company's viewpoint on the accounting treatment of such loans, considering them as a non-current asset under the intangible asset standard (from paragraph 105 to paragraph 120 of the same standard) of the Company's assets. Zakat Payer concluded its objection to this item by requesting the cancellation of the Primary Committee's Decision on this item, considering that these loans represent long-term assets owned by the Company and should therefore be deducted from Zakat base, and that only the employee's contributions should be zakatable, as they represent the value corresponding to a portion of the repaid asset.

Regarding item (Comparison between Zakat base and adjusted profit, whichever is greater, and subjection of adjusted net profit to Zakat for the year 2008 at (SAR 15,284,438,819) and for the year 2009 at (SAR 15,264,483,834)), ... Company is objecting to the Primary Committee's Decision upholding ZATCA's viewpoint of subjecting the adjusted net profits to Zakat for the years 2008 and 2009. Zakat Payer states that the Primary Committee uphold ZATCA's viewpoint on the Grounds that the profit realized from Zakat Payer's activity during the year is the minimum for Zakat base, as profits (gains) are defined in accounting terms as the increase in the equity of owners that comes either from an increase in assets or a decrease in liabilities. Zakat Payer responds to this by citing a Council of Ministers' Decision dated Monday, 30/02/1436 AH, which reinstated the Implementing Regulations for Zakat collection issued by Minister of Finance's Decision No. (393) dated 06/08/1370 AH. These Regulations did not include any regulatory provisions that require the aforementioned comparison. Therefore, subjecting adjusted net profit as Zakat base is a measure taken by ZATCA that is not based on any regulatory provision but rather contradicts Shari'a basis for calculating Zakat on trade assets, which considers Zakatable assets at their value and assessment on the day Zakat becomes due, using the balance sheet, regardless of whether there is a profit or loss in the profit and loss account. One of the conditions of Zakat is reaching Nisab (threshold). The Permanent Committee for Scholarly Research and Ifta issued Fatwa No. (23408) dated 18/11/1424 AH, which stated that what has been made as revenue in the purchase of assets or spent by its owner on non-trade assets before the completion of the lunar year is not subject to Zakat. Zakat Payer also states that it is known that revenues flow throughout the year and



that the entity's operations continue throughout the year. So, where would the purchase of assets come from if not from the Company's revenues that flow throughout the year? Additionally, net profit is realized after matching revenues with expenses and is defined as an annual profit at the end of the fiscal year. Since net profit is an element in determining Zakat base according to ZATCA's circular No. (2/8443/2/1) dated 08/08/1392 AH, then to balance the equation, it is necessary to accept the deduction of fixed assets funded by revenues flowing throughout the year. Zakat Payer's net fixed assets should be deducted regardless of their size or type, as long as they represent non-current assets that contribute to current and future production (productive assets). Since Zakat is a financial obligation that is only due when there is money, its limit has no basis in Shari'a or law. Therefore, ZATCA's procedure is incorrect and must be canceled.

Regarding item (Withholding taxes on leased internet circuits, satellite capacity rentals, and submarine cable capacity rentals, and imposition of withholding tax on resident and exempt entities in KSA for the years 2008 and 2009), ... Company is objecting to The Primary Committee's Decision supporting ZATCA's Decision to subject the amounts paid by the Company for the use of satellites, leased internet services, and leased cable capacities to withholding tax.

In its turn, ZATCA filed an appeal against the contested Decision, as per a statement of appeal, which can be summed up as follows:

Regarding the appeal on item (Deduction of commercial service fees from Zakatable profit for the year 2008 at (SAR 15,040,000) and for the year 2009 at (SAR 32,068,000)), ZATCA is objecting to the Primary Committee's Decision upholding Zakat Payer's viewpoint on deducting commercial service fees from Zakatable profit for the years 2008 and 2009. ZATCA reaffirms its rejection of said amounts because they are overstated. They were calculated correctly according to Royal Decree No. (206) dated 17/6/1428 AH, as the Company recorded expenses in 2008 amounting to (SAR 4,144,181,000) while the fees that should have been recorded amounted to (SAR 4,129,141,000), and in 2009, it recorded expenses amounting to (SAR 4,037,045,000) while the fees that should have been recorded amounted to (SAR 4,004,977,000). ZATCA responds to Zakat Payer's clarification before the Primary Committee, as stated in the Decision on page (6), that these differences represent commercial service fees charged on the Company's receivables from local operators. ZATCA clarifies that the Company's receivables from operators are fully included in the Company's income statement prepared on an accrual basis. Since the service fees were calculated on the net operating income, including receivables, calculating them again would be a double taxation of expenses, once as part of the income included in the financial statements and again as a separate item. Assuming that these fees are calculated and paid to the government by local operators on behalf of the Company, the Company should have reduced the total fees by this amount if it wanted to show it as a separate item within the costs. Moreover, the Company has not provided any supporting documents to prove that these operators have paid these fees on behalf of the Company's account to the government, nor the claims submitted by the local operators to the Company, nor the method by which the Company has calculated these fees that it has paid on behalf of the local operators in a similar manner.

Regarding ZATCA's appeal on item (Deduction of fees from Zakatable profit (fees for licenses exceeding 1%) at SAR 1,832,660 for 2009), ZATCA is objecting to the Primary Committee's Decision upholding Zakat Payer in deducting these fees. ZATCA reaffirms its right to reject these amounts by reiterating its previous viewpoint in the preceding item, and also because these amounts are overstated. The correct amount that should have been charged is SAR 308,323.340, not SAR 310,156,000.

Upon opening the door for pleadings, Zakat Payer submitted a Reply dated 19/01/1442 AH corresponding to 06/09/2020 AD, regarding the items disputed by ZATCA. Attached to it were a number of Fatwas as well as the Company's board of directors' Decision



regarding granting loans to employees. The Reply can be summed up as follows: Regarding item (Deduction of commercial service fees from Zakatable profit for the year 2008 at [amount] and for the year 2009 at [amount]), Zakat Payer responded to ZATCA's appeal by stating that the Company does not agree with ZATCA's calculation of commercial service fees. ZATCA added an amount of (SAR 15,040,000) for 2008 and (SAR 32,068,000) for 2009 to the book profit, claiming that these amounts were overpaid. These amounts represent commercial service fees charged on the Company's receivables from local operators, as they are calculated and paid to the government through local operators, who then bill ... Company for them. Then Company records these as an actual expense - within commercial service fees - which is offset by the Company's revenue and compensates the local operators. Therefore, these are not overpaid commercial service fees but rather are due to local operators. Regarding item (Deduction of fees from Zakatable profit (fees for licenses exceeding 1%) at SAR 1,832,660 for 2009), Zakat Payer responded to ZATCA's appeal by stating that the Company does not agree with ZATCA's calculation of the license fees. The Company argues that these fees are actual expenses that were correctly calculated and paid during 2009. Furthermore, the Company disagrees with the inclusion of the additional 1% license fee of (SAR 1,832,660) back into the adjusted profit as it was calculated in accordance with Royal Decree No. (206) dated 17/06/1428 AH. This amount represents the license fee for Company Bahrain amounting to (SAR 874,000) and an additional 1% license fee of (SAR 959,000) on the Company's receivables from local operators. These fees are calculated and paid to the government through local operators, who then bill Company for them. Then Company records these as an actual expense - within the 1% license fees - which is offset by the Company's revenue and compensates the local operators. Therefore, these are not overpaid license fees but rather are the license fees for Company Bahrain and amounts due to local operators.

On 27/05/1442 AH, ZATCA's response was submitted as per a Memorandum that can be summed up as follows: Regarding Zakat Payer's appeal on item (Housing loans for employees for the years 2008 and 2009), ZATCA responded that these loans represent receivables due to Zakat Payer and cannot be deducted from Zakat base according to relevant Islamic Fatwas, as they are debts likely to be re-paid and are fully recoverable. Regarding item (Subjection of adjusted net profit to Zakat for the years 2008 and 2009), ZATCA responded that Zakat Payer's reliance on Fatwa No. (23408) dated 18/11/1426 AH is incorrect and does not apply to Zakat Payer's case under any circumstances. In ZATCA's letter No. (1567/9) dated 21/03/1430 AH, it explained the Fatwa and continued to follow the method that ZATCA uses when determining Zakat base for accounts prepared according to the accrual principle, which is to deduct fixed assets up to the limits of equity so that Zakat base is represented by the adjusted net profit of the year as a minimum, unless there are carried-forward losses approved by ZATCA for previous years, in which case they are deducted because they represent actual losses. ZATCA also indicates that what is stated in the Fatwa supports ZATCA's procedure, as the net profit for the year for which Zakat is due is not determined until the accounts are closed at the end of the fiscal year, and it cannot be said that the purchase of fixed assets during the year was made from net profits that had not yet been realized and are not actually determined until the end of the year after preparing, reviewing, and auditing the final accounts by Zakat Payer's chartered accountant.

In its session held on 02/07/1442 AH, corresponding to 14/02/2021 AD, having taken cognizance of the statements of appeal and reply thereto, and after reviewing papers and documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.

Grounds





Having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer/... Company, And the appeal filed by ZATCA, the Department found that the conditions for hearing both appeals have been met in form in accordance with conditions stipulated in the relevant laws, regulations and resolutions. Therefore, the appeals are accepted in form for being filed by party that has capacity and within the prescribed statutory period.

On merits: Regarding Zakat Payer's appeal on item (Housing loans for employees for the years 2008 and 2009), after reviewing the primary Decision, the appeal, and the pleadings and documents submitted by both parties, the Department found that the subject of the appeal centers on the Appellant's request to deduct housing loans for employees for 2008 amounting to (SAR 615,491,000) and for 2009 amounting to (SAR 717,750,704). The Appellant argues that Zakat is not due on these loans because they do not meet the conditions of Zakat according to Islamic law, as stated in its appeal memorandum. Zakat Payer also points out that ZATCA has accepted the deduction of this item in subsequent years, which means that the dispute over it is considered settled and represents a precedent that can be applied to the disputed years. However, ZATCA believes that these loans represent receivables due to Zakat Payer and cannot be deducted from Zakat base according to relevant Islamic Fatwas, as they are debts likely to be re-paid and are fully recoverable. Since there was no dispute between the parties regarding the collection of these funds, and since it is established that there is no legal difference from a Sharia perspective between loans provided to employees or to external parties, which means that they fall within the scope of fatwas obligating Zakat on the creditor if the debt is likely to be re-paid, it is decided to reject Zakat Payer's appeal and uphold the primary Decision on that matter.

Regarding Zakat Payer's appeal on item (Subjection of adjusted net profit to Zakat for the years 2008 and 2009), the Department found that the subject of the appeal centers on Zakat Payer's request not to take the adjusted net profit as the base for Zakat for the years 2008 and 2009, while ZATCA insists on taking the adjusted net profit as the base for Zakat. This Department is convinced that Zakat base for Zakat Payers is calculated using a specific method, one of whose pillars is the deduction of net fixed assets and their equivalents, regardless of their size or type, as long as they represent non-current assets that contribute to current and future production. Therefore, limiting them to certain limits has no legal, regulatory, or accounting basis. This is further supported from a Sharia perspective by Fatwa No. (23408) dated 18/11/1426 AH, issued by the Permanent Committee for Scholarly Research and Ifta, which states that "whatever is made from the factory's income that is subject to Zakat to purchase assets or that the owner spent on non-trade assets before the completion of a full lunar year, there is no Zakat on it because it was spent before the completion of a full lunar year." This is not affected by ZATCA's statement that this Fatwa is specific to a particular case, as long as the result of this Fatwa is consistent with what the calculation of Zakat base equation requires, which requires, for the obligation of Zakat, the presence of the money subject to Zakat with Zakat Payer, which is realized by taking into account the elements of Zakat base, represented by capital, equity, annual profits, and other sources of financing, minus the elements of the negative Zakat base, represented by fixed assets, long-term investments, annual losses, and carried-forward losses. One of its pillars is the deduction of net fixed assets and their equivalents, regardless of their size or type, as long as they represent non-current assets that contribute to current and future production. As long as the annual profits have been used to finance these assets, limiting them to certain limits has no legal basis, since the origin of Zakat is its imposition on Zakatable funds with Zakat Payer at the end of a full lunar year. Since fixed assets, regardless of their source of funding, are not Zakatable funds, the Department has concluded by accepting Zakat Payer's appeal regarding its request not to consider the adjusted net profit as Zakat base, and overturning the primary Decision on the matter.

Regarding Zakat Payer's objection to item (Withholding taxes on the costs of leased internet circuits, satellite capacity rental costs, and submarine cable capacity rental costs, and imposition of withholding tax on resident and exempt entities in KSA for the years 2008 and 2009), it has been proven to the Department that a settlement was reached between the parties pursuant to Letter No. (33396/16/1439) dated 16/1439 AH from Zakat and Tax Dispute Settlement Committee. As such, the dispute regarding this item is therefore considered settled.

Regarding ZATCA's appeal concerning item (Deduction of commercial service fees from Zakatable profit for the year 2008 amounting to (SAR 15,040,000) and for the year 2009 amounting to (SAR 32,068,000)), it is apparent to the Department that the appeal centers on ZATCA's request to amend the results of the calculations for the years 2008 and 2009 by the difference in commercial service fees, while Zakat Payer believes that commercial service fees should not be added to the book profit for the year 2008 at (SAR 15,040,000) and for the year 2009 at (SAR 32,068,000), considering them to be real, actual, and confirmed expenses. This Department may adopt the reasons of the appealed Decision regarding the matter under consideration without adding to them whenever it is considered that those reasons are sufficient without the need to introduce anything new, since the appealed Decision is in accordance with the valid reasons on which it was based and sufficient to support its judgment; as the issuing committee scrutinized the crux of the dispute and reached the conclusion it did in its judgment. Since the Department sees no Grounds to amend or comment on the Decision based on the evidence provided, it concludes that the arguments presented do not alter the outcome of the primary Decision on this matter. Therefore, the Department decided to reject ZATCA's appeal and uphold the primary Decision in respect of this item.

Regarding ZATCA's appeal concerning item (Deduction of fees from Zakatable profit (fees for licenses exceeding 1%) amounting to SAR 1,832,660 for 2009), the Department found that the appeal centers on ZATCA's request to amend the calculation results for the year 2009 by the difference in fees for licenses exceeding 1% amounting to SAR 1,832,660, while Zakat Payer believes that this is actual expenses that have been correctly calculated. This Department may adopt the reasons of the appealed Decision regarding the matter under consideration without adding to them whenever it is considered that those reasons are sufficient without the need to introduce anything new, since the appealed Decision is in accordance with the valid reasons on which it was based and sufficient to support its judgment; as the issuing committee scrutinized the crux of the dispute and reached the conclusion it did in its judgment. Since the Department sees no Grounds to amend or comment on the Decision based on the evidence provided, it concludes that the arguments presented do not alter the outcome of the primary Decision on this matter. Therefore, the Department decided to reject ZATCA's appeal and uphold the primary Decision in respect of this item.

Decision

First: In form: Accept the appeal filed by/ ... Company, C.R. No. (...), as well as the appeal filed by ZATCA, against Decision No. (19) of 1436 AH issued by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Reject the appeal filed by Zakat Payer regarding item (Employee housing loans for the years 2008 and 2009), and uphold the primary Decision on the matter.
2. Accept the appeal filed by Zakat Payer regarding item (Subjection of adjusted net profit to Zakat for the years 2008 and 2009), in response to Zakat Payer's request to not consider Zakat base as the adjusted net profit, and overturn the primary Decision on this matter, for the reasons stated in this Decision.



3. Approve end of the dispute between Zakat Payer and ZATCA regarding item (Withholding taxes on leased internet circuits, satellite capacity rental costs, and submarine cable capacity rental costs, and imposition of withholding tax on resident and exempt entities in KSA for the years 2008 and 2009), as a settlement was reached between the two parties. As such, the appeal regarding this matter is considered null and void.
4. Reject the appeal filed by ZATCA regarding item (Deduction of commercial service fees from Zakatable profit for the year 2008 at (SAR 15,040,000) and for the year 2009 at (SAR 32,068,000)), and uphold the primary Decision and its conclusion on this matter, for the reasons stated in this Decision.
5. Reject the appeal filed by ZATCA regarding item (Deduction of fees from Zakatable profit (fees for licenses exceeding 1%) at SAR 1,832,660 in 2009), and uphold the primary Decision and its conclusion on this matter, for the reasons stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-138)
Delivered in Appeal No. (Z-1591-2018)

Principle No. 181

Whether or not an investment is deducted does not affect the consideration of loans that have completed a lunar year. Rather, it is contingent on adding loans that have not yet completed a lunar year to Zakat base if they are used to finance assets that are excluded from Zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday, 26/11/1442 AH, corresponding to 06/07/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 29/10/2018, by/ Company, against Decision No. (1/1) of 1439 AH dated 19/01/1439 AH, delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah issued regarding Zakat Payer's Objection to Zakat assessment for 2008 AD, in the Case filed by the Appellant against of Zakat, Tax, and Customs Authority ("ZATCA"), in which the primary Decision ruled as follows:

First: In Form:

Accept Zakat Payer's Objection No. (288) of 08/07/1434 AH received by ZATCA, in form, for being filed by a party that has capacity and within the period prescribed by Law, meeting the conditions stipulated in the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH.

Second: On Merits

1. Uphold ZATCA's Decision to not deduct Foreign Investment Losses from Zakat base for 2008 AD.
2. Uphold Zakat Payer's claim to deduct Donations of SAR (766,497) from its Zakat base.
3. Uphold ZATCA's Decision to not deduct Zakat Expenses amounting to SAR (4,124) from Zakat Payer's Zakat base for 2008 AD.
4. Uphold ZATCA's Decision to not deduct gains from selling shares of ... Company, At SAR (47,186,697) from Zakat Payer's Zakat base for 2008 AD.
5. Uphold Zakat Payer's claim to deduct Fixed Investments of SAR (137,479,578) only from Company's Zakat base.
6. Uphold ZATCA's Decision to not deduct Investment Income of ... Company, from Zakat Payer's Zakat base for 2008.
7. Uphold ZATCA's Decision to add Bank Loans that completed a full year at SAR (78,441,386.80) in Zakat Payer's Zakat base for 2008.
8. Uphold ZATCA's Decision to deduct Projects Under Implementation amounting to SAR (19,767,620) from Zakat Payer's Zakat base for 2008.



As this Decision was not accepted by Zakat Payer (... Company), Zakat Payer submitted a Statement of Appeal, which included the following:

Zakat Payer is appealing the Primary Committee's Decision on six items: Regarding item (Foreign investment losses): Zakat Payer asserts that the Company incurred losses in Company, and has provided ZATCA with a copy of Investee Company's audited financial statements, which have been accredited by a chartered accountant and translated into Arabic by a certified translator. Therefore, Zakat Payer requests to deduct the investment losses from Zakat base. Regarding item (Zakat expenses), Zakat Payer asserts its right to exclude these expenses from Zakat base. It argues that these expenses have been paid by the Company as evidenced by supporting documents. Regarding item (Profits from sale of shares in Company), Zakat Payer bases its appeal on the fact that profits from the sale of these shares meet the criteria stipulated in Article 7 of the Implementing Regulations of the Income Tax Law, which states: "Capital gains realized from the disposal of securities traded in accordance with the following criteria are exempt: if the sale was conducted in accordance with Saudi Capital Market Law, and if the investments disposed of were not in existence before effective date of the law on 13/06/1425 AH". Therefore, Zakat Payer requests to deduct profits from the sale of shares from Zakat base. Regarding item (Investments), Zakat Payer bases its appeal on the fact that the Company has included in its Zakat declaration the loans used to finance the investments, as well as unrealized gains from securities, and that the long-term investments are held for the purpose of acquisition. Therefore, Zakat Payer requests to deduct these investments from Zakat base. Regarding item (Income from profits in ... Company ...) Zakat Payer believes that these earnings have already been subjected to Zakat at Company, which is a joint-stock company with its own Zakat file at ZATCA. As for the committee's statement that the original investment is included in the Company's accounts under the heading of available-for-sale securities, and that a portion of the shares of (...) Company was actually sold during 2008, Zakat Payer has already objected to what pertains to the investment in shares of (...) Company as part of its objection to manufacturing shares. Regarding item (Bank loans), Zakat Payer clarifies that bank loans have been added based on the completion of the lunar year. The Company initially added a portion of the bank loans to Zakat base while deducting the investments financed by these loans. However, ZATCA adjusted the value of the investments and did not allow a full deduction. Therefore, Zakat Payer requests that the loans not be added, given that ZATCA has not accepted the deduction of the investments financed by these loans.

Upon opening the door for pleadings, ZATCA submitted a reply on 20/03/1442 AH, corresponding to 06/11/2020 AD, in which it responded to the Zakat Payer's appeal regarding the items in dispute maintaining its arguments that had been submitted before the Primary Committee. ZATCA also confirms that the Zakat Payer's appeal is nothing but reiteration of the same claims and arguments it raised before the Primary Committee, which ZATCA responded to. ZATCA concluded its reply confirming the validity and soundness of its procedures and requests that the Zakat Payer's appeal be dismissed and that the primary Decision be upheld.

On Thursday, 17/09/1442 AH corresponding to 29/04/2021 AD, the Department decided to hold a 10-day e-hearing. However, the period elapsed without either party to the appeal submitting any additional arguments.

The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on Sunday 10/11/1442 AH corresponding to 20/06/2021 AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final Decision.

Grounds



After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merits: With regard to Zakat Payer's appeal concerning item (Foreign investment losses), it appears that the appeal centers on Zakat Payer's disagreement with the inclusion of this item in Zakat base, due to the existence of specific losses for the Company in Company. Meanwhile, ZATCA believes that it is not permissible to deduct the item from Zakat base due to the Appellant's failure to provide supporting documents proving the acquisition of investments and the financial statements of investee companies, certified by a chartered accountant. Upon careful consideration of the subject matter of the dispute, and since the Primary Committee based its Decision on rejecting Zakat Payer's objection on lack of certification of Zakat Payer's financial statements by official authorities, and given that the disputed year is 2008, which is governed by Ministerial Decision No. (1005) dated 28/04/1428 AH, which did not require certification by official authorities for financial statements, it becomes clear to the Department that Zakat Payer's position is sound and valid. The Primary Committee's reliance on Article 4 of the Implementing Regulations of Zakat Collection Law does not undermine this, as the Regulations were issued after the disputed years, and its provisions apply only to matters occurring from its effective date, and its effects do not retroactively apply to what occurred before it, in accordance with the principle of non-retroactivity of laws. As a result, the Department has decided to accept Zakat Payer's appeal and overturn the primary Decision regarding this item.

As for item (Zakat expenses), the appeal centers on Zakat Payer's request to exclude this item from Zakat base, on the Grounds that these expenses have been paid by the Company as evidenced by supporting documents. However, ZATCA believes that it is not permissible to deduct it from Zakat base, considering it a right due to Allah - the Almighty - and not an expense that can be attributed to costs. Upon careful consideration of the subject matter of the dispute, and given that Zakat is calculated on Zakat base and is not part of it, there is no legal or regulatory basis to support Zakat Payer's argument that Zakat payments should be considered an expense. This Department has verified the correctness of the conclusion reached by the Committee that issued the appealed Decision. The arguments presented by Zakat Payer do not affect the outcome of the Decision. Therefore, this Department has decided to reject Zakat Payer's appeal and uphold the primary Decision regarding this item.

As for item (Profits from sale of shares of Company), it appears that the appeal centers on Zakat Payer's disagreement with the failure to deduct this item from Zakat base, since the profits from the sale of these shares meet the criteria set forth in Article (7) of the Implementing Regulations of Income Tax Law, which exempts capital gains realized from the disposal of traded securities. However, ZATCA believes that the item should not be deducted from Zakat base, as the profits are realized income subject to Zakat, and Zakat Payer's reliance on the provisions of Income Tax Law and its Implementing Regulations regarding the exemption of capital gains realized from the disposal of traded securities is specific to income tax payers and not Zakat payers. Upon careful consideration of the subject matter of the dispute, as well as what was presented by both parties to the appeal, and since what Zakat Payer relied on pertains to income tax payers, and those provisions relied upon by Zakat Payer have no relation to Zakat payers, and since the appealed Decision was in accordance with the sound reasons upon which it was based and sufficient to support its judgment; as the issuing committee examined the crux of the dispute and concluded that ZATCA was correct in not deducting the profits from the sale of shares of Company from Zakat Payer's Zakat base for 2008. Since the Department did not



observe any requirement for correction or further comment based on the evidence presented, this Department concludes that the submissions made do not affect the outcome of the primary Decision regarding this item. Therefore, this Department dismisses the appeal and upholds the primary Decision in respect of this item.

Regarding item (Investments), it appears that the appeal centers on Zakat Payer's disagreement with the inclusion of this item in Zakat base, given that the Company, in its Zakat declaration, added the loans used to finance the investments and the unrealized gains from securities, and that the investments are long-term and for the purpose of acquisition. However, ZATCA believes that it is not permissible to deduct this investment, and consequently, not to recognize the related profits and losses. Upon careful consideration of the subject matter of the dispute, and given that Zakat Payer's appeal was not specific to a particular component of those investments but was a general appeal against that item without details, and given that it is evident from the primary Decision that the Primary Committee arrived at the amount it accepted for Zakat Payer after examining Zakat Payer's financial statements and distinguishing between what is subject to Zakat and what is not from those investments, and given that this Department has accepted Zakat Payer's appeal in deducting foreign investment losses in the first item of this Decision, the Department has therefore decided to amend the primary Decision by adding the amount of foreign investment referred to in the first item to the amount of investments that the primary Decision allowed Zakat Payer to deduct.

As for item (Income from profits in ... Company), it appears that the appeal centers on Zakat Payer's disagreement with the inclusion of this item in Zakat base, given that these profits were already subject to Zakat in Company. As for the Committee's statement that the original investment was added to the Company's accounts under the item (available-for-sale securities), and that a portion of the shares of (...) Company was indeed sold was actually sold during 2008, Zakat Payer has already objected to what pertains to the investment in shares of (...) Company as part of its objection to manufacturing shares. ZATCA believes that it is not permissible to deduct the income, as the investments related to (...) Company have not been approved, and therefore, no profits or losses related to those investments have been approved. Upon careful consideration of the subject matter of the dispute, and given that ... Company is a Saudi company registered with ZATCA and submits its Zakat declarations to ZATCA, and since the annual profit is an element of Zakat base for ... Company, its distribution to the partners does not necessitate payment of Zakat on those incomes again, in order to prevent double Zakat and paying Zakat on the same money twice in a single year, as a result of which the Department has decided to accept Zakat Payer's appeal and overturn the primary Decision regarding this item.

As for item (Bank loans), it appears that the appeal centers on Zakat Payer's disagreement with the inclusion of this item in Zakat base, due to ZATCA's refusal to deduct the investments financed by these loans, while ZATCA believes that the loans should be added to Zakat base in accordance with Islamic Fatwas and regulations. Upon careful consideration of the subject matter of the dispute, and given that the primary Decision upheld ZATCA in adding the loans that have completed a lunar year, and given that Zakat Payer had no document in its appeal other than ZATCA's modification of the investments by not allowing their deduction, even though they were financed by the disputed loans, and given that deducting or not deducting the investment does not affect the consideration of loans that have completed a lunar year, but rather its basis is related to adding loans that have not completed a lunar year to Zakat base if they are financed for assets excluded from the base, and given that this Department has ascertained the correctness of the conclusion reached by the Committee that issued the appealed Decision, the Department has therefore decided to reject Zakat Payer's appeal and uphold the Decision on this matter.

Decision



First: In form: Accept the Appeal submitted by Zakat Payer/ Company, against Decision No. (1/ 1) of 1439 AH issued by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept the appeal filed by Zakat Payer regarding item (Foreign Investment Losses:), and overturn the primary Decision concluded in this regard, for the Grounds and merits stated in this Decision.
2. Reject the appeal filed by Zakat Payer regarding item (Zakat Expenses), and uphold the primary Decision concluded in this regard, for the Grounds and merits stated in this Decision.
3. Reject the appeal filed by Zakat Payer regarding item (Profits from Selling Shares of Company), and uphold the primary Decision concluded in this regard, for the Grounds and merits stated in this Decision.
4. Reject the appeal filed by Zakat Payer regarding item (Investments), and amend the primary Decision by adding the amount of foreign investment mentioned in the first item to the amount of investments that the primary Decision had already allowed Zakat Payer to deduct.
5. Accept the appeal filed by Zakat Payer regarding item (Profit Income in ... Company), and overturn the primary Decision concluded in this regard, for the Grounds and merits stated in this Decision.
6. Reject the appeal filed by Zakat Payer regarding item (Bank Loans), and uphold the primary Decision concluded in this regard, for the Grounds and merits stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-93)
Delivered in Appeal No. (Z-1617-2018)

Principle No. 182

Any addition of unrealized gains to Zakat base shall be offset by deducting the investments at their market value from Zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Saturday, 30/02/1442 AH, corresponding to 17/10/2020, the First Appellate Department for Income Tax Violations and Disputes, established pursuant to Royal Order No. (65474) dated 23/12/1439 AH in accordance with Article (67.b) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh to review the Appeal submitted on 05/01/1438 AH by/ ... Company against Decision No. (32) of 1437 AH of the Second Primary Committee for Zakat and Tax Objections in Riyadh, issued in Objection No. (37/22), filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept, in form, the objection submitted by/ ... Company regarding Zakat assessment for the year ending on 31/12/2013.

Second: On Merits:

1. Dismiss Zakat Payer's objection to (Unrealized Gains) item according to merits stated in the Decision.
2. Confirm resolution of the dispute over (Donations) item according to merits stated in the Decision.
3. Dismiss Zakat Payer's objection to (Subsidiary Profits) item according to merits stated in the Decision.
4. Dismiss Zakat Payer's objection regarding (Retained Zakat Provision) item according to merits stated in the Decision.
5. Dismiss Zakat Payer's objection by majority regarding (Advance Payments by Customers) item according to merits stated in the Decision.
6. Dismiss Zakat Payer's objection by majority regarding (Dividends to Creditors) item according to merits stated in the Decision.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

1. Item (Unrealized Gains from Investments): ZATCA added unrealized gains that outline the increase resulting from reassessing investments of our customers in the companies in which the investments were made. In addition, ZATCA added the accumulated balance to investment assessment. Zakat Payer argues that the value of investments (Unrealized Gains) resulting from reassessment at the year-end do not outline actual revenues or profits for the Company. Instead, they reflect the increase



in market value of investments owned by Appellant Company, and are shown in the financial statements for the purpose of informing users that Appellant Company has investments whose market value as on 31/12/2013 AD is higher than their acquisition cost. Moreover, Appellant Company requests amending assessment by reflecting investments at their cost after deducting (Unrealized Gains) that ensue from reassessment at the year-end.

2. Item (Profits from a Subsidiary Under Liquidation): The Appellant Company indicates that its clients hold a share of 88% in Company, a Saudi Company under liquidation. Upon completion of its liquidation, profits were realized from the liquidation process, which were recorded by the Appellant Company based on the "equity method." According to the declaration submitted by ... Company, these profits were already subject to Zakat by ZATCA. To prevent double Zakat, the realized profits from these investments shall be deducted from Appellant Company's Zakat base.
3. Item (Retained Zakat Provision): Appellant Company points out that ZATCA disallowed adding retained Zakat provision amounting to SAR 10,690,457 to Zakat base in accordance with the religious rule (Zakat money is not subject to zakat), as the profits that are subject to Zakat shall be taken into account before deducting Zakat.
4. Item (Shareholder Payables for the Years 2012 and 2013, and Dividend Payables for the Years 2012 and 2013): Appellant Company indicates that ZATCA did not verify the balance of dividend distributions that had not completed a full lunar year with the Company. ZATCA added the dividend distributions of shareholder payables to the Zakat base twice, amounting to SAR (153,201,225). The amount that has completed a full lunar year is significantly lower than this figure. ZATCA did not confirm the balance that has completed a full lunar year with the Company, and the Appellant Company has separated the amount in a separate bank account. Additionally, there is no Zakat due on (Dividend Payables) as they have not completed a full Zakat lunar year, and there is no Zakat on (Shareholder Payables) because the entire amount was separated from Company's accounts by depositing it into a special account for shareholders. The Appellant Company shall provide the committee with a bank certificate for the amount related to (Shareholder Payables), amounting to SAR (4,026,387).

The Department decided to open pleadings for considering merits of the appeal filed by Zakat Payer Company. However, Zakat Payer Company requested the Department to supplement its statement of appeal with a Supplemental memorandum under its request during the e-hearing session dated 05/02/1442 AH. Therefore, the Department gave the Company a two-week opportunity for submitting Supplemental memorandum regarding the request submitted to the Department.

The Department asked ZATCA to reply to arguments included in Appellant's memorandum regarding the contested items. Therefore, the Department received an answer from ZATCA regarding Zakat Payer's statement of appeal on 20/01/1442 AH. Accordingly, the Department decided to continue considering the Case in light of the documents included in Case file and ZATCA's answer to Zakat Payer's objections before the Primary Committee. The appeal shall bring the case back to its original state existing at the time of consideration when hearing appeal. The Department received a supplemental memorandum from Appellant Company on 20/02/1442 AH that included an explanation and details regarding two contested items: (Profits from a Subsidiary under Liquidation) and (Creditors of Shares and Creditors of Dividends), without adding new reasons to its arguments that had been previously submitted due to the fact that Appellant Company did not appeal them.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.



Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

Having reviewed the Case file, its contents, and the statement of appeal, and given that the Case is now ready for consideration based on the foregoing, the Department has decided to rule on the appeal filed by Zakat Payer Company regarding the disputed items as follows:

1. Item (Unrealized Gains from Investments): Upon reviewing Appellant Company's objection regarding this item as previously outlined, and after referring to the primary Decision that clarified ZATCA's position on this item during discussions before the Committee issuing the Appealed Decision and the conclusion reached by that Committee, it became evident to the Department that there is no disagreement between the parties on the principle that any addition of unrealized gains to Zakat base shall be offset by deducting the investments at their market value from Zakat base. The disagreement, as stated, lies in the extent to which this principle was applied. Zakat Payer believes that ZATCA did not deduct these amounts according to this principle and provided a comparison between the investment amounts deducted in ZATCA's assessment and the amounts reflected in the financial statements. The Department found that the remaining amount, which Zakat Payer claims was not deducted by ZATCA, was actually deducted in the assessment as "Zakat-paid long-term investment revenues", thus confirming proper application of the principle underlying the accounting treatment for available-for-sale investments according to accounting standards. Accordingly, the primary Decision is upheld, and Zakat Payer's Appeal regarding this item is rejected.
2. Item (Profits from a Subsidiary Under Liquidation): The basis for Zakat Payer Company's argument is that (... Company), in which Zakat Payer Company owns 88%, and the profits from the activities of that Company have been endorsed based on the practices of Saudi companies that submit their Zakat declarations to ZATCA and are assessed accordingly. Since the profits of Zakat Payer Company in the invested Company will result in Zakat liability when ZATCA requests Zakat payment on those profits again upon submission of Zakat declaration by the Company, Committee's conclusion was based on the fact that Zakat Payer Company did not provide the documents supporting its claim when objecting to ZATCA's assessment regarding this item. It is established that Saudi companies must submit their Zakat declarations to ZATCA, and ZATCA did not deny Appellant's claim of having endorsed those profits at the Investee Company. This matter could have been easily addressed by ZATCA confronting Zakat Payer Company with evidence proving that those profits were not endorsed in the Investee Company based on the Zakat declarations submitted by Zakat Payer companies to ZATCA, or by proving complete liquidation of the Company and absence of Zakat file for the Investee Company after its liquidation, along with fulfilling its obligations to ZATCA through a settlement in such cases. Given this context, the Department concluded to accept Zakat Payer's Appeal to deduct the amount (item of profits from a subsidiary under liquidation) from its Zakat base, and annulled the primary Decision regarding that item.
3. Item (Retained Zakat Provision): Since Appellant, in its memorandum regarding this matter, relied on its previous objection to the inclusion of retained zakat provision within zakat base, as stated in its arguments before the Primary Committee. Since Appellant's argument at that time was based on its belief that the principal amounts had already been subject to zakat, and the relevant Islamic rule in this matter states:



(Zakat money is not subject to zakat). These allocated amounts have completed a full year while still held by the Company. The rule on which Zakat Payer relies does not apply to the case at hand, as the rule means that Zakat money is not subject to Zakat for the year in which Zakat was already paid. Accordingly, since these amounts were held by the Company for another year, Zakat shall be due on such amounts for that year. Therefore, the Department dismisses Zakat Payer's appeal and upholds the primary Decision regarding this item.

4. Item (Shareholder Payables for the Years 2012 and 2013, and Dividend Payables for the Years 2012 and 2013): Upon reviewing Zakat assessment conducted by ZATCA for the year ending on 31/12/2013, it was observed that ZATCA added the ending balance for both (Dividend Payables) and (Shareholder Payables – Capital Adjustments) to Zakat base, as well as the beginning balance for the same two accounts. The core of the dispute between the parties is whether the balance of (Dividend Payables and Shareholder Payables) was kept in a separate bank account that the Company did not have control over. Zakat Payer provided to this Department, as part of the attachments to its supplemental memorandum submitted on 20/02/1442 AH, a sample of Company's transfers from its bank account to another bank account for the purpose of dividend distributions. ZATCA's response, dated 20/01/1442 AH, to Department's inquiry regarding the disputed item indicated that the disagreement between ZATCA and Zakat Payer is a documentation-related issue. Accordingly, ZATCA added the disputed balance amount due to the lack of documents proving that these amounts were held in a separate account and were not intermingled with Company's funds, and that the Company did not have control over them. Accordingly, the Department concluded that disputed account balances were not under Company's control, whether it pertains to the ending balance for the year 2012, which was added to Zakat base for 2013, or the lower balance for 2013, which was included in Zakat base. The Department is convinced that Zakat Payer has provided sufficient documentation proving that the funds related to Shareholder Payables and Dividend Payables were excluded from Company's assets and not under its control as an owner. Therefore, the Department determined that the disputed balances for the years 2012 and 2013 are not subject to Zakat, and accordingly, Zakat Payer's Appeal regarding this item is accepted, and the primary Decision is overturned.

Decision

First: Accept Taxpayer's (..... Company) appeal against Decision No. (32) of 1437 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Riyadh, in form.

Second: On Merits:

1. Dismiss Zakat Payer's appeal regarding (Unrealized Gains from Investments) item and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Profits from a Subsidiary under Liquidation) item, allow deduction of profits amount from Zakat Payer's zakat base and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
3. Dismiss Zakat Payer's appeal regarding (Retained Zakat Provision) item and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
4. Accept Zakat Payer's appeal regarding (Creditors of Shares for 2012 and 2013 and Creditors of Dividends for 2012 and 2013) item by disallowing their balances to be subject to zakat and overturn the primary Decision in this regard according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

**Decision No. (IAR-2020-97)
Delivered in Appeal No. (Z-2018-1630)**

Principle No. 183

The accounting treatment in the audited financial statements includes recording the unrealized gains on the disputed investments within equity, while also recording the investments at their fair value.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Monday, 11/03/1442 AH, corresponding to 28/10/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, based on Article (67.B) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh, to consider the appeal submitted on 12/01/1438 AH by/ ... Company, and the Appeal submitted by ZATCA on 10/01/1438 AH, against Decision No. (39/11) of 1437 AH of the First Primary Committee for Zakat and Tax Objections in Jeddah, issued in Objection No. (29) filed by both parties to the appeal concerning the Decision under consideration, which ruled as follows:

First: In form: Accept the objection submitted by (...) Company.

Second: On Merits:

1. Recalculate the depreciation schedule for Zakat Payer for the year 2013 in accordance with the new tax regulations specified for Zakat Payers, as outlined in ZATCA's circular No. (2574/9) dated 14/05/1426 AH.
2. Uphold ZATCA's Decision to include unrealized gains in Zakat Payer's Zakat base for the year 2013.
3. Add non-Zakatable investment income amounting to SAR (1,191,738) to Zakat Payer's Zakat base for the year 2013.
4. Calculate item (Profits from the sale of fixed assets through the fixed assets depreciation schedule (Schedule No. 4)), as stated in item (First) of this Decision.
5. Add item (Related parties) amounting to SAR 282,604 to Zakat Payer's Zakat base for the year 2013.
6. Add item (Performance guarantee) amounting to SAR (723,148) to Zakat Payer's Zakat base for the year 2013.
7. Uphold ZATCA's Decision to add item (Payables) amounting to SAR (10,416,450) to Zakat Payer's Zakat base for the year 2013.
8. Uphold ZATCA's Decision to add the Zakat provision – for which a full lunar year has been completed – to Zakat Payer's Zakat base for the year 2013.
9. Uphold ZATCA's Decision to add item (Short-term loans) amounting to SAR (35,000,000) to Zakat Payer's Zakat base for the year 2013.

10. Uphold Zakat Payer's request to deduct the net value of fixed assets and their equivalents from Company's Zakat base for the year 2013.

All of the above is in accordance with the Grounds stated in the Decision.

Since this Decision was not accepted by either party, (...) Company) and ZATCA, each submitted a Statement of Appeal to the Department, which included their objections to certain items included in the ruling under Appeal as follows:

Regarding the Appeal of/ (...) Company:

1. Item (Unrealized Gains from Investments): Zakat Payer Company is objecting to the Committee upholding ZATCA's position to add unrealized gains amounting to SAR (66,754,909), arguing that the amounts represent an increase resulting from the revaluation of investments at the end of 2013. ZATCA should not have added this increase and should have adjusted the calculation by deducting the full value of investments and assets in exchange for it, or by deducting investments and fixed assets (or their equivalents) from Zakat base at cost value after excluding unrealized gains.
2. Item (Investment Revenue amounting to SAR 30,239,523): Zakat Payer Company is contesting the Committee's Decision regarding this item. While the Committee did not fully uphold ZATCA's position of adding the entire amount to Zakat base, as it ruled to deduct SAR 29,047,785 considering that these funds had been previously subjected to Zakat at investee companies, the Committee did not deduct the amount of SAR (1,291,738). This is because the latter amount, in reality, represents revenues already subjected to zakat against Zakat Payer Company's investments in ... Company. Therefore, this amount shall not be subjected to Zakat again within Zakat assessment of Zakat Payer Company to avoid duplication of Zakat on the same revenue.
3. Item (Short-term Loans amounting to SAR 35,000,000), Zakat Payer Company is contesting the Committee's addition of two loan amounts from ... Bank. This amount represents the loans in question, which were added to Zakat base under the pretext that they financed fixed assets. In reality, this is incorrect because the two loans amounted to SAR (5,000,000) and SAR (30,000,000), respectively. The documents prove that these two loans were received on 01/07/2013 and 22/12/2013, respectively, and were repaid on 27/03/2014 and 19/03/2014. Therefore, loan balance data at the end of 2013 clearly shows that neither Zakat lunar year was completed nor was the amount of SAR (30,000,000) used to finance fixed assets, contrary to the primary Decision's conclusion. Thus, short-term loans should not be added to Zakat base.

As for ZATCA's Appeal against the primary Decision under Appeal regarding certain items included therein, it can be summarized as follows, based on the Statement of Appeal submitted by ZATCA on 10/01/1438 AH:

1. (Re-preparation of the Depreciation Schedule): ZATCA disputes Committee's conclusion in its Decision regarding the calculation method of asset depreciation as stated in the Income Tax Law and Implementing Regulations thereof. This is because, when assessing Zakat Payer in 2012, ZATCA used the straight-line method and reached an agreement with Zakat Payer to continue using this approach for calculating depreciation on fixed assets for the 2013 assessment. Therefore, Zakat Payer should not change the depreciation calculation method from one year to another, contrary to what was previously agreed upon.
2. (Addition of Non-Zakatable Investment Revenues), ZATCA objects to the primary Decision that excluded an amount from these revenues for Zakat Payer Company's investments totaling SAR (1,191,738). This is because, such revenues in fact represent dividend distributions for the year 2012 and do not pertain to the year 2013. Thus, their Zakat year follows that of their original source, as confirmed by the distributed profit balances in the accounts of the Investee Company. Zakat Payer did not clarify the nature of these profits, which are, in essence, retained earnings and not specific to



the year 2013. Moreover, the Company did not provide certificates from the Investee Company confirming that these profits were generated from the year 2013 earnings and are not related to the retained earnings of the Investee Company.

3. (Calculation of Profits from the Sale of Fixed Assets amounting to SAR 175,993): ZATCA requests that the provisions of the Tax Law and Implementing Regulations thereof not be applied when calculating the sale of assets for disposal as well as resulting profits or losses. Profit difference should be added to Zakat base without deduction, contrary to what was concluded in the primary Decision and its calculation, which ZATCA noted when examining the issue of depreciation differences and the method of their calculation.
4. (Net Fixed Assets Deducted from the Base): ZATCA believes in the validity of its position when calculating Zakat base for Zakat Payer by subjecting the adjusted net profit to Zakat, as ZATCA deducts fixed assets only within the limits of equity, in accordance with its circulars. This is to prevent the expenses for acquiring assets from being included in the income statements, which would result in the actual profits not being subjected to Zakat if Zakat base calculation turns out negative for Zakat Payer. Otherwise, this could lead to large companies operating in industries such as hotels being exempt from Zakat if such calculation is used by Zakat Payers. This contradicts the Committee's conclusion in its Decision. In reality, Zakat Payer itself calculated Zakat based on the adjusted net profit amounting to SAR (2,361,974), with the corresponding Zakat amounting to SAR (59,049). The principle followed by ZATCA is that if Zakat Payer's Zakat base is lower than the net profit of the year, then Zakat shall be calculated based on that profit. Such calculation aligns with the established principle that what is subjected to Zakat in such cases is the difference between revenues and expenses, representing net profit as Zakat base. Calculating Zakat based on the adjusted net profit is consistent with the established Sharia opinion, where the yield generated from capital investment is subject to Zakat without including the capital itself in the base in some cases, due to the nature of the activity involved, given that the capital is used in capital assets, and profits, as a form of growth, become liable for Zakat. Thus, there is no valid Sharia reason to exclude them from Zakat, as concluded in the primary Decision. Furthermore, the cited Fatwa in the Decision pertains to a specific case that does not necessarily apply to the current case. Additionally, there are several Decisions that have supported ZATCA's position in subjecting the adjusted net profit to Zakat.

Grounds



Upon reviewing case documents, the Appeal submitted by the Appellant Company, and the Appeal submitted by ZATCA, the Department found that both Appeals meet the formal requirements as stipulated in the relevant regulations, laws, and Decisions. Therefore, both Appeals are formally admissible as they were submitted by parties with the appropriate standing and within the legally prescribed timeframe.

On merits: Regarding Zakat Payer Company's Appeal, the Department reviewed and deliberated on its content as follows:

1. Item (Unrealized Gains from Investments): After the Department reviewed the reasons for Zakat Payer Company's Appeal on this item, it found that the Company objects to the treatment of unrealized gains from investments, as detailed in the summary of its Appeal previously mentioned. Company's Appeal pertains to the request to either add the balance of unrealized gains to Zakat base and deduct the related investment (not held for trading) based on the amounts shown in the financial statements, or not add these unrealized gains to Zakat base and deduct the related investment based on its cost. Since the accounting treatment in the audited financial statements includes recording the unrealized gains on the disputed investments within



equity, while also recording the investments at their fair value, adhering to what is stated in the audited financial statements would achieve a balanced Zakat treatment when assessing Zakat Payer regarding these investments and the gains realized from them. Therefore, the Department concluded to accept Zakat Payer's Appeal by adding the entire amount of unrealized gains, as shown in the year-end financial statements, to Zakat base as an independent item while deducting the related investments based on their values reflected in the year-end financial statements.

2. Item (Investment Revenues amounting to SAR (30,239,523)): It appears that the dispute highlighted by Zakat Payer's Appeal pertains to an amount of SAR (1,191,738) from these investment revenues, excluding the remaining amount that the issuing committee supported Zakat Payer in deducting from its Zakat base. After the Department examined the Grounds for Zakat Payer's Appeal regarding this item, it found that the Company argues for the validity of its position in deducting this remaining amount of investment revenues, considering that this amount represents profits that have already been subjected to Zakat at investee companies. Upon reviewing the financial statements, the Department noted that Zakat Payer, in accordance with its accounting policy, accounts for its subsidiaries and associates using the equity method, which requires recording Zakat Payer's share of the annual profit in these companies in its annual income. At the same time, it increases the value of the investment deducted from Zakat base. Since Zakat Payer did not dispute the amount deducted from Zakat base related to its investments accounted for using the equity method, the principle (according to the accounting policy) is that this amount is deducted from Zakat base based on the value shown in the financial statements, which includes Zakat Payer's share of the profits of the companies accounted for using the equity method. Therefore, to avoid double deduction from Zakat base, Zakat Payer's share of the profits of those companies accounted for using the equity method shall be added to Zakat Payer's base income, so that this addition corresponds to the amount deducted from Zakat base concerning investments in those companies. Thus, the Department concluded to reject Zakat Payer's Appeal, as it was not based on a valid argument from a factual standpoint, and to uphold the primary Decision regarding this item.
3. Item (Short-term Loans amounting to SAR (35,000,000)): After the Department reviewed Zakat Payer's reasons for Appealing this item, in which Zakat Payer requested that the loan balance not be added to its Zakat base for the year 2013, and after examining the case documents related to this item, as well as the content of the Appealed Decision, it became clear that the amount consists of two short-term loans received from Bank as detailed in Zakat Payer Appeal summary referenced in this Decision. The Department found that the Primary Committee issuing the Decision did not verify the final status of these two loans at the end of 2013 zakat year and merely stated that all types of loans shall be added to Zakat Payer zakat base, without considering the objections raised by Zakat Payer regarding the inclusion of these two loans in the zakat base. Zakat Payer argued that a portion of these loans was spent during that year and that the remaining larger portion appeared in the year-closing balance. The Committee issuing the Decision did not find any evidence justifying the addition of the loan amount and deduction of an equivalent amount if it is used to purchase fixed assets. Furthermore, the Committee issuing the Decision did not verify Zakat Payer claim that zakat lunar year had not completed for the loan amount by the end of its zakat year. Given that the total loan amount was received after the start of zakat year, it is appropriate not to include this loan balance, regardless of its amount, in Zakat Payer zakat base for that year. Consequently, the Department was convinced by Zakat Payer argument and concluded to exclude the short-term loans from 2013



zakat base, thereby accepting Zakat Payer Appeal and rejecting the primary Decision on this matter.

Regarding the Appeal submitted by GAZT, the Department reviewed and deliberated on its content as follows:

1. With regard to Item (Re-preparation of the Depreciation Schedule), GAZT Appeal is essentially a request not to calculate depreciations according to Article (17) of the tax law. GAZT clarified that, when assessing Zakat Payer, it applied Circular No. (3299) dated 26/05/1434 AH, which requires using the net value of fixed assets and calculating depreciations as per the financial statements based on the straight-line method, as agreed with Zakat Payer. Therefore, GAZT applied this method when calculating depreciation of fixed assets for the year 2013 AD. GAZT Appeal is merely a repetition of what it previously argued before the Committee issuing the Decision using the same reasoning presented in its Appeal. The Department did not find any reason to amend or comment on the conclusion reached in the primary Decision, given the Grounds provided by GAZT to contest the result related to this item in the Appealed Decision. Thus, the Department decided to reject GAZT Appeal and uphold the primary Decision regarding this item. The fact that GAZT mentioned that an agreement was reached with Zakat Payer to calculate depreciations using a method that differs from the one applied by Zakat Payer in its zakat declaration does not change this conclusion. What matters in this regard is the compliance with the regulations, laws, and instructions related to calculating depreciations when calculating Zakat Payer base. Since GAZT did not provide evidence proving inaccuracy of the method used by Zakat Payer in calculating depreciations of its fixed assets, the mere claim of an agreement between GAZT and Zakat Payer to use a different method does not establish a valid legal basis for GAZT Appeal.
2. With regard to Item (Adding Non-Zakatable Investment Revenues), upon consideration of the reasons provided by GAZT for Appealing against this item, as detailed in the summary of its Appeal mentioned earlier in this Decision, it became clear that GAZT based its treatment of these revenues on the assumption that they represent dividends from the investee companies. However, this conclusion is not entirely accurate, as the disputed amount represents the Company share in the profits of the investee companies, not dividends. This is because, according to Zakat Payer accounting policy, it accounts for its subsidiaries and associates using the equity method, which requires recognizing Zakat Payer share of the annual profit in these companies in its annual income. At the same time, that share increases the value of the investment deducted from zakat base. Since GAZT did not base its Appeal on proving this fact, but rather argued that these revenues represent dividends, and given the above, GAZT Appeal, which is based solely on this unproven assertion, lacks a solid legal foundation in order to be accepted, given the fact that dividends from these companies are not recognized in the income statement, but rather directly reduce the investment amount, which is naturally deducted from zakat base. Furthermore, GAZT did not provide evidence that the investment in those companies had been deducted from zakat base at its value shown in the financial statements, as a justification for adding the revenues to the zakat base to prevent double deduction. Accordingly, the Department decided to reject GAZT Appeal as it was based on an incorrect factual basis, and thus, uphold the primary Decision in this regard.
3. With respect to Item (Handling Profits realized from Sale of Fixed Assets Amounting to SAR 175,993), upon reviewing GAZT Appeal regarding this item by the Department, it became evident that GAZT disputes the conclusion reached by the Committee that issued the Decision, which supported ... Company position. The Company prepared its depreciation schedule for the year 2013 AD according to the new Tax Law applicable to zakat payers subject to GAZT Circular No. (9/2574) dated



14/05/1426 AH, which requires deduction of fixed assets. GAZT requested to disallow deduction of profits realized from the sale of fixed assets according to what is stated in Item No. (1) regarding depreciation differences. GAZT argues that application of Article (8) of the Implementing Regulations, which stipulates that no capital gains or losses are accounted for when disposing of fixed assets, is linked to application of the provisions of Article (17) of the Tax Law. GAZT believed that if the provisions of Article (17) are not applied, then Article (8) of the Implementing Regulations shall not be applied either. After the Department considered GAZT Circular No. (9/2574) dated 14/05/1426 AH, covering application of some procedural provisions and accounting rules in the new Tax Law to sharia-based zakat payers to unify treatment, which states that: "...Accordingly, we request consideration of applying the following procedural provisions and accounting rules from the new Tax Law to sharia-based zakat payers for declarations submitted for fiscal years ending on 25/06/1426 AH, corresponding to 31/07/2005 AD, and beyond. These include: 1-The depreciation method stipulated in Article (17) of the Law. 2-The accounting rules outlined in Articles (22) through (27) of the Law. 3-The procedures for submitting declarations as stated in paragraphs (A, B, D) of Article (60) of the Law. 4-GAZT right to have information mentioned in Article (61) of the Law." Upon reviewing Zakat Payer declaration - Schedule (4) for Fixed Asset Depreciation - it is clear that the Company applied the depreciation method stipulated in Article (17) of the Law. Furthermore, upon examining the audited financial statements and the cash flow statement of Zakat Payer, it turned out that Zakat Payer included the Item "Profit/Disposal of Fixed Assets" for the year 2013 AD. Based on the above, it is evident that the Committee Decision to treat the profits realized from the sale of fixed assets amounting to (SAR 175,993) by deducting the same from 2013 zakat base was correct. Accordingly, the Department decided to reject GAZT Appeal, as it was not based on a valid legal reason, and to uphold the primary Decision in this matter.

4. As for Item (Net Fixed Assets Deducted from Zakat Base), upon reviewing GAZT Appeal concerning this item, the Department found that GAZT disputed the Committee Decision to uphold Zakat Payer position of deducting fixed assets and similar items from zakat base for the year 2013 AD, based on the fatwa issued by the Permanent Committee for Scholarly Research and Ifta, No. (23408) dated 18/11/1426 AH. Therefore, the fixed assets are deducted accordingly. GAZT Appeal requested that the deduction of fixed assets be limited to the value of equity, as per GAZT Circular No. (1/8443/2) dated 08/08/1392 AH. However, upon examining the reasons for Appeal on this item by the Department, it became clear that GAZT arguments focused on justifying calculation of the adjusted net profit for zakat purposes in cases where the usual method of calculating the zakat base results in a negative figure. GAZT did not provide any legal or religious reasoning to challenge the method of calculating the adjusted net profit for zakat purposes in such cases. The Decision under Appeal cited fatwas from reputable fatwa institutions to support the conclusion mentioned in the verdict with relation to this item. The Department is convinced that the zakat base for Zakat Payers is calculated using a specific method, one of the key components of which is deduction of net fixed assets and similar items, regardless of their size or type, as long as they represent non-current assets that contribute to current and future production. Therefore, limiting the deduction of fixed assets to a certain threshold has no legal or accounting basis. This is further supported from a religious perspective by the Fatwa issued by the Permanent Committee for Scholarly Research and Ifta, No. (23408) dated 18/11/1426 AH, which states: "If factory zakat-eligible revenues are spent on purchasing assets or used by the owner on non-trading items before the completion of the zakat year, then no zakat is due on them, as they were spent before completion of zakat year". GAZT argument that this



fatwa applies to a specific case is irrelevant, as the outcome of the fatwa aligns with the zakat base calculation formula, which requires presence of zakat-eligible funds in the possession of Zakat Payer. This key element is absent in GAZT Appeal, which challenges the validity of Decision's outcome regarding the item in question. The zakat base for Zakat Payers, as calculated by the general method employed by GAZT, is based on a specific formula: positive zakat base components (such as capital, equity, annual profits, and other funding sources) minus negative zakat base components (such as fixed assets, long-term investments, annual losses, and carried forward losses). One of the key components is the deduction of net fixed assets and similar items, regardless of their size or type, as long as they represent non-current assets that contribute to current and future production. Since annual profits were used to fund these assets, imposition of specific limits on their deduction has no religious basis. The fundamental principle in zakat is that it is imposed on zakat-eligible funds held by Zakat Payer at the end of zakat year. Fixed assets, regardless of their source of funding, are not zakat-eligible funds. As a result, the Department concluded to reject GAZT Appeal and uphold the primary Decision in this matter.

Decision

First: In form, accept the Appeal submitted by Zakat Payer/ Company, C.R No. (...), and GAZT Appeal against Decision No. (11/39) of 1437 AH, issued by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. As for appeal filed by Zakat Payer Company:
 - a. Accept Zakat Payer Appeal regarding Item (unrealized gains from investments), by adding the full amount of unrealized gains, as reflected in the year-end financial statements, to zakat base as a separate item, while deducting the related investments at their value as shown in the year-end financial statements, and overturn the primary Decision regarding this matter, for the reasons and justifications mentioned in this Decision.
 - b. Reject Zakat Payer Appeal regarding the Item (investment revenues amounting to SAR 30,239,523), and uphold the primary Decision on this matter, for the reasons and justifications mentioned in this Decision.
 - c. Accept Zakat Payer Appeal regarding the Item (short-term loans amounting to SAR 35,000,000), while determining that short-term loans shall not be added to zakat base for the year 2013, and overturn the primary Decision regarding this matter, for the reasons and justifications mentioned in this Decision.
2. As for ZATCA Appeal:
 - a. Reject GAZT Appeal regarding Item (re-preparation of the depreciation schedule), and uphold the primary Decision on this matter, for the reasons and justifications mentioned in this Decision.
 - b. Reject GAZT Appeal regarding Item (addition of non-zakatable investment revenues), and uphold the primary Decision on this matter, for the reasons and justifications mentioned in this Decision.
 - c. Reject GAZT Appeal regarding the Item (treatment of profits realized from the sale of fixed assets amounting to SAR 175,993), and uphold the primary Decision on this matter, for the reasons and justifications mentioned in this Decision.
 - d. Reject GAZT Appeal regarding the Item (net fixed assets deducted from the zakat base), and uphold the primary Decision on this matter, for the reasons and justifications mentioned in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-131)
Delivered in Appeal No.
(ZW-1644-2018)

Principle No. 184

A mere accounting error does not necessitate imposing zakat on funds that are not in Zakat Payer possession.

Principle No. 185

Any decrease in the value of assets shall be recognized as expenses in the income statement, and will simultaneously reduce the value of assets deducted from zakat base, resulting in a net-zero impact on the zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday 19/11/1442 AH, corresponding to 29/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the Appeal submitted on 23/03/1438 AH by/ ... Company against the Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (1) of 1438 AH, issued in Case No. (37/25), with regard to zakat and tax assessment for the period (2010 - 2012 AD), filed by Appellant against ZATCA, in which the primary Decision ruled as follows:

First: In Form:

Accept the objection submitted by Zakat Payer/ ... Company with regard to zakat and tax assessment for the period (2010-2012 AD) in form, based on the Grounds mentioned in the Decision.

Second: On Merits

1. Reject Taxpayer objection with regard to Item (overstated social insurance premiums for the period 2010-2011 AD), based on the Grounds mentioned in the Decision.
2. Reject Taxpayer objection with regard to Item(bonuses based on account movement, taking into consideration the reverse entry), based on the Grounds mentioned in the Decision.
3. Reject Taxpayer objection with regard to Item (consulting fees), based on the Grounds mentioned in the Decision.
4. Reject Taxpayer objection with regard to Item (distribution commission), based on the Grounds mentioned in the Decision.
5. Reject Taxpayer objection with regard to Item (settling losses with suppliers for the year 2012 AD), based on the Grounds mentioned in the Decision.
6. Accept Taxpayer objection with regard to Item (life insurance for the year 2011 AD), based on the Grounds mentioned in the Decision.



7. Reject Taxpayer objection with regard to Item (imposing zakat on long-term accounts payable for the year 2011 AD), based on the Grounds mentioned in the Decision.
8. Settle the dispute over Item (imposing zakat on Islamic Tawarruq financing for the year 2011 AD), based on the Grounds mentioned in the Decision.
9. Reject Taxpayer objection with regard to Item (imposing zakat on amounts payable to suppliers), based on the Grounds mentioned in the Decision.
10. Reject Taxpayer objection with regard to Item (unspecified items), based on the Grounds mentioned in the Decision.
11. Reject Taxpayer objection with regard to Item (withholding tax), based on the Grounds mentioned in the Decision.
12. Reject Taxpayer objection with regard to Item (delay fines), based on the Grounds mentioned in the Decision.

As this Decision was not accepted by Zakat Payer (.... Company), Zakat Payer submitted a Statement of Appeal, which included the following:

Taxpayer objection against the Primary Committee Decision covers eight items, which are as follows: with regard to Item (excluding amounts due for bonuses for the fiscal years ending on 31 March 2010 AD to 2012 AD), Taxpayer argued in its Appeal that such bonuses constitute a part of employment contracts and are among the expenses necessary for realizing taxable income. In this regard, Taxpayer relied on Article (9.1) of Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which stipulates that: "Deductible expenses in determining taxable income are as follows: A. The expense must be an actual one, supported by documentary evidence or other proof that allows the Authority 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 not of a capitalist nature." Accordingly, Taxpayer called for issuing a Decision by which ZATCA is directed to deduct bonuses, given that such amounts are due payables rather than a provision. Should ZATCA maintain its stance of classifying accrued bonuses as provisions, Taxpayer requests that ZATCA be directed to treat the paid amount as deductible expense for the fiscal year 2013 upon the issuance of the amended tax assessment for the same year. As for Item (excluding consulting fees for the fiscal years ending on 31 March 2010 to 2012 AD), Taxpayer confirmed that it has the right to deduct consulting fees for the fiscal years ending on 31 March 2010 to 2012 AD, given that such fees are related to consulting services received from various entities for the purpose of the Company rights of issue, with the total amount of (SAR 18,725,355). In this regard, Taxpayer relied on its right to deduct the aforementioned fees in accordance with Article (12) Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates 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." Therefore, Taxpayer called for issuing a Decision canceling the Decision reached by the Primary Committee with regard to excluding consulting and professional fees and thereby making an amended assessment. With respect to Item (excluding distribution commission for the fiscal years ending on 31 March 2010 AD to 2012 AD), Taxpayer explained that it has concluded distribution contracts with several local entities for the purpose of marketing and selling its products in KSA. Taxpayer added that commissions are paid to these distributors based on services of several types provided by them. As such, Taxpayer called for issuing a Decision canceling the Decision reached by the Primary Committee with regard to excluding distribution commission and thereby making an amended assessment that allows deduction of such distribution commission. Concerning Item (excluding settlement of losses with suppliers for the fiscal year ending on 31 March 2012 AD), Taxpayer raised an objection against the Primary Committee conclusion that external auditors issued a qualified report on the settlement amount. Moreover, Taxpayer confirmed that external auditor reservations concerning such report are based on the



Company failure to recognize the impairment in the fixed asset value at the time of issuing the external auditor certificate and that the Company management was in the process of assessing this amount. Therefore, Taxpayer called for issuing a Decision canceling the Decision reached by the Primary Committee with regard to adding the amount of (SAR 19.7 million) to revenues. With regard to Item (imposing zakat on long-term accounts payable and supplier accounts payable), Taxpayer filed its Appeal arguing that ZATCA unintentionally made a mistake when determining accounts payable used in financing fixed assets. Taxpayer also called for amending calculation of accounts payable used for financing fixed assets and avoiding adding the amounts related to "receivable account data," "unpaid supplier invoices," and "unpaid supplier invoices added to zakat base." Finally, Taxpayer requested issuing an amended assessment in which accounts payable used only to finance fixed assets are added. Regarding Item (accounts payable related to Company for the year 2012 AD), Taxpayer confirmed that accounts payable shall not be added to zakat base, given that they are not used for financing the purchase of long-term fixed assets in the Company, but rather represent regular operating expenses incurred to realize taxable income and are recognized as accounts payable in the Company books. Consequently, Taxpayer requested cancellation of the Primary Committee Decision, which requires adding business creditors of... Company in KSA to zakat base for the year 2012 AD. As for Item (value of fixed assets deducted from zakat base for the years 2010 AD and 2012 AD), Taxpayer confirmed its objection to the Primary Committee Decision, which validated deduction of the values mentioned in this item from zakat base in accordance with ZATCA assessment. Taxpayer also affirmed that the Company has submitted a detailed statement of works under implementation and a sample of supporting documents to ZATCA and the Primary Committee. Accordingly, Taxpayer called for amending the assessment by including works under implementation in the value of fixed assets deducted from zakat base and canceling the depreciation difference added by mistake in the years 2011 AD and 2012 AD. With respect to Item (imposing a delay fine on the additional withholding tax liability arising from ZATCA assessment for the period 2010-2012 AD), Taxpayer filed its Appeal claiming that the Company was acting in good faith and used to pay due tax obligations as provided by applicable law. Since no final Decision was issued with regard to the disputed items, the imposition of late payment penalties is unwarranted. Therefore, Taxpayer called for cancellation of the Primary Committee Decision, which validated ZATCA action of imposing a delay fine on income tax and withholding tax obligations.

The Department decided to open pleading, so ZATCA provided a Reply on 09/04/1442 AH, corresponding to 24/11/2020 AD, responding to Taxpayer Appeal with regard to the appealed items. With regard to Item (excluding amounts due for bonuses for the fiscal years ending on 31 March 2010 AD to 2012 AD), ZATCA responded that Taxpayer recognized accrued bonus amounts to be paid to employees based on their performance, which indicates that these amounts are merely bonus provisions whose disbursement is contingent upon achievement of employee target goals. So, ZATCA maintained that the accrued bonus amounts constitute provisions, and consequently, the opening balance should be added to income after deducting payments made during the year, as it has been outstanding for a complete year. As for Item (excluding consulting fees for the fiscal years ending on 31 March 2010 AD to 2012 AD), ZATCA responded that such amounts are classified under the category "miscellaneous" in the Statement No. (6) of the Consulting and Professional Fees Declaration. ZATCA rejected deduction such amounts due to their significant value and because they should have been detailed in the statement. Upon reviewing the submitted documents and considering Appellant arguments, it was determined that these documents were insufficient to support the item. Therefore, ZATCA confirmed the validity and integrity of its action. Concerning Item (excluding distribution commission for the fiscal years ending on 31 March 2010 AD to 2012 AD),

ZATCA responded that it has reversed undistributed commission amounts due to lack of documents supporting related profits, as Taxpayer failed to provide relevant supporting documents and also failed to analyze such item in spite of ZATCA request. Therefore, ZATCA believed that distribution commission amounts should not be deducted due to Taxpayer failure to provide sufficient supporting documents justifying such deduction. As for Item (excluding settlement of losses with suppliers for the fiscal year ending on 31 March 2012 AD), ZATCA responded that the auditor had reservations concerning this item and stated that: "due to absence of a complete and detailed examination and inability to perform alternative auditing procedures, no conclusion was reached with regard to whether it is necessary to record a loss in return for a decrease in the value of assets." Therefore, ZATCA decided to add the amount of (SAR 19,643,898) as a profit for the year 2012 AD. As for Item (imposing zakat on long-term accounts payable and supplier accounts payable), ZATCA responded that it had added the closing balance of long-term accounts payable to zakat base. After considering documents and analyses submitted in the aforementioned objection, it turned out that such balance was used for financing the purchase of fixed assets and equipment. Therefore, ZATCA maintained the validity of its action of adding the balance to offset the deduction of fixed asset value from zakat base, in accordance with Fatwa No. (22665) for the year 1424 AH, Second Question Answer, which covers additions of similar amounts based on their final destinations. Moreover, Plaintiff agreed with ZATCA view on adding accounts payable used for financing fixed assets. Upon reviewing submitted documents, it was clear that Taxpayer did not submit any documents except for accounts payable movement; therefore, ZATCA maintained the validity of its position. Regarding Item (accounts payable related to Company for the year 2012 AD), ZATCA added the amounts due to suppliers, given that such amounts are used for financing fixed assets, and therefore, are covered by the defenses mentioned in the previous item. As such, ZATCA confirmed the validity of its action. With regard to Item (value of fixed assets deducted from zakat base for the years 2010 AD and 2012 AD), ZATCA responded that, with regard to fixed assets, it had previously asked Taxpayer to submit a detailed and analytical statement of works under implementation, relevant supporting documents, a statement of the amounts paid to non-resident entities, and payment documents. However, Plaintiff failed to complete the required documents and only submitted a detailed statement, daily entries, and settlement entries. Therefore, ZATCA confirmed the validity and integrity of its action. Regarding Item (imposing a delay fine on the additional withholding tax obligation arising from ZATCA assessment for the period 2010-2012 AD), ZATCA responded that it imposed the delay fine in accordance with Article (57.A) of Income Tax Law, which provides 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.", in addition to Article (68.1.b) of the Implementing Regulations of the Income Tax Law, which states that: "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: including: (b) Delay in payment of due tax as per the Department's assessment.

On Thursday 12/08/1442 AH, corresponding to 25/03/2021 AD, the Department decided to hold a 10-day e-hearing session, during which ZATCA submitted a supplementary memorandum that did not introduce any new submissions.

On Thursday 03/09/1442 AH, corresponding to 15/04/2021 AD, upon reviewing the Case file, the Department asked Taxpayer to submit the following: 1. Documents proving the consulting fees, such as contracts, disbursement documents, and the places of disclosing the same in the financial statements for each year being disputed. 2. Documents



proving the amount of sales allocated to distributors during the year, and the amounts deposited by distributors to Taxpayer in exchange for these sales, i.e., after deduction of commission. Moreover, since Taxpayer mentioned in its Appeal that it had attached in Appendix No. (9) of its Appeal an analytical statement of distribution costs for the period (2010 - 2012 AD), and a sample including copies of receipt notices from distributors, the Department requested Taxpayer to submit that Appendix side by side with the financial statements of the years being disputed within (10) days from date.

On Sunday, 03/11/1442 AH, corresponding to 13/06/2021 AD, upon reviewing appeal briefs replies thereto, and after examining all papers and documents included in the Case file, the Department decided that the Case is ready for adjudication and issuing a Decision on its merits.

Grounds



After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merits, with regard to Taxpayer Appeal against Item (excluding amounts due for bonuses for the fiscal years ending on 31 March 2010 AD to 2012 AD), Taxpayer filed its Appeal to call for deducting all amounts due for annual bonuses, not just the paid portion thereof, given that such amounts constitute expenses necessary for performing business activity and do not represent provisions. Taxpayer added that in case of disallowing deduction of such amounts, the portion paid thereof for the year 2013 AD shall be deducted when issuing the amended tax assessment for that year. On the other hand, ZATCA believed that the amounts due for bonuses are provisions, and therefore, the opening balances shall be added after deducting the amounts paid throughout the year because one complete year has passed. Upon reviewing the foregoing by the Department, and since the accrued amounts and provisions represent future obligations on the Company that were not paid during the current fiscal year, as a result of which the obligation or the provision was created, the same shall be added to the tax base as they represent funds in the possession of Taxpayer. In short, such amounts constitute an obligation assumed by Taxpayer and still in its possession, so it does not matter whether they are allocated for paying bonuses or for any other purposes. Accordingly, the Department decided to reject Taxpayer appeal and validate the primary Decision reached with regard to this item.

As for Taxpayer Appeal against Item (excluding consulting fees for the fiscal years ending on 31 March 2010 AD to 2012 AD), the dispute arises from Taxpayer claim to deduct all consulting fees for the period (2010-2012 AD), since such fees represent expenses related to consulting services provided by several entities for the purpose of the Company rights to issue, with the total amount of (SAR 18,725,355) as detailed in the appeal brief. While ZATCA believed that such funds shall not be deducted due to Taxpayer failure to submit sufficient supporting documents. Having carefully considered the dispute subject matter, and since this dispute is essentially a matter of documentation in the first place, due to Taxpayer failure to submit the required documents supporting its claim, this Department became satisfied with the validity of the conclusion reached by the Primary Committee issuing the Decision and that the Grounds adopted to take the primary Decision were sufficient to uphold the same; therefore, the Department decided to reject Taxpayer Appeal and uphold the primary Decision reached in this regard.

With respect to Taxpayer Appeal against Item (excluding distribution commission for the fiscal years ending on 31 March 2010 AD to 2012 AD), the dispute centers around Taxpayer claim to deduct distribution commissions for the fiscal years ending on 31 March



2010 AD, 2011 AD, and 2012 AD from the tax base, with the amounts of (SAR 8,287,132), (SAR 10,547,039), and (SAR 9,885,941) respectively. Taxpayer explained that such amounts were paid as distribution commission expenses by virtue of contracts concluded with local entities for marketing and selling the Company products in KSA, noting that such commissions are paid in accordance with the terms and conditions of the attached contracts. While ZATCA believed that such distribution commissions shall not be deducted due to Taxpayer failure to provide sufficient supporting documents required to accept such deduction. Having carefully considered the dispute subject matter, and since this dispute is essentially a matter of documentation in the first place, since the Department requested Taxpayer to submit the supporting documents related to the sales allocated to distributors during the year and the amounts deposited by distributors to Taxpayer in exchange for these sales (after commission deduction), since Taxpayer failed to submit the documents supporting its claim, and since the Department did not observe any matter that requires correction or commentary in light of submissions presented to it, the Department decided to reject Taxpayer Appeal and uphold the primary Decision reached in this regard. Concerning Taxpayer Appeal against Item (excluding settlement of losses with suppliers for the fiscal year ending on 31 March 2012 AD), the dispute happened as a result of Taxpayer objection against the Primary Committee conclusion that external auditors issued a qualified report on the settlement amount. Moreover, Taxpayer confirmed that external auditor reservations concerning such report are based on the Company failure to recognize the impairment in the fixed asset value at the time of issuing the external auditor certificate and that the Company management was in the process of assessing this amount. Therefore, Taxpayer called for issuing a Decision canceling the Decision reached by the Primary Committee with regard to adding the amount of (SAR 19.7 million) to revenues. On the other hand, ZATCA believed that the auditor had reservations concerning this item and stated that: "due to absence of a complete and detailed examination and inability to perform alternative auditing procedures, no conclusion was reached with regard to whether it is necessary to record a loss in return for a decrease in the value of assets." Therefore, ZATCA decided to add the amount of (SAR 19,643,898) as a profit for the year 2012 AD. Upon considering the dispute subject matter, the Department was satisfied that the disputed amount, which was classified as taxable income, consists of several components. Also, it turned out that the dispute resulted from the inappropriate accounting application by Taxpayer, since Taxpayer included impairment losses, previously paid amounts, and expenses of third parties in determining the income recognized against the write-off of debts. The Department was satisfied that the occurrence of an accounting error does not necessarily imply that zakat shall be imposed on funds not in Taxpayer possession. This does not contradict ZATCA argument that the auditor had reservations concerning calculation of impairment losses, given that inclusion or exclusion of such losses does not affect the zakat base. It is worth noting that the impairment in the value of assets will be recognized as an expense in the income statement and will simultaneously reduce the value of assets deducted from the zakat base, resulting in a net zero impact on the zakat base. Therefore, the Department decided to accept Taxpayer Appeal and overturn the primary Decision reached in this regard.

With respect to Taxpayer Appeal against Item (imposing zakat on long-term accounts payable and supplier accounts payable), it is clear that the dispute centers around Taxpayer claim to amend calculation of accounts payable with regard to fixed assets and exclude the amounts related to "receivable account data," "unpaid supplier invoices," and "unpaid supplier invoices added to zakat base." Taxpayer called for issuing an amended assessment in which accounts payable used only to finance fixed assets are added. On the other hand, ZATCA believed that the closing balance of the long-term accounts payable was added to the zakat base. Based on documents submitted by Taxpayer and the discussions held with it, it was evidenced that such balance was used for financing fixed assets, in accordance



with Fatwa No. (22665) of 1424 AH issued by the Council of Senior Scholars, Second Question Answer, which covers additions of similar amounts based on their final destinations. Upon considering the dispute subject matter, the Department found that Taxpayer Appeal covers only the amounts used in business activity and not used for financing fixed assets. Also, ZATCA and the Primary Committee, in their Decisions, failed to provide any connection between these amounts and financing fixed assets. It is established that trade creditor balances have no relation to financing fixed assets, so Taxpayer perspective shall be adopted unless ZATCA provides valid evidence proving that a certain financing activity is related to a specific fixed asset or that a year has passed over a financing activity. Since ZATCA failed to do so, the Department decided to accept Taxpayer Appeal based on the amounts mentioned by Taxpayer therein and overturn the primary Decision reached in this regard.

As for Taxpayer Appeal against Item (accounts payable related to Company for the year 2012 AD), it turned out that the dispute centers around Taxpayer claim not to add the accounts payable related to Company, given that such funds are not used for financing the purchase of long-term assets, but rather are regular operating expenses used to generate income and are recognized as accounts payable in the Company books. While ZATCA believed that such balance was added because it was used for financing the purchase of fixed asset, as balances related to the purchase of equipment, machinery, and fixed assets were identified and were recognized by adding amounts under the following categories: “amounts due to suppliers,” “long-term accounts payable,” and “trade accounts payable against fixed asset suppliers.” Upon considering the dispute subject matter, the Department found that there is no dispute concerning the passage of a lunar year over the disputed balance. Also, Taxpayer acknowledged a complete lunar year had passed over such balance, but argued that the debt is commercial in nature, and thus shall not be added to the base. Given that the amounts owed by Taxpayer against services represent a financial obligation that has not yet been settled at the time of zakat due date, these funds are still considered in Taxpayer possession and shall be added to zakat base. Therefore, the Department decided to reject Taxpayer Appeal and uphold the primary Decision reached in this regard.

As for Taxpayer Appeal against Item (value of fixed assets deducted from zakat base for the years 2010 AD and 2012 AD), it is clear that the dispute centers around Taxpayer claim to amend the zakat assessment by including works under implementation in the value of fixed assets deducted from zakat base and canceling the difference in depreciation added mistakenly by ZATCA in the years 2011 AD and 2012 AD. While ZATCA believed that, in addition to the previously deducted funds, the closing balance of the works under implementation shall be deducted after submitting a detailed analytical statement of the works under implementation and reviewing and verifying the related documents. The verdict of the primary Decision did not address the dispute subject matter, which is Taxpayer objection to excluding works under implementation from the value of fixed assets deducted from the zakat base and Taxpayer objection to the difference in depreciation added by mistake for the years 2011 AD and 2012 AD. So, the dispute remains unsettled as concluded by the primary Decision, and the Primary Committee has not fully adjudicated the matter. Therefore, the Department decided to cancel the Primary Committee Decision and refer the dispute to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh for consideration.

With regard to Taxpayer Appeal against Item (imposing a delay fine on the additional withholding tax obligation arising from ZATCA assessment for the period 2010-2012 AD), the dispute happened as a result of Taxpayer claim not to impose a delay fine in the withholding tax, given that the Company was acting in good faith and used to pay due tax obligations as provided by applicable law. Since no final Decision was issued with regard to the disputed items, the imposition of a late payment fine is unwarranted on the other



hand, ZATCA believed that a delay fine shall be imposed on Taxpayer in accordance with Article (77) of Income Tax Law and Paragraph (1/b) of its Executive Regulations. Upon considering the dispute subject matter, the Department noted that Taxpayer objection to withholding tax is based on its argument that the amounts upon which ZATCA made its tax assessment were due and unpaid at the time of ZATCA assessment, and Taxpayer became aware of the actual due tax imposed on it at the time of ZATCA assessment. In accordance with Article (68.1) of Executive Regulations of Income Tax Law, ZATCA shall have the right to impose a delay fine for late payment of due tax based on ZATCA assessment,

and this approach is consistent with the relevant legal and regulatory rules, such as the legal principle that states: "No one is legally obligated to do something that is impossible, beyond their capacity, or unknown to them in a way that would compel them to comply." Therefore, the Department decided to amend the primary Decision by imposing a delay fine as of the date of notifying Taxpayer of ZATCA assessment.

Decision

First: Accept the appeal submitted by Taxpayer/.....Company, against t the Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (1) of 1438 AH, in form.

Second: On Merits:

1. Dismiss Taxpayer Appeal against Item (excluding amounts due for annual bonuses for the fiscal years ending on 31 March 2010 AD to 2012 AD) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
2. Dismiss Taxpayer Appeal against Item (excluding consulting fees for the fiscal years ending on 31 March 2010 AD to 2012 AD) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
3. Dismiss Taxpayer Appeal against Item (excluding distribution commission for the fiscal years ending on 31 March 2010 AD to 2012 AD) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Taxpayer Appeal against Item (excluding settlement of losses with suppliers for the fiscal year ending on 31 March 2012 AD), and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
5. Accept Taxpayer Appeal against Item (imposing zakat on long-term accounts payable and supplier accounts payable) and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
6. Dismiss Taxpayer Appeal against Item (accounts payable related to Company for the year 2012 AD) and uphold the primary Decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
7. Cancel the Decision taken by the Primary Committee with regard to Item (value of fixed assets deducted from zakat base for the years 2010 AD and 2012 AD), and refer the dispute to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh for consideration.
8. Amend the primary Decision with regard to Item (imposing a delay fine on the additional withholding tax obligation arising from ZATCA assessment for the period 2010-2012 AD) by imposing a delay fine as of the date of notifying Taxpayer of ZATCA assessment.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2020-84)
Delivered in Appeal No. (Z-1649-2018)

Principle No. 186

When making assessment partner payments shall be added as a funding source to completely write-off losses, and offsetting the same through deducting total losses, irrespective of the net loss balance.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 20/02/1442 AH corresponding to 07/10/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened in Riyadh to consider the appeal filed on 08/03/1438 AH, corresponding to 15/07/2016 AD, by ... Company, against the Second Primary Zakat and Tax Objection Committee in Dammam Decision No. (32) of 1437 AH delivered by in Case No.(20) filed by Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: In form, accept the objection filed by Zakat Payer/ ... Company, against zakat assessment made by GAZT for the period (2007-2010 AD).

Second: On Merits:

1. Validate GAZT action of deducting adjusted accumulated losses from zakat base based on adjusted losses mentioned in zakat assessments for the period (2007-2010 AD).
2. Validate GAZT action of not accepting settlements of previous years for the year 2007 AD.
3. Validate GAZT action of adding the subordinate loan provided by partner to zakat base for the year 2010 AD, with the amount of (SAR 100,015,237.14), as it one complete year passed over the same.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

1. Zakat Payer challenged the way adopted by GAZT for making its assessment, which was also validated by the primary Decision issued with regard to the losses carried forward from 2007 AD to 2010 AD. Zakat Payer argued that GAZT added the gross supplementary loan provided by partners in zakat base without deducting the total balance of carried forward losses, but only the net losses balance, i.e., GAZT added the total supplementary loan based on the financial statement and at the same time added the carried forward losses balance based on the zakat assessment for the year 2006 AD. In other words, GAZT added that amount as a funding source provided by partners and did not deduct the corresponding losses, although such funding was



aimed at amortizing such losses so that the Company could pursue its business activity and avoid dissolution or liquidation if losses reached 50% of its capital, as stipulated in provisions of Companies Law. Therefore, GAZT action resulted in imposing zakat on the same funds twice, with the amount of (SAR 64,824,92).

2. Zakat Payer filed an objection to non-recognition of amendments made to the income statement for the year 2007 AD, as detailed in clarifications of 2018 financial statements, which clarified that the Company had written off the amount of (SAR 3,383,660) related to relevant parties. Writing off such bad debts was justified as long as the chartered accountant has reviewed such settlements and attested their validity. The auditor statement in this regard shall constitute evidence of the soundness of the Company action of writing off these amounts.
3. Zakat Payer raised an objection to the Primary Committee Decision rejecting its claim and upholding GAZT action of disallowing deduction of losses incurred by partners in 2009 AD and accepting deduction of the same in 2011 AD, after correcting entries related to the relevant transactions made with associated companies. GAZT added an account payable with the amount of (SAR 29,634,281) as a funding source without deducting the corresponding amounts, which are incurred by partners through waiving their rights in receivables of... Company. Therefore, GAZT assessment will result in imposing zakat twice on the same funds.

On 20/07/1441 AH, Zakat Payer submitted an explanatory note to the Department after opening pleadings in the submitted appeal. In such explanatory note, Zakat Payer confirmed its statements and requests included in its Appeal, and clarified that one-year period had not yet elapsed on the subordinate loan amounting to (SAR 29,632,221) for the year 2010 AD. Zakat Payer also argued that the loan movement statement provided by mistake to GAZT was the reason for adopting the period closing balance amounting to (SAR 100,015,237), noting that the balance reported in the financial statements was only (SAR 70,382,956). Therefore, the subordinate loan subject to zakat shall be reassessed by reversing the impact of the loan balance in the financial statements after making the necessary amendments to the related accounting entries. On 19/01/1442 AH, the Department received a Reply from Zakat Payer, in which Zakat Payer inquired about the written-off debts and whether they were recognized as revenues in the associated company. In its Reply, Zakat Payer also explained the accounting treatment of the written-off debts in the books of the associated company (... Commercial Group Company), as the associated company had initially recorded the written-off amount as a deduction from the partner/... account for the account of Company. However, upon discovering the error, and on the date of writing off the debt owed to ... Company by ... Commercial Company, a reversing entry was made to close the credit balance of ... Company owed by ... Commercial Group Company, for the account of the partner (...). The adjusted account balances were subsequently approved by the partners of the associated company ON 31/12/2008 AD.

When the Department asked GAZT about the statements mentioned by the plaintiff company attorney in its explanatory note related to the debts written off by the associated company, and whether they were recognized as revenues by the associated company, GAZT submitted a Reply on 28/01/1442 AH. In its reply, GAZT explained that it agrees with the plaintiff company attorney that the amount of (SAR 3,383,660) represents revenues earned from providing services and works that were recorded for the year 2006 AD. However, due to an accounting error, this amount was mistakenly debited to.... Commercial Group Company instead of the partner (...), and this mistake was rectified in 2008 AD. From GAZT perspective, such revenues are written-off and classified as bad debts for the purpose of reducing the retained earnings of the partner ... for the year 2007 AD, after correcting the related entry in the statements of Company. Note (13) clarified that this amount was recorded as selling and marketing expenses in 2008 financial



statements, resulting in reducing the net profit for the year 2007 AD by the same amount, although the conditions required for writing off debts were not satisfied, particularly since these debts were owed by a related party, the partner (...). So, it is not acceptable to assume that the company could not collect these debts from a partner. This action is in line with International Circular No. (2) dated 01/06/1994 AD. Therefore, GAZT called for upholding the primary Decision with regard to this item and other items included in the contested Decision, as stated in the conclusion of its Reply dated 28/01/1442 AH.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits: having reviewed the Case file, documents included therein, and the statement of appeal, and given that the Case is now ready for consideration based on the foregoing, the Department decided to rule on the Appeal filed by Zakat Payer/the Company regarding the disputed items as follows:

1. With regard to Item (validating GAZT action of deducting adjusted accumulated losses from zakat base based on adjusted losses mentioned in zakat assessments for the period 2007-2010 AD), the dispute centers around the method adopted by GAZT for calculating losses written off by virtue of partners' submissions to avoid the Company dissolution and liquidation. The assessment made by GAZT and validated by the Primary Committee in this regard considered the total amounts transferred to Zakat Payer/the Company for the purpose of extinguishing these losses as loans and funding sources, so they were added to zakat base. At the same time, GAZT deducted the net losses without considering the total losses before the Company has handled its losses in order to be able to pursue its business activity. When doing so, GAZT should have added the funding source, represented in partners' contributions provided to cover all losses, and offset this by deducting the total losses, not just the balance of net losses. This approach ensures a balanced calculation of zakat base, which considers both negative and positive elements, and helps avoid double taxation on the funds provided to the Company, ensure deduction of corresponding losses for which the funding sources were used to extinguish, and avoid dependence only on net losses when calculating the zakat base for the item under consideration. Therefore, the Department decided to accept the Appeal of Zakat Payer/the Company and determined that the balance of total losses covered by partner funds shall be deducted from zakat base for the years in dispute, as evidenced by the Company financial statements.
2. As for Item (validating GAZT action of not accepting settlements of previous years for the year 2007 AD), the dispute happened as a result of GAZT rejection of the amendments made to the income statements for the year 2007 AD, arguing that these amendments are related to a previous period and that the related fiscal year has ended. On the other hand, Zakat Payer contended that these amendments and settlements were necessary for rectifying accounting errors made in contract costs and incorrect cost distribution, which resulted in overstatement of the revenues of the last year by (SAR 6,646,989), and accordingly, the Company adjusted the same in the carried forward losses. In the same year, the Company wrote off the amount of (SAR 3,383,000) as receivables from related parties, arguing that this amount should have



been recorded as losses in the previous year or written off. Upon careful consideration of Zakat Payer perspective and the primary Decision reached with regard to this item, the Department noted that Zakat Payer failed to provide the documents supporting its amendments and settlements. It is worth noting that making accounting amendments is a routine practice usually made when making accounting entries by Zakat Payers. Since the Company auditor had verified these amendments and settlements, which is sufficient and established evidence for proving their validity, the burden of proof should have been on the party challenging the accuracy thereof. The Department was satisfied that neither GAZT nor the Primary Committee requested any documents to verify the invalidity of making settlements and amendments to rectify errors that were mistakenly recorded and then corrected. Therefore, the Department was convinced that the action taken by Zakat Payer was correct and, therefore, decided to validate the amendments and settlements made in Zakat Payer declaration provided to GAZT for making 2007 assessment.

3. With respect to Item (validating GAZT action of adding the subordinate loan provided by partner), the dispute between Zakat Payer and GAZT happened as a result of GAZT action of disallowing deduction of losses with the amount of (SAR 29,634,281) incurred by partners in 2009 AD and allowed deduction of the same in 2010 AD. Zakat Payer argued that these losses were expenses incurred by another company (... Company) and were related to equity facilities provided by that company to Zakat Payer, and the total amount of such expenses and facilities resulted in the amount recognized in the financial statements and the accompanying notes. Since the partners decided to assume such liabilities owed to an added company, stemming from transactions between Zakat Payer and the added company, and these transactions were duly recorded in the books of both companies, GAZT inclusion of this amount as an account payable and a funding source requires a corresponding deduction when partners incur these amounts by waiving their right in the receivable account in... Company. Upon careful consideration of the dispute between Zakat Payer and GAZT with regard to including or excluding this amount in the accounts of Zakat Payer/ the Company in/from zakat base for the year 2009 AD, it turned out that the amount of that credit balance of... Company owed to... Company was fully written off and closed in the carried forward losses account for that year. Since the dispute happened due to an error in accounting entries made for calculating opening and closing balances of the year 2009 AD. Upon reviewing the corrected accounting entries, it was evident that the balance in question had no impact on the financial statements for the year in dispute. Accordingly, Zakat Payer approach in handling these amounts as a whole was correct and helped avoid double taxation on the same funds when calculating zakat base.

Decision

First: In form, accept the appeal filed by Zakat Payer/the Company ..., C.R. No(...), against Decision No. (32) of 1438 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

1. Accept Zakat Payer Appeal with regard to Item (deducting adjusted accumulated losses from zakat base based on adjusted losses mentioned in zakat assessments for the period 2007-2010 AD), confirm adding the full balance of losses, which were offset using partner contributions, when calculating zakat base of Zakat Payer for the years in dispute, and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer Appeal with regard to Item (settlements of years prior to 2007 AD) through validating the amendments and settlements recognized in Zakat Payer



declaration submitted to GAZT to made 2007 assessment, and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.

3. Accept Zakat Payer Appeal with regard to Item (the disputed subordinate loan) through recognizing its opening balance for the year 2010 AD with the amount of (SAR 70,382,956), and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-148)
Delivered in Appeal No.
(ZW-1650-2018)

Principle No. 187

Solvency margin is a legal requirement laid down to maintain financial investments aimed at satisfying future liabilities of the company, and shall be dealt with in terms of zakat based on its constituent assets, whether such assets are equity in other companies held for trading or acquisition, or debt securities.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday, 03/12/1442 AH, corresponding to 13/07/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the Appeal submitted on 29/02/1438 AH by/ ... Company and the Appeal submitted by Zakat, Tax and Customs Authority (ZATCA) on 03/02/1438 AH against Decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (35) of 1437 AH, issued concerning the case filed by Zakat Payer against the General Authority of Zakat and Tax. The primary Decision ruled as follows:

First/ In Form:

Accept in form the objection of the Zakat Payer regarding zakat and tax assessment for the years 2008 to 2012 based on the justifications provided in the Decision.

Second/ On Merits:

1. Reject Zakat Payer objection with regard to Item (paid-up capital), based on the merits mentioned in the Decision.
2. Accept Zakat Payer objection with regard to Item (transactions with related parties for the year 2008 AD), based on the merits mentioned in the Decision.
3. Reject Zakat Payer objection with regard to Item (investments), based on the merits mentioned in the Decision.
4. Reject Zakat Payer objection with regard to Item (statutory deposit with the Saudi Central Bank (previously SAMA)), based on the merits mentioned in the Decision.
5. Reject Zakat Payer objection with regard to Item (solvency margin), based on the merits mentioned in the Decision.
6. Reject Zakat Payer objection with regard to Item (adjusted carried forward losses for the period 2009-2012 AD), based on the merits mentioned in the Decision.
7. Reject Zakat Payer objection with regard to Item (withholding taxes), based on the merits mentioned in the Decision.

Dissatisfied with the Decision, each party filed an appeal, the summary of which are as follows:

Regarding Zakat Payer Appeal against Item (paid-up capital for the years 2006 AD and 2007 AD), Zakat Payer bases its Appeal on the argument that the paid amount shall not



be subject to zakat because a full year had not passed thereon. Additionally, Zakat Payer argued that the date of the ministerial Decision approving establishment of the Company is the same date on which the Company gained its legal personality, and from that date onward, the Company shall hold accountable for zakat. Prior to that date, the mentioned amount shall be subject to zakat in the account of depositors, not the Company. Zakat Payer also stated that the deposit was made in the name of the depositors, not the Company, as the Company had not yet acquired its legal personality. Furthermore, the paid amount shall not be subject to zakat as it was restricted and could not be utilized until the Company commenced its operations after its establishment and licensing. Therefore, the full ownership rights over this amount are suspended, as it cannot be freely disposed of. With regard to Zakat Payer Appeal against Item (non-deduction investments according to Company financial statements), Zakat Payer asserts that these investments are made for acquisition purposes and not for trade. Therefore, the Company is legally entitled to deduct these investments from zakat base. With respect to Zakat Payer Appeal on Item (statutory deposit held in accordance with Cooperative Insurance Companies Control Law and its Implementing Regulations), Zakat Payer based its Appeal on the argument that the Islamic legal basis for full ownership, subject to which zakat is imposed on funds, is founded on four principles: ownership right, possession, disposal, and benefit. If the ownership right is deferred until the Company liquidation, and possession, disposal, and benefit are absent, then the statutory deposit cannot be considered a fully owned property that shall be subject to zakat. In accordance with the Implementing Regulations of Cooperative Insurance Companies Control Law, insurance companies are not entitled to dispose of the statutory deposit amount, and the returns generated therefrom are not owned by the insurance companies, but rather owned by the Saudi Central Bank. Consequently, it is illogical for the state to benefit from the deposit returns, and then impose zakat thereon. Zakat Payer pointed out that, practically, the statutory deposit shall be deducted from zakat base as fixed assets, noting that fixed assets are utilized in business activity and generate income. However, fixed assets are not subject to zakat, so their value is deducted from tax base and their annual depreciation is deducted from adjusted profit. While the statutory deposit is a compulsory cash reserve that is not utilized in any way and do not generate any returns, so it shall be deducted from zakat base as fixed assets. Therefore, Zakat Payer called for cancellation of ZATCA action and deduction of the statutory deposit from zakat base for the years of dispute. As for Zakat Payer Appeal against Item (solvency margin), Zakat Payer clarified that the solvency margin is considered funds reserved for specific purposes, similar to trading tools and acquisition offers. Thus, the solvency margin shall subject to provisions of Fatwa No. (12756) regarding funds that cannot be disposed of, which states that: "Zakat shall not be imposed on funds that cannot be disposed of until such restriction on disposal is removed. Once the right of disposal is gained, zakat shall be imposed if a year has passed over such funds as of the date of gaining the right of disposal." Moreover, Zakat Payer argued that the solvency margin is essentially a reserved amount that cannot be disposed of, and that the returns generated from these investments are added to zakat base. Accordingly, these investments shall be deducted from zakat base as long-term assets. Therefore, Zakat Payer called for cancellation of ZATCA action and deduction of the solvency margin from zakat base.

With regard to Zakat Payer Appeal against Item (adjusted carried forward losses), Zakat Payer requested that the losses be recognized based on the Company financial statements, rather than the assessments issued by ZATCA. Concerning Zakat Payer Appeal against Item (withholding taxes), Zakat Payer argued that ZATCA calculated withholding tax based on the total premiums paid to foreign reinsurers, noting that the Company has paid withholding tax estimated at 5% of the paid amounts, in accordance with the applicable tax law, and that these amounts were paid to ZATCA within the specified deadlines. Zakat Payer requested that withholding tax not be calculated based on total premiums paid to

foreign reinsurers and also called for refunding the excess paid tax amount, given that the amounts paid to third parties shall be recognized in the Company income statement and are subject to zakat and tax accordingly. Regarding Zakat Payer Appeal against Item (material error in calculating withholding tax differences for the year 2011 AD), Zakat Payer based its Appeal on the fact that ZATCA incorrectly calculated the withholding tax differences for 2011 AD with the amount of (SAR 851,142), while the correct amount is (SAR 581,142), resulting in an overstatement estimated at (SAR 270,000). Zakat Payer called for amending the assessment and refunding or settling the overstated tax difference. ZATCA also was dissatisfied with the Decision; therefore, ZATCA submitted its Appeal against the contested Decision subject to a statement of appeal, which included the following in summary:

Regarding ZATCA Appeal on Item (upholding Zakat Payer position on related party transactions for the year 2008), ZATCA clarified that it had added the balance of related party transactions for the year 2008 AD with the amount of (SAR 2,560,000), and that Zakat Payer objected to the total amount without going into details, as the amount of (SAR 315,000), which was mentioned by Zakat Payer, was recognized in its declaration submitted to ZATCA. However, the additional amount of (SAR 2,245,000) was disclosed in Note No. (10) of Company financial statements, and was paid for assets purchased on behalf of the Company by Company (a Bahraini affiliate). Since these assets are deductible from zakat base, their sources of funding must be added thereto, in accordance with Fatwa No. (22665) of 1424 AH, Second Question Response, which requires that all funds received from third parties shall be added to zakat base and then treated for zakat purposes to determine whether to impose zakat thereon or not, depending on their ultimate use. ZATCA also clarified that the Primary Committee did not issue its Decision based on tangible facts and evidence that could support Zakat Payer position. The Primary Committee did not also explain the Grounds adopted to reach its Decision, and its Decision is in consistent with the information mentioned in the financial statement Note No. (10), which supports the action taken by ZATCA. Therefore, ZATCA did not accept the Grounds adopted by the Primary Committee in its Decision because they contradict the information included in the financial statements.

The Department decided to open pleadings. On 10/04/1442 AH, corresponding to 25/11/2020 AD, ZATCA submitted a memorandum in response to Zakat Payer Appeal regarding the contested items. Regarding Item (paid-up capital for the years 2006 and 2007 AD), ZATCA responded that it has conducted a field audit of the Company accounts and reviewed the Company notarized Articles of Association, and found that the date of notarization by the notary public is considered the official date of Company establishment and the date of acquisition of its legal personality. Since contract notarization by the notary public only occurs after the specified capital has been deposited, regardless of whether the date of deposit or the date of notarization was adopted, a full zakat year had passed on the capital. Therefore, ZATCA maintained the validity and integrity of its action. With regard to Item (investments for the period 2008-2011 AD), ZATCA responded that it did not deduct such investments because they include sukuk, a real estate fund, and an equity portfolio. Given the nature of these investments, they are considered tradable investments and shall not be deducted from zakat base. It is worth noting that the duration of acquisition is not the sole criterion for considering an asset as a fixed acquisition (non-trade). Furthermore, these investments were not subject to zakat by the entity in which they were invested, and therefore, zakat must be paid on them by the investing entity. As for Item (statutory deposit held in accordance with Cooperative Insurance Companies Control Law and its Implementing Regulations), ZATCA responded that this item was added to zakat base as a pledged property that shall be subject to zakat, as this deposit is a requirement for conducting business and is a pledged property, the ownership of which has not been transferred. ZATCA supported its Decision by referring to Article (4) of



Implementing Regulations for Zakat Collection, which states that "statutory deposits of banks and insurance companies with the Saudi Central Bank, as well as any statutory deposits required by other activities, shall not be deducted from zakat base." Regarding Item (solvency margin), ZATCA responded that the capital is the primary basis for determining zakat obligation imposed on the entity, in accordance with the zakat collection general principles, legal fatwas issued in this regard, the zakat collection regulations governing trade offers, Ministerial Decision No. (393) dated 06/08/1430 AH, Circular No. (1/8443/2), and Article (4) of Implementing Regulation for Zakat Collection. With regard to the claim that Company control over these funds is restricted, it is incorrect; the Saudi Central Bank (previously SAMA) has merely specified certain investment channels and tools for these companies to safeguard shareholder rights, build reserves to support Company financial position, and achieve the required solvency margin in accordance with the Cooperative Insurance Companies Control Law applicable in KSA and its Implementing Regulations. Furthermore, the solvency margin does not only refer to capital, but rather covers three components defined by Article (66) of the mentioned Regulations. Therefore, ZATCA maintained the validity and integrity of its action. With respect to Item (adjusted carried forward losses), ZATCA responded that the accepted adjusted carried forward losses are based on the applicable regulations and instructions governing this case and applicable to all Zakat Payers, including Circular No. (3/148) dated 08/08/1408 AH, Circular No. (1/122) dated 19/08/1414 AH, and Circular No. (1/92) dated 19/07/1418 AH, which defined losses deductible from zakat base as the losses adjusted according to ZATCA assessments, after adding the provisions and reserves that were previously added to the business outcomes in previous years. This is further confirmed by Article (4.2) of Implementing Regulation for Zakat Collection, which states that: ("the following items shall be deducted from zakat base... the net adjusted carried forward loss calculated based on to ZATCA assessments after adding only provisions or reserves that were previously used to reduce the loss in the year they were created.") Therefore, ZATCA maintained the validity and integrity of its action. Regarding Item (withholding taxes), ZATCA claimed that its action is valid based on Article (63.1) of Implementing Regulations of Income Tax Law, as amended by Ministerial Decision No. (1776) dated 18/05/1435 AH, which states that: "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:

Rent; technical or consulting services; air tickets; air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums.	5%.

And Paragraph (8) of the same Article, which states that: "The withholding tax as per rates stated in Paragraph (1) of this Article shall be levied on total amount paid to the nonresident, regardless of expenses incurred to make such income, and notwithstanding full or partial allowance/disallowance, as a deduction, of such payment; it shall also be even imposed on payments attributed to contracts concluded before the effective date of the Law." Regarding Item (material error in calculating withholding tax differences for the year 2011 AD), ZATCA responded that no objection was raised with regard to this item, which means that this is a new request by Plaintiff. Therefore, ZATCA called for rejection of Plaintiff request regarding this item.

On Thursday, 26/08/1442 AH, corresponding to 08/04/2021 AD, the First Appellate Department for Income Tax Violations and Disputes convened and decided to open the a 10-days e-pleading session, and this period would begin five days after the litigants were notified of the Department Decision. The specified period terminated without providing any additional submissions by either litigant.

On Thursday, 24/09/1442 AH, corresponding to 06/05/2021 AD, the First Appellate Department for Income Tax Violations and Disputes convened. After reviewing the Case



file, with regard to Item (non-deduction of investments based on the Company financial statements), Zakat Payer claimed that a part of the disputed investments was made in local companies. Accordingly, the Department requested Zakat Payer to provide detailed information on the investments made in local companies for each year of dispute, supported by financial statements and including the date of acquisition and the date of sale, if any. As for Item (solvency margin), the Department requested Zakat Payer to specify the amount invested in shares of local companies within the solvency margin for each year of dispute, supported by financial statements, including the date of acquisition and the date of sale, if any, provided that documents shall be submitted via the electronic portal within 30 days from date.

On Tuesday, 05/11/1442 AH, corresponding to 15/06/2021 AD, and 27/10/1442 AH, corresponding to 08/06/2021 AD, having reviewed Appeal memoranda and responses thereto, and examined documents and papers included in Case file, the Department concluded that the Case was ready for adjudication and issuing a Decision on its merits.

Grounds

Upon reviewing Case documents and Appeal Brief submitted by Appellant Company and ZATCA, the Department found that both appeals have fulfilled formal consideration requirements in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, both appeal requests were accepted in form for being submitted by persons with legal capacity and within the statutory prescribed period.

On merits: with regard to Zakat Payer Appeal on Item (paid-up capital for the years 2006 AD and 2007 AD), the Appeal revolves around Zakat Payer argument that the paid-up capital shall not be subject to zakat for the years 2006 AD and 2007 AD. Zakat Payer argued that the funds used to establish the Company are originally owned to investors, and that the Company could not own or utilize these funds to carry out its activities until the incorporation procedures are fully completed. On the other hand, ZATCA believed that zakat is due on the funds deposited as the Company capital, because these funds were no longer owned by original owners and became the sole property of the Company once the Company gained its legal status after its incorporation documents were concluded and notarized. Upon considering the dispute subject matter and based on the provisions of Companies Law, it turned out that the full legal existence of the Company only happens upon completion of incorporation procedures and registration in the commercial registry. Also, the Company, as a legal entity subject to zakat, shall assume its obligations toward ZATCA only after completion of its legal incorporation and gaining legal personality, and the Company absolute ownership of the funds transferred to its account is not fully vested thereon until completion of its incorporation procedures and its establishment in accordance with applicable law. Moreover, ZATCA alleged that the conclusion and notarization of the Company articles of association are not sufficient for proving its establishment and gaining an independent legal personality but rather a mere procedure required by law for the Company to gain its full legal capacity, which enables the Company, when performed as required by law, to practice its business activity and dispose of its funds. It is worth noting that the dispute between Zakat Payer and ZATCA regarding this item revolves around imposing zakat on such funds at the time when the Company had not yet fully come into existence and did not have control over these funds during the years of dispute. This means that the obligation of paying zakat on such funds for the disputed year shall be assumed by owners, i.e., investors who established the Company, and based on the extent to which they were individually obligated to pay zakat on these funds. Furthermore, the Company is not responsible for paying zakat on funds if ownership of such funds has not been clearly, fully, and definitively established, especially considering that the Company incorporation procedures were not yet complete as previously mentioned. Therefore, the Department decided by majority to accept Zakat Payer Appeal

and overturn the primary Decision reached in this regard. The Department also ruled that the capital funds paid and deposited at the time of the Company incorporation shall be excluded from zakat base for the years 2006 AD and 2007 AD.

With regard to Zakat Payer Appeal on Item (non-deduction of investments according to Company financial statements), the Appeal is based on Zakat Payer request to deduct the investments from zakat base, as they were made for acquisition purposes. However, ZATCA believed that these investments shall not be deducted, because they consist of sukuk, a real estate fund, and an equity portfolio. Upon considering the dispute subject matter, the Department requested Zakat Payer to provide detailed information regarding the investments in those companies, but Zakat Payer failed to provide any response supporting its claim. Moreover, ZATCA performed its action based on the audited financial statements notes, which showed that the investments consisted of sukuk, a real estate fund, and an equity portfolio, and there is no indication of direct investments in Saudi companies. Zakat Payer failed to provide any evidence to the contrary of ZATCA conclusions reached based on the audited financial statements of Zakat Payer. Accordingly, the Department concluded that the Primary Committee Decision being appealed was correct. Therefore, the Department decided to reject Zakat Payer Appeal and uphold the primary Decision regarding this item.

With respect to Zakat Payer Appeal on Item (statutory deposit held in accordance with Cooperative Insurance Companies Control Law and its Implementing Regulations), Zakat Payer filed its Appeal to call for deduction of the statutory deposit from zakat base, arguing that these funds are held by the Saudi Central Bank, and the Company has no right to dispose of the same in any way. However, ZATCA believed that the deposit shall not be deducted, as it is considered a pledged property that subject to zakat and is a requirement for conducting business activities. Having carefully considered the dispute subject matter, since the Appellate Department ruled that the statutory deposit shall be classified as a guarantee required by a regulatory authority in exchange for protecting the rights of customers; as such, it is a mandatory rather than a non-voluntary obligation. Therefore, it must be concluded that the Company is not entitled to dispose of the deposit funds except upon liquidation, as the Company has no control over these funds held by the regulatory authority supervising the Company activities, which means that these funds are retained by order of that regulatory authority as a requirement and perquisition for issuing the business license. Moreover, regulatory provisions of Cooperative Insurance Companies Control Law stipulate that the regulatory authority responsible for regulating such activities and mandating retention of capital funds is also the beneficiary of any returns generated on these funds, which requires consideration of excluding the statutory deposit funds from zakat base of Zakat Payer. Therefore, the Department decided to accept Zakat Payer Appeal and overturn the primary Decision reached in this regard.

Regarding Zakat Payer Appeal on Item (solvency margin), Zakat Payer filed its Appeal to call for deduction of the solvency margin from zakat base, arguing that it is retained funds that cannot be disposed of. However, ZATCA maintained that the capital is the primary basis for imposing zakat on the entity in accordance with general rules for zakat collection, relevant fatwas, regulations governing collection of zakat imposed on trade offers, and interpretive circulars. ZATCA also contended that Zakat Payer claim that the Company has no control over these funds is invalid, as the Saudi Central Bank has simply designated specific investment channels and tools for these companies to safeguard shareholder rights. Upon considering the dispute subject matter, the Department found that the solvency margin is a legal requirement for maintaining the financial investments aimed at meeting the Company future obligations; therefore, imposing zakat thereon shall depend on the nature of assets that comprise the solvency margin, and such assets may be investments in equity of other companies intended for trading or retention or debt instruments. The Department requested Zakat Payer to specify the amount invested in

shares of local companies within the solvency margin, along with the dates of acquisition and sale thereof, but Zakat Payer did not provide the requested information to support its claim. It was established by the Department that the components of the solvency margin include deposits with local banks, which are subject to zakat based on their nature. As a result, the Department concluded that the submissions provided with regard to this item do not affect the conclusion reached in the primary Decision. Therefore, the Department decided to reject Zakat Payer Appeal and uphold the primary Decision reached in this regard.

Regarding Zakat Payer Appeal on Item (adjusted carried forward losses), Zakat Payer filed its Appeal to call for recognizing losses as indicated in its financial statements. However, ZATCA believed that losses deducted from zakat base are carried forward losses as per the assessments issued by ZATCA. Upon considering the dispute subject matter, based on Article (188) of Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "An appeal or a petition for revision shall be made by means of a brief deposited with the court rendering the judgment. Such brief shall contain the appealed judgment, its number, date, Grounds for objection ...", and given that Zakat Payer Appeal regarding this item lacked sufficient Grounds, the Department concluded that the submissions provided with relation to this item does not affect the conclusion reached in the primary Decision. Therefore, the Department decided to reject Zakat Payer Appeal and uphold the primary Decision reached in this regard.

As for Zakat Payer Appeal on Item (withholding taxes), Zakat Payer filed its Appeal requesting not to calculate withholding tax based on the total premiums paid to foreign reinsurers and refund the taxes already paid, given that these amounts paid to third parties are included in Company income statement and are subject to zakat and tax, resulting in double taxation. However, ZATCA believed that Zakat Payer raised an objection to imposing tax on the total value of the premiums paid to non-resident companies, which are recognized in the income statement as direct costs of the activity. Zakat Payer also requested imposing tax only on the net amount owed to the reinsurers from the reinsurance premiums paid to non-resident companies, as Zakat Payer settled the amounts owed to the reinsurers by deducting the credits from "policy values" received, and what the resident company pays as compensation for these policies on behalf of the non-resident reinsurer. Upon considering the dispute subject matter, the Department was satisfied that withholding tax shall be imposed, as required by applicable law, on the total amounts paid to non-resident companies based on the rates specified by law in accordance with Article (63.1) of Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which provides that: "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: Technical or consulting services; international telephone services other than payments made to the head office or an affiliated company; rent; airline tickets; air or maritime freight; dividends; loan charges; insurance or reinsurance premiums. 5%. Also, Paragraph (8) of the same Article mentioned above, provided that: "The withholding tax as per rates stated in Paragraph (1) of this Article shall be levied on total amount paid to the nonresident, regardless of expenses incurred to make such income, and notwithstanding full or partial allowance/disallowance, as a deduction, of such payment; it shall also be even imposed on payments attributed to contracts concluded before the effective date of the Law." Therefore, the Department decided to reject Zakat Payer Appeal and uphold the primary Decision reached with regard to this item.

With respect to Zakat Payer Appeal on Item (material error in calculating withholding tax differences for the year 2011 AD), Zakat Payer filed its Appeal to call for amending assessment and refund or settle the excess calculated withholding tax. On the other hand, ZATCA believed that no objection was raised earlier with regard to this appealed item,

which means that it is a new request from Zakat Payer part. Upon considering the dispute subject matter, the Department found that Zakat Payer confirmed that a material error happened when calculating withholding tax differences for the year 2011 AD. It is worth noting that material errors, once proven, do not essentially constitute a judicial dispute that could be challenged before judiciary; therefore, Zakat Payer has the right to seek correction of the errors mentioned in its appeal from the ZATCA. Since Zakat Payer objection with regard to this item is not included in its main objection provided to the Primary Committee, the Appellate Department does not have jurisdiction to consider this objection on merits. Accordingly, the Department decided to disregard the subject of this objection.

With regard to ZATCA Appeal on Item (upholding Zakat Payer position on related party transactions for the year 2008 AD), ZATCA filed this Appeal to challenge the Primary Committee Decision to support Zakat Payer objection on Item (related party transactions for the year 2008 AD). ZATCA claimed that the Primary Committee did not issue its Decision based on tangible facts and evidence that could support Zakat Payer position. The Primary Committee did not also explain the Grounds adopted to reach its Decision, and its Decision is inconsistent with the information mentioned in the financial statement Note No. (10), which supports the action taken by ZATCA. Upon considering the dispute subject matter, the Department found that ZATCA failed to provide any evidence that the disputed amount is recognized as a liability on the balance sheet, did not prove that a full year had passed over that amount, did not establish a link between the amount and any specific asset deducted from zakat base. The Department did not observe any matter that deserve correction or commentary in light of ZATCA submissions with regard to this item. Therefore, the Department decided to reject ZATCA Appeal and uphold the primary Decision reached in this regard.

Decision

First: In form, accept the Appeal filed by/ Company and the Appeal filed by ZATCA against Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh Decision No. (35) of 1437 AH.

Second: On Merits:

1. Accept Zakat Payer Appeal with regard to Item (paid-up capital for the years 2006 AD and 2007 AD) by majority, and overturn the primary Decision in accordance with Grounds and merits mentioned herein.
2. Reject Zakat Payer Appeal with regard to Item (non-deduction of investments according to Company financial statements), and uphold the primary Decision in accordance with Grounds and merits mentioned herein.
3. Accept Zakat Payer Appeal with regard to Item (statutory deposit held in accordance with Cooperative Insurance Companies Control Law and its Implementing Regulations), and overturn the primary Decision in accordance with Grounds and merits mentioned herein.
4. Reject Zakat Payer Appeal with regard to Item (solvency margin), and uphold the primary Decision in accordance with Grounds and merits mentioned herein.
5. Reject Zakat Payer Appeal with regard to Item (adjusted carried forward losses), and uphold the primary Decision in accordance with Grounds and merits mentioned herein.
6. Reject Zakat Payer Appeal with regard to Item (withholding taxes), and uphold the primary Decision in accordance with Grounds and merits mentioned herein.
7. Dismiss Zakat Payer Appeal with regard to Item (material error in calculating withholding tax differences for the year 2011 AD) in accordance with Grounds and merits mentioned herein.



8. Reject ZATCA Appeal with regard to Item (upholding Zakat Payer position on related party transactions for the year 2008 AD), and uphold the primary Decision in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2021-136)

Delivered in Appeal No. (Z-1663-2018)

Principle No. 188

The primary purpose of obligation and related consequences is assuming the resulting debt by debtor, and such debt shall subject to zakat based on accumulated balance at end of lunar year. On the other hand, creditor debt shall by a liability assumed by debtor, representing a property owned by creditor and held by debtor.

Principle No. 189

Provisions related to travel tickets and similar expenses shall be classified as potential expenses and expenditures; therefore, the difference between the provision opening balance and closing balance shall be added, considering that such difference reflects the actual expenditure utilized or released from the Company funds for the intended purposes.

Principle No. 190

If Zakat Payer primary business activity is not related to trading or selling, and the Company purchases items required for its own business, these items shall not be classified as trade assets and, therefore, shall not be added to zakat base, unless there is substantial evidence proving that they are being traded.

Principle No. 191

Funds donated to unrecognized charitable organizations that have not completed a lunar year are no longer the donor liability, and accordingly, shall not subject to zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 08/05/1442 AH corresponding to 23/12/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened in Riyadh to consider the appeal filed on 26/03/1438 AH, by.....Company against Decision No. (3) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah in Objection No. (6309) filed by Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept the objection in form filed by (... Company) to zakat assessment for years from 2004 to 2006.

Second: On Merits:



1. Dues of relevant parties:

- For the year 2004 AD, uphold GAZT Decision with relation to adding the opening balance side by side with value of the lands amounting to (SAR 21,688,300) to zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.
- For the year 2005 AD, uphold GAZT Decision with relation to adding the opening balance side by side with value of the lands amounting to (SAR 85,000,000) to zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.
- For the year 2006 AD, uphold GAZT Decision related to adding closing balance to zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.

2. Partners' current account: Uphold Zakat Payer position and accept its request with regard to excluding credit balance with the amount of (SAR 200,000,000) for the year 2006 AD from zakat base, in accordance with Grounds mentioned in the Decision.

3. Advance payments from clients (... companies): Accept Zakat Payer request with regard to excluding advance payments balances provided by customers for the period (2004-2006 AD) from zakat base, in accordance with Grounds mentioned in the Decision.

4. Advance receivables from some of the Company clients: Uphold GAZT Decision with regard to adding this item-related balances for the period 2004-2006 AD to zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.

5. Travel tickets and leaves for the period (2004-2006 AD): Uphold GAZT Decision with regard to adding this item to zakat base of Zakat Payer for the years of dispute, in accordance with Grounds mentioned in the Decision.

6. Capitalized costs, work in progress, and lands:

- For the year 2004 AD, Accept Zakat Payer request with regard to adding the amount of (SAR 4,216,495) as an expense that can be deducted from zakat base out of the amount of (SAR 76,424,298), in accordance with Grounds mentioned in the Decision.
- For the year 2005 AD, Accept Zakat Payer request with regard to adding the amount of (SAR 7,518,172) as an expense that can be deducted from zakat base out of the amount of (SAR 94,547,191), in accordance with Grounds mentioned in the Decision.
- For the year 2006 AD, Accept Zakat Payer request with regard to adding the amount of (SAR 8,009,914) as an expense that can be deducted from zakat base out of the amount of (SAR 107,563,475), in accordance with Grounds mentioned in the Decision.

7. Adjustments to profits, including:

7/1. Provision for end of service benefits:

- For the year 2005 AD, Uphold ZATCA Decision with regard to adding this item to zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.
- For the year 2006 AD, Uphold GAZT Decision with regard to rejecting Zakat Payer request to deduct this item from zakat base, in accordance with Grounds mentioned in the Decision.

7/2. Non- current liabilities: Uphold GAZT Decision with regard to this item assessment for the period (2004-2006 AD), in accordance with Grounds mentioned in the Decision.

7/3. Employee travel tickets:



- For the year 2004 AD, The Committee decided to add only the amount of (SAR 304,750) to the net profit of that year and exclude any other amounts from zakat base, in accordance with Grounds mentioned in the Decision.
 - For the years 2005 AD and 2006 AD: Reject Zakat Payer claim with regard to this item for both years of dispute, in accordance with Grounds mentioned in the Decision.
- 7/4. Management bonus for the year 2004: Approve management bonus for partners with the amount of (SAR 45,000) per month as an expense that can be deducted from zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.
 - 7/5. Bonuses for the year 2006 AD: Uphold Zakat Payer request with regard to excluding this item from zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.
 - 7/6. Other bonus, benefits, and advantages for employees for the years 2004 AD & 2005 AD: Uphold GAZT Decision with regard to disallowing deduction of this item from zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.
 - 7/6. Donations for the year 2004: Uphold GAZT Decision with regard to adding the amount of (SAR 656,685) to zakat base of Zakat Payer, rather than the amount of (SAR 1,313,370), in accordance with Grounds mentioned in the Decision.
 - 7/8. Travel and entertainment expenses for the period (2004-2006 AD): Settlement of dispute between both litigants due to GAZT approval of Zakat Payer objection, in accordance with Grounds mentioned in the Decision.
 - 7/9. Legal consultations for the year 2006 AD: Settlement of dispute between both litigants due to GAZT approval of Zakat Payer objection, in accordance with Grounds mentioned in the Decision.
 - 7/10. External procurement for the year 2006 AD: The Committee decided to add the amount of (SAR 1,424,216) to the net profit of that year, rather than the full value of external procurement, in accordance with Grounds mentioned in the Decision.
 - 7/11. Temporary labor for the years 2004 and 2005: Uphold GAZT Decision with regard to its assessment of this item for both years of dispute, in accordance with Grounds mentioned in the Decision.
 - 7/11. Insurance against fidelity guarantee and personal accidents for the year 2006 AD: Uphold GAZT Decision with regard to adding the value this item to zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.
 - 7/13. Other expenses for the years 2004 AD and 2006 AD: Settlement of dispute between both litigants due to GAZT approval of Zakat Payer objection, in accordance with Grounds mentioned in the Decision.
 - 7/14. Equipment selling cost not recognized for the year 2004 AD: Uphold GAZT Decision with regard to adding the value this item to zakat base of Zakat Payer, in accordance with Grounds mentioned in the Decision.
 8. Material error: Settlement of dispute between both litigants concerning this item due to GAZT approval to correct the material error, in accordance with Grounds mentioned in the Decision.

Since this Decision was not accepted by (.... Company) with regard to some items, the Company submitted an Appeal Brief to the Department, which included the following in summary:

1. Item (dues of relevant parties): The Company filed its Appeal to challenge GAZT assumption that the balance due to Company Ltd. disclosed as a part of balances due to related parties, is indeed a partner current account that completed a lunar year, so it was added to zakat base. The Company explained that such credit balances do not pertain to a partner, but rather resulted from regular business transactions performed with the said company. The Company also added that such balances are disclosed in the financial statements of Company Ltd. as debit balances due from



relevant parties and were subject to zakat in the same years, so they were excluded from zakat base. Consequently, adding these balances in the Company zakat base would lead to double taxation. Moreover, these balances cannot be classified as long-term loans or short-term loans, and shall not be assessed as such for zakat purposes.

2. Item (Advance receivables from some of the Company clients): The Company filed its Appeal to challenge GAZT action of adding advance payments provided by the Company clients to zakat base, arguing that such balances shall not subject to zakat. The Company explained that such funds are neither owned by the Company nor represent loans provided to the Company by third parties, and the Company is obligated to return the same in full to beneficiaries if the specified objectives for which they were provided are not met.
3. Item (leaves): The Company filed its Appeal to challenge GAZT action of adding leave payment balance due to employees to zakat base, arguing that such amounts are recognized in the Company accounts in accordance with Accrual Accounting Principle, and are not provisions. The Company added that the outstanding balance at the end of the year is considered as accrued expenses that are usually disbursed during the following year, and therefore shall not be added to zakat base.
4. Item (capitalized costs, works in progress, and lands): The Company explained that its primary business is hotel construction, operation, and management, as well as land acquisition and development. Since completion of these projects requires several years, capital expenditures are classified and charged as costs of works in progress in line with accounting principles. Therefore, all expenses are actually incurred and shall not be ignored without a valid reason, especially considering that GAZT guidelines require deduction of capital work expenditures and other related expenses from zakat base. Furthermore, the Company accounts are reviewed by chartered accountants who have verified the accounting process of these expenses and would have mentioned any discrepancies in their reports, if any. Additionally, the Company requested that the value of lands be included in capital expenditures, and in case of rejecting the same, the Company agrees to assess the same as revenue expenditures charged to the income of the period, provided that the book retained earnings of the following years shall be adjusted. Also, the Committee issuing the Decision did not clarify which accounting principles prohibit adding any expendable costs to lands' book value, noting that the generally applicable accounting standards (fixed assets standard) state that any costs incurred to bring an asset to a condition ready for use shall be capitalized.
5. Item (provision for end of service benefits): The amount of (SAR 161,187) for the year 2005 AD was added to zakat base although it was not recognized in the income statement, but rather recognized as part of capital expenditures. Also, the amount of (SAR 755,506) was added to zakat base as entitled leaves, and was erroneously classified in the primary objection of Zakat Payer as a provision for end of service benefits, and the same applies to the entitled leave item
6. Item (employee travel tickets): Travel tickets are necessary expenses for business activity and shall be deducted from zakat base.
7. Item (management bonus): The Company filed its Appeal on this item calling for deduction of management bonus as stated in the Administrative Court of in Jeddah Sentence No. (S/2/8372) dated 1434 AH, which accepted the Company objection.
8. Item (other bonus, benefits, and advantages for employees): The Company filed its Appeal on this item calling for deduction of employees' rewards and incentives as stated in the Administrative Court of in Jeddah Sentence No. (S/2/8372) dated 1434 AH, which accepted the Company objection.
9. Item (donations): The Company filed its Appeal on this item calling for deduction of donations as stated in the Administrative Court of in Jeddah Sentence No. (S/2/8372) dated 1434 AH, which accepted the Company objection.



10. Item (external procurement): The Company filed its Appeal challenging the Decision taken by the Primary Committee, which requires calculating a 10.5% profit margin for external procurement because the company has no commercial activity. Also, the Company provided a custom clearance proving that the imported items were solely purchased for the purpose of hotel construction and supporting related administrative operations, not for resale purposes.
11. Item (temporary labor): The Company provided all supporting documents related to this item. GAZT approved the amounts of (SAR 399,524) for the year 2004 AD and (SAR 478,384) for the year 2005 AD, but rejected the remaining amounts of (SAR 404,819) for the year 2004 AD and (SAR 410,33) for the year 2005 AD, although the Company has provided all necessary supporting documents related to this item.
12. Item (insurance against fidelity guarantee and personal accidents): The Company filed its Appeal on this item, arguing that insurance is necessary operational expenses for practicing any business activity, and the Company has the required supporting documents.
13. Item (cost of selling equipment): The Company filed its Appeal challenging adding equipment sale proceeds in its revenue, and GAZT refused to recognize associated selling expenses, which violates the principle of matching revenues with expenses.

The Department requested GAZT to respond to the Appeal Brief presented by Appellant with regard to the contested items, and GAZT submitted its Reply on 25/04/1442 AH. Upon reviewing GAZT overall responses to the Appeal Brief concerning the contested items, the Department determined that GAZT had merely reiterated its previous stance regarding the contested items as presented before the Primary Committee.

The Department, having taken cognizance of memorandums of appeal and responds thereto, and having reviewed documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing Case documents and statement of appeal submitted by Zakat Payer, the Department found that conditions of appeal 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 statutory prescribed period.

On merits, after considering the overall defenses presented by Appellant concerning the aforementioned items, as well as GAZT position as presented upon consideration before the Primary Committee, the Department decided as follows:

1. Item (dues of relevant parties): The Company filed its Appeal to challenge GAZT assumption that the balance due to Company Ltd. disclosed as a part of balances due to related parties, is indeed a partner current account that completed a lunar year, so it was added to zakat base. The Company argued that such credit balances do not pertain to a partner but rather resulted from regular business transactions performed with the said company. The Company also added that such balances are disclosed in the financial statements of Company Ltd. as debit balances due from relevant parties and were subject to zakat in the same years, so they were excluded from zakat base. Consequently, adding these balances in the Company zakat base would lead to double taxation. Moreover, such balances shall not be classified as long-term loans or short-term loans and thus shall not be assessed as such for zakat purposes, as determined in the primary Decision. No doubt, the Department may adopt only the reasons mentioned in the appealed Decision whenever it deems that such reasons are sufficient to address any new arguments. As such, the Department affirmed the validity of the primary Decision based on the sufficient reasons mentioned therein and thereby confirmed that the arguments raised against such Decision have nothing that deserves



response beyond such reasons. Based on the above, the appealed Decision issued with regard to the dispute over this appealed item is entirely consistent with the valid and sufficient Grounds upon which it is based, given that the Primary Committee issuing such Decision has thoroughly examined the dispute subject matter and reached its Decision in this regard. Also, the Appellate Department did not observe anything that deserved correction or commentary in light of the defenses raised before it, so the Department decided that the raised arguments have no effect on the conclusion reached in this Decision. The Company argument against the primary Decision, which indicate that there is a difference between regular financial transactions and debts arising from loan agreements between lender and borrower, because the primary purpose of obligation and related consequences is assuming the resulting debt by debtor, and such debt shall be subject to zakat based on accumulated balance at the end of lunar year, and the creditor debt shall be a liability assumed by debtor, representing a property owned by creditor and held by debtor, which means that there is no double taxation as claimed by Appellant. Accordingly, the Department decided to reject Zakat Payer Appeal and uphold the primary Decision reached with regard to this item.

2. Item (Advance receivables from some of the Company clients): The Company filed its Appeal to challenge GAZT action of adding advance payments provided by the Company clients to zakat base, arguing that such balances shall not be subject to zakat. The Company explained that such funds are neither owned by the Company nor represent loans provided to the Company by third parties, and the Company is obligated to return the same in full to beneficiaries if the specified objectives for which they were provided are not met. Upon considering the Grounds of the Appeal on the contested item, as outlined in the Appeal Brief, and after reviewing the reasons upon which the primary Decision based to add balances of these receivables paid by some clients to zakat base, it turned out that the Primary Committee issuing the Decision determined that these balances, which were added by GAZT to zakat base, represent the opening balances of the period on which one lunar year has passed due to absence of any debits recorded in these accounts. Since Appellant failed to prove that these funds were no longer in its possession after they were paid to it in the disputed years, and failed also to prove that they were kept as separate accounts away from its personal funds, so that they would not be added to other funds that subject to zakat at the end of the year; therefore, Appellant claim that these amounts shall be returned to clients is inconsistent with the correct assessment of these funds for zakat purposes, which requires adding the same to Appellant funds, as evidenced by Appellant accounts of the years of dispute. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the primary Decision reached in this regard.
3. Item (leaves): The Company filed its Appeal to challenge GAZT action of adding leave payment balances due to employees to zakat base, arguing that such amounts are recognized in the Company accounts in accordance with Accrual Accounting Principle, and are not provisions. The Company added that the outstanding balance at the end of the year is considered as accrued expenses that are usually disbursed during the following year and therefore shall not be added to zakat base. In response to the Appeal on this item, GAZT confirmed the validity of its action with regard to this item, which requires adding the balance of these entitled leaves to zakat base as outstanding funds owed to employees for their annual leaves until they spend the same, so they are funds that are still in the possession of the Company and under its control. Upon considering views of both Zakat Payer/the Company and GAZT with regard to zakat assessment of the funds covered by this item for the years of dispute, it turned out that these funds are indeed the Company property, regardless of the Company claim that they will be paid out in the future as long as these funds are



included in expenses recognized in statement of financial position, and there is no valid evidence that they were no longer in the possession of the Company in each of the years of dispute. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the primary Decision reached in this regard.

4. Item (capitalized costs, works in progress, and lands): The Company filed its Appeal to confirm that its primary business is hotel construction, operation, and management, as well as land acquisition and development. Since completion of these projects requires several years, capital expenditures are classified and charged as costs of works in progress in line with accounting principles. Therefore, all expenses are actually incurred and shall not be ignored without a valid reason, especially considering that GAZT guidelines require deduction of capital work expenditures and other related expenses from zakat base. Furthermore, the Company accounts are reviewed by chartered accountants who have verified the accounting process of these expenses and would have mentioned any discrepancies in their reports, if any. Additionally, the Company requested that the value of lands be included in capital expenditures, and in case of rejecting the same, the Company agrees to assess the same as revenue expenditures charged to the income of the period, provided that the book retained earnings of the following years shall be adjusted. Also, the Primary Committee issuing the Decision did not clarify which accounting principles prohibit adding any expendable costs to lands' book value, as claimed by Zakat Payer/ the Company, noting that the generally applicable accounting standards (fixed assets standard) state that any costs incurred to bring an asset to a condition ready for use shall be capitalized. In its response to Zakat Payer Appeal on this item, GAZT confirmed the validity and integrity of the conclusion reached by the Primary Committee issuing the Decision, stating that it had deducted the capitalized costs for each year based on the amounts determined in the primary Decision. Upon careful consideration of the primary Decision, the Department found that GAZT deducted some capitalized costs, which were then reviewed by the Primary Committee issuing the Decision. The Department was also satisfied that the basis adopted by both GAZT and the Primary Committee for making their assessment was not clear, given that the Company accounts were reviewed by the chartered accountant appointed by the Company, who confirmed that expenses were allocated, assessed, and classified as capital or revenue costs correctly, as presented by Zakat Payer before the Primary Committee. The Department was also satisfied that the Primary Committee failed to properly consider Zakat Payer claim with regard to the accuracy of its assessment based on its financial statements, and also that the primary Decision did not consider Zakat Payer arguments in this regard. Moreover, it is established that Zakat Payer declaration shall be adopted unless there is compelling evidence that doubts the accuracy of submitted accounts. The Department was convinced that there are no Grounds justifying deviation from depending on Zakat Payer declaration, taking into consideration investment size, location, and nature side by side with the land used for implementing the same and the extent to which such capitalized costs are appropriate for associated projects. Therefore, the Department decided to accept Zakat Payer Appeal, calculate capitalized costs, works in progress, and lands for the years of dispute based on Zakat Payer declaration and financial statements, and overturn the primary Decision reached in this regard.
5. Item (provision for end of service benefits): Zakat Payer/the Company filed its Appeal claiming that the amount of (SAR 161,187) for the year 2005 AD was added to zakat base although it was not recognized in the income statement, but rather recognized as part of capital expenditures. Also, the amount of (SAR 755,506) was added to zakat base as entitled leaves and was erroneously classified in the primary objection of Zakat Payer as a provision for end-of-service benefits, and the same applies to the entitled



leave item. Upon careful consideration of Zakat Payer/the Company arguments and GAZT approach in dealing with the amounts covered by this item for the years of dispute, it turned out that these amounts are indeed in the Company possession, notwithstanding the Company claim that they were not included in the income statement, since it is undisputed that such amounts have not been discharged from the Company balance sheet for each of the years of dispute. Consequently, these amounts are still under the control of the Company and in its possession, so they shall be included in zakat base. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the primary Decision reached in this regard.

6. Item (employee travel tickets): Zakat Payer/the Company filed its Appeal on this item to confirm that travel tickets shall be considered as necessary expenses for business activity and shall be deducted from zakat base. In its response to Zakat Payer Appeal, GAZT confirmed the validity of its action and assessment of the funds covered by this item. Since provisions of travel tickets and similar expenses are usually treated as potential future expenditures; therefore, the difference between opening balance and closing balance of these provisions for the relevant year shall be added to zakat base as it represents the amount that has actually been incurred and spent from the Company funds to meet specified purposes. Therefore, the Department concluded that zakat assessment of such provisions shall take into consideration adding the amount remaining thereof at the end of the year to zakat base of Zakat Payer, rather than adjusting the net profit accordingly. Based on the above, the Department decided to dismiss Zakat Payer Appeal, and decided also to add the provision of employee travel tickets, as disclosed in the statement of financial position, to zakat base at the end of the period without adding the provision amount to the adjusted net profit, contrary to the primary Decision.
7. Item (management bonus): The Company filed its Appeal on this item to call for deduction of management bonuses, claiming that it is established based on judicial sentences that manager remuneration represents his consideration for the burdens assumed in management, which has nothing to do with manager entitlements based on the share provided by him in the Company. So, such management bonus is entitled based on the responsibilities assumed by the manager, not against ownership of shares in the Company, which means that such entitlements are not paid to the partner personally but are rather represent a remuneration for his role in the Company management and shall not be treated as a dividend. Moreover, there is no valid evidence justifying setting a limit for remuneration due for management or restricting the same as provided by social insurance regulations, such as setting the limit of (SAR 45,000) per month, and zakat assessment shall be made based on actual and real situations, as evidenced by expenses recognized as operating costs in the Company financial statement. On the other hand, GAZT responded that this amount is actually a dividend rather than a business expenditure and that the Primary Committee has previously decided to deduct management fees paid to partners as expenses from tax base, based on the stipulated limit of (SAR 45,000) per month. So, GAZT confirmed the validity and integrity of its Decision taken with regard to this item. Upon careful consideration of the dispute subject matter as outlined previously, it turned out that zakat assessment requires consideration of whether the funds are in possession of Zakat Payer at the end of the year so that zakat could be imposed thereon. The dispute related to this item is not about releasing such funds by the Company, but rather centers around GAZT refusal to allow such expenses to exceed the limit of (SAR 45,000) per month so that they could be deducted from zakat base. Since zakat is only imposed on funds possessed by Zakat Payer at the end of the year, and given that this amount was disbursed and expended as management fees, the Department decided that the entire amount shall be considered fully deductible expenses for zakat



purposes, disregarding the lower limit set by the primary Decision. Therefore, the Department decided to accept Zakat Payer Appeal, overturn the primary Decision, and add all management expenses paid to partners to zakat base of Zakat Payer.

8. Item (other bonus, benefits, and advantages for employees): The Company filed its Appeal on this item to call for deduction of employee rewards and incentives as stated in the Administrative Court in Jeddah Sentence No. (S/2/8372) dated 1434 AH, which required deduction of amounts paid and spent without the need for a specific bonus policy that regulates employee entitlement to the same. Zakat Payer argued that protecting rights of Zakat beneficiaries by GAZT cannot be done at the expense of the shareholder legitimate ownership rights, so any funds that are no longer under the Company ownership before the end of the year shall not be subject to zakat. In its response, GAZT confirmed that it adhered to provisions of Labor Law that shall not be violated even if both contracting parties agreed on that. GAZT added that Zakat Payer failed to provide copies of employment contracts and approved penalties and rewards regulations, which make it impossible to verify the legitimacy of this item. As such, bonuses and incentives shall not be considered deductible expenses, and payment of the same does not necessarily mean that they are deductible from zakat base, which was supported by several Decisions issued by the Appellate Committee. It is worth noting that the Appeal Committee issued Decision No. (1291) in 1434 AH, regarding the same company and the same item, in which it decided to uphold GAZT Decision. Therefore, GAZT confirmed the validity and integrity of its action. Upon considering the dispute happened between Zakat Payer/the Company and GAZT as mentioned above, it turned out that in order to make a zakat assessment, the related funds shall be in the possession of Zakat Payer and shall complete one year as such in order to impose zakat thereon. Also, the dispute here is not related to discharging the related funds by Zakat Payer, but rather is related to disagreement by GAZT to the validity of deducting such bonuses and incentives due to employees from zakat base due to noncompliance with regulations of Labor Law governing deduction of such expenses. GAZT argument that these bonuses shall comply with relevant regulations and shall be applied in accordance with provisions of related Labor Law, is irrelevant to zakat assessment and whether such funds are included in zakat base of Zakat Payer, as regulatory procedures serve another purpose, as stipulated by applicable law, which is safeguarding rights of employees working in these entities. Moreover, zakat obligation depends mainly on ownership of funds by Zakat Payer at the end of lunar year, while it was evidenced that the related funds were no longer owned by Zakat Payer at that time as they were paid to fulfill such bonuses and incentives for employees, and no dispute happened concerning this matter as previously mentioned. As such, the Department decided to consider the full amount under dispute as an expense that can be deducted from zakat base when making zakat assessment, contrary to the primary Decision. Therefore, the Department decided to accept Zakat Payer Appeal and overturn the primary Decision, and decided also to calculate all expenses covered by this disputed item from zakat base of Zakat Payer.
9. Item (donations): The Company filed its Appeal on this item to call for deduction of donations, as stated in the Administrative Court in Jeddah Sentence No. (S/2/8372) dated 1434 AH, which required deduction of the amounts paid and spent regardless of whether they were paid to charitable organizations and entities approved by the government, which contradicts GAZT argument that donations shall be paid only to approved charitable organizations, as stipulated by applicable law. Therefore, the Primary Committee Decision was in line with regulatory provisions, and GAZT adhered to the Grounds mentioned therein, which support the validity and integrity of its actions. Upon considering the dispute happened between Zakat Payer/the Company and GAZT as mentioned above, it turned out that in order to make a zakat

assessment, the related funds shall be in possession of Zakat Payer and shall complete one year as such in order to impose zakat thereon. Also, the dispute here is not related to discharging the related funds by Zakat Payer, but rather is related to disagreement by GAZT to the validity of deducting such donations from zakat base due to noncompliance with regulations of Labor Law governing deduction of such expenses. GAZT argument that these donations and the necessity of payment thereof to approved charitable bodies, institutions, and organizations shall comply with relevant regulations, is irrelevant to zakat assessment and whether such funds are included in zakat base of Zakat Payer, as regulatory procedures serve another purpose, as stipulated by applicable law, which is safeguarding funds from being subject to illegal activities. Although violation of these provisions may lead to imposing penalties, it does not change the fact that the money was no longer in Zakat Payer possession. Moreover, zakat obligation depends mainly on ownership of funds by Zakat Payer at the end of lunar year, while it was evidenced that the related funds were no longer owned by Zakat Payer at that time as they were paid to fulfill such donations, and no dispute happened concerning this matter as previously mentioned. As such, the Department decided to consider the full donation amount under dispute as an expense that can be deducted from zakat base when making zakat assessment, contrary to the primary Decision. Therefore, the Department decided to accept Zakat Payer Appeal and overturn the primary Decision, and decided also to calculate all expenses of this disputed item from zakat base of Zakat Payer.

10. Item (external procurement): The Company filed its Appeal on this item to challenge the Primary Committee Decision to calculate a 10.5% profit margin on external procurement, arguing that the Company has no commercial activity. A certificate from the customs authority was submitted as evidence that the imported items were aimed at fulfilling the needs of hotel establishment and the Company administrative operations, and thus not intended for resale. Consequently, the amounts of these items shall not be deducted from zakat base, contrary to the primary Decision. In response to Zakat Payer Appeal on this item, GAZT stated that its action as well as the primary Decision are in compliance with applicable laws, regulations, and Decisions. Zakat assessment of Zakat Payer with relation to this item was based on data extracted from the information center, and the full net profit for the year was adjusted because Zakat Payer did not disclose any procurements in its zakat declaration. Consequently, the Primary Committee estimated a 10.5% profit margin on the value of these imports and added the same to the annual profit, rather than adding the full value of the foreign procurement. Therefore, GAZT maintained the validity and integrity of its action with regard to this item. Upon careful consideration of the argument presented by Zakat Payer and GAZT along with the primary Decision conclusion reached in this regard, the Department was satisfied that the Company business activities do not include trading or selling, as was the case with the Company external procurement being disputed, which could be considered as evidence supporting Zakat Payer claim that the Company had no intention to trade the imported items, upon which zakat assessment was made. Also, there is no substantial evidence to the contrary. Therefore, the Department decided to accept Zakat Payer Appeal and overturn the primary Decision with regard to excluding the estimated profit on external procurement from zakat base of Zakat Payer, contrary to the primary Decision issued with regard to this item being considered.
11. Item (temporary labor): Upon careful consideration of the dispute happened between Zakat Payer and GAZT, the Department found that Appellant filed its Appeal to challenge the conclusion reached in the primary Decision to disregard the documents supporting its claim for deducting temporary labor expenses for the years 2004 AD and 2005 AD, which were not fully deducted by GAZT. Zakat Payer claimed that it

had the documents supporting its claim, and such documents were provided to GAZT. Nevertheless, Appellant failed to provide any evidence justifying its argument concerning deduction of temporary labor expenses for the years 2004 AD and 2005 AD on the ground. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the primary Decision with regard to non-deduction of temporary labor expenses for the years of dispute, for which Zakat Payer failed to provide supporting documents before the Primary Committee or before this Department. Given the foregoing, the Department determined that Zakat Payer Appeal on this item is groundless and, therefore, uphold the primary Decision in relation to this item being considered.

12. Item (insurance against fidelity guarantee and personal accidents): Upon careful consideration of the dispute happened between Zakat Payer and GAZT, the Department found that Appellant filed its Appeal to challenge GAZT approach as well as the primary Decision supporting it with regard to non-deduction of expenses incurred for insurance against fidelity guarantee and personal accidents. Zakat Payer claimed that the amounts incurred with relation to this item are expenses necessary for practicing any business activity and that the Company possesses supporting documents proving the same. On the other hand, GAZT position with regard to Zakat Payer Appeal was based on the Grounds that the Company failed to provide the supporting documents related to this item. The Department was satisfied that Zakat Payer/the Company had the opportunity to provide supporting documents justifying the expenses covered by this item, such as insurance policies and the like, to support the validity of its claim. However, Zakat Payer failed to provide these documents when the dispute was initially heard by the Primary Committee and then before this Department. As such, the Department was satisfied that Zakat Payer claim is unsubstantiated by any evidence, such as the documents claimed to exist by Zakat Payer, which support deduction of amounts related to this item. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the primary Decision reached with regard to this item.

Item (cost of selling equipment): Upon considering Zakat Payer Appeal on this item and its dispute with GAZT in this regard, the Department found that the disagreement centers around Zakat Payer claim for deducting costs of equipment sales for the year 2004 AD. Zakat Payer confirmed that the proceeds of equipment sales were included in the Company revenues, yet ZATCA denied the corresponding expenses, which contradicts the principle of matching revenue with expenses. On the other hand, GAZT argued that Zakat Payer failed to submit the required supporting documents justifying its claim for deduction of these expenses from zakat base and considering the same as deductible expenses. The primary Decision supported GAZT approach due to Appellant failure to provide any evidence supporting its claim. Despite being given the opportunity to present supporting documents before the Primary Committee and before this Department to validate its claim regarding deduction of equipment sale expenses, Zakat Payer failed to do so, making its claim a mere allegation. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the primary Decision reached with regard to this item.

Decision

First: In form, accept the Appeal filed by Zakat Payer/(...) Company against Decision No. (3) of 1438 AH issued by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Dismiss Zakat Payer Appeal with regard to Item (dues of relevant parties) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.



2. Dismiss Zakat Payer Appeal with regard to Item (advance receivables from some of the Company clients) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
3. Dismiss Zakat Payer Appeal with regard to Item (Leaves) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Zakat Payer Appeal with regard to Item (capitalized costs, works in progress, and lands), calculate capitalized costs, works in progress, and lands for the years of dispute based on Zakat Payer declaration and financial statements, and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
5. Dismiss Zakat Payer Appeal with regard to Item (provision for end of service benefits) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
6. Dismiss Zakat Payer Appeal with regard to Item (employee travel tickets) and amend the conclusion reached by the primary Decision by adding the provision of employee travel tickets, as disclosed in the statement of financial position, to zakat base at the end of the period without adding the provision amount to the adjusted net profit, in accordance with Grounds and merits mentioned herein.
7. Accept Zakat Payer Appeal with regard to Item (management bonus), deduct the full management expenses incurred by the partner from zakat base of Zakat Payer, and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
8. Accept Zakat Payer Appeal with regard to Item (other bonus, benefits, and advantages for employees), deduct full expenses covered by this item in dispute from zakat base of Zakat Payer, and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
9. Accept Zakat Payer Appeal with regard to Item (donations), deduct full amounts covered by this item in dispute from zakat base of Zakat Payer, and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
10. Accept Zakat Payer Appeal with regard to Item (external procurement), disallow deduction of estimated profit on external purchases, and overturn the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
11. Dismiss Zakat Payer Appeal with regard to Item (temporary labor) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
12. Dismiss Zakat Payer Appeal with regard to Item (insurance against fidelity guarantee and personal accidents) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.
13. Dismiss Zakat Payer Appeal with regard to Item (cost of selling equipment) and uphold the primary Decision reached in this regard, in accordance with Grounds and merits mentioned herein.



Similar Decisions:

First Appellate Department for Income Tax Violations and Disputes

Appellate Decision (IR-2021-126)

Appellate Decision (IR-2021-103)

Appellate Decision (IR-2021-391)

Appellate Decision (IR-2022-8)

Appellate Decision (IR-2022-7)

Appellate Decision (IR-2021-373)



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-181)
Delivered in Appeal No. (Z-16065-2020)

Principle No. 192

Recognizing unbilled revenues as a part of Zakat Payer assets is contingent upon Zakat Payer entitlement thereto, regardless of Zakat Payer claim thereof. Consequently, such revenues are classified as Zakat Payer funds due from third parties.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Sunday, 21/01/1443 AH, corresponding to 29/08/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, convened at its headquarters in Riyadh, to consider the appeal filed on 08/10/1441 AH, corresponding to 31/05/2020 AD, by Company against Decision No. (ISZR-2020-9) delivered by Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (Z-2018-128) filed by Appellant against Zakat, Tax and Customs Authority (ZATCA), in which the primary Decision ruled as follows:

First: Accept the Case filed by Plaintiff/.... Company, C.R. No. (...), in form.

Second: On Merits:

1. Dismiss objection with regard to Item (payments of carried forward provisions balances).
2. Dismiss objection with regard to Item (advance payments).
3. Dismiss objection with regard to Item (other credit balances).
4. Dismiss objection with regard to Item (relevant parties).
5. Dismiss objection with regard to Item (unbilled revenues).
6. Dismiss objection with regard to Item (investment differences).

Since this Decision was not accepted by Zakat Payer (.... Company), Zakat Payer filed an appeal brief that included the following, in summary: Zakat Payer Appeal against the Primary Committee Decision covers six items as follows: with regard to Item (balances of carried forward provisions), Zakat Payer explained that ZATCA added the amount of (SAR 115,572,321) as non-carried forward provisions, considering that such amount does not satisfy deduction conditions in accordance with Implementing Regulation for Zakat Collection. Zakat Payer also mentioned that a portion of these provisions with the amount of (SAR 38,034,892) was already paid, but ZATCA did not recognize the same, and that the Primary Committee validated ZATCA action due to failure to submit documents supporting payment of the abovementioned amount. However, Zakat Payer confirmed that it possesses the required documents supporting payment of such provisions with the amount of (SAR 38,034,892) during the fiscal year 2015 AD. Accordingly, Zakat Payer requested that zakat assessment be amended in accordance with Decision No. (22) of 1437 AH issued by the Second Primary Zakat and Tax Objection Committee in Jeddah. As for



Item (advance payments), Zakat Payer contended that ZATCA added the advance payment amount to zakat base, although a lunar year had not passed thereover. Zakat Payer argued that only the portion of the advance payments on which a lunar year has passed shall be added to zakat base. Therefore, Zakat Payer called for deduction of advance payments on which a lunar year has not passed from the zakat base and amendment of zakat assessment in accordance with Decision No. (3) of 1437 AH issued by the Third Primary Zakat and Tax Objection Committee in Riyadh. With respect to Item (other credit balances), Zakat Payer confirmed that such balances have been fully paid to creditors upon completion of works assigned to them, and have no longer owed by Zakat Payer. Accordingly, Zakat Payer requested that zakat assessment be amended in accordance with Decision No. (3) of 1438 AH issued by the Second Primary Zakat and Tax Objection Committee in Jeddah. Concerning Item (related parties), Zakat Payer confirmed that the amount added to zakat base by ZATCA has already been subjected to zakat in other company, which constitutes double imposition of zakat. Consequently, Zakat Payer called for amendment of zakat assessment. With regard to Item (unbilled revenues), Zakat Payer contended that such revenues are related to works implemented subject to contracts concluded with a government entity, and no invoices or financial vouchers were issued because such works have not been completed till the end of the fiscal year 2015 AD, are still under progress, and have not been transformed into actual revenues that could be claimed. Zakat Payer added that such revenues will subject to zakat in the subsequent year to avoid double imposition of zakat. Based on the above, Zakat Payer requested that zakat assessment be amended in accordance with Decision No. (30) of 1433 AH issued by the Third Primary Zakat and Tax Objection Committee in Jeddah. As for Item (investment differences), Zakat Payer contended that ZATCA disallowed deduction of investment differences from zakat base, despite the fact that these investments have already been subjected to zakat subject to financial statements and zakat declarations of investee companies. Therefore, Zakat Payer called for amendment of zakat assessment in accordance with Decision No. (23) of 1437 AH issued by the Third Primary Zakat and Tax Objection Committee in Riyadh.

On 20/04/2021, Zakat Payer submitted a supplementary note that included the following, in summary:

Zakat Payer requested that the same sentences previously issued for similar disputed items be applied to the current items being disputed with ZATCA. With regard to Item (provision for project delay fines), Zakat Payer requested that the same rulings issued in Decision No. (IAR-2020-99) and Decision No. (IAR-2020-100) be applied. With relation to Item (provision for supervision fees), Zakat Payer requested that the same rulings issued in Decision No. (IAR-2020-99) and Decision No. (IAR-2020-100) be applied. Concerning Item (credit retentions of third parties), Zakat Payer called for applying Decision No. (553/3) of 1435 AH. With relation to Item (investments), Zakat Payer requested that the same rulings issued in Decision No. (IAR-2020-99) and Decision No. (IAR-2020-100) be applied. With relation to Item (advance payments), Zakat Payer requested that the same rulings issued in Decision No. (IAR-2020-99) and Decision No. (IAR-2020-100) be applied.

On Thursday, 24/09/1442 AH corresponding to 06/05/2021 AD, the Department decided to hold a 10-day e-hearing. However, the period elapsed without either party to the appeal submitting any additional arguments.

On Thursday, 14/11/1442 AH corresponding to 24/06/2021 AD, upon reviewing submissions provided by Zakat Payer in its appeal brief, with regard to Item (balances of carried forward provisions), the Department requested Zakat Payer to submit supporting documents side by side with a detailed comparison explaining the difference between balance added by ZATCA and balance requested to be added by Zakat Payer. As for Item (advance payments for the year 2015 AD), since the total advance payments for the year

2015 AD are estimated at (SAR 308,890,099) based on financial statements, while ZATCA imposed zakat on the amount of (SAR 175,661,606), the Department requested Zakat Payer to provide a detailed breakdown of the total amount disclosed in the financial statements amounting to (SAR 308,890,099) side by side with the related supporting documents verifying all components, including receipt date of each payment, subsequent transactions, and remaining balance at the end of the year of dispute. Moreover, Zakat Payer shall clearly demonstrate the balance of payments received during 2015 AD that remained in its possession at the end of the year (i.e., the funds that Zakat Payer claimed that a lunar year has not passed over). With respect to Item (credit balances), the Department requested Zakat Payer to submit a detailed breakdown of the total amount disclosed in the financial statements side by side with related supporting documents verifying all components thereof, including the date of every retention amount paid by subcontractors and the date of payment thereof. The Department also requested Zakat Payer to submit the evidence proving that the disputed amount was no longer in its possession during 2015 AD, or that it was originated during that year and a lunar year has not yet passed thereover. As for Item (unbilled revenues), upon reviewing Zakat Payer Appeal on this item, the Department requested ZATCA to clarify how this amount was added to unbilled revenues, and whether Zakat Payer excluded a portion of its accounting revenues according to its financial statements when filing its zakat declaration to exclude unbilled revenues, or whether ZATCA added the amount of unbilled revenues disclosed in statement of financial position to revenues disclosed in income statement. Moreover, the Department asked Zakat Payer to clarify how unbilled revenues were added by ZATCA and whether Zakat Payer excluded a portion of its accounting revenues based on its financial statements when submitting its zakat declaration for the purpose of excluding unbilled revenues. Regarding Item (investment differences), the Department asked ZATCA to clarify the reasons for ignoring Zakat Payer declaration and financial statements with regard to Zakat Payer investments in other Saudi companies that submit zakat declaration to ZATCA and pay zakat based on them. Both parties were given ten days to provide their responses to the Department requests, but Zakat Payer failed to provide any further clarification during such period.

On 04/07/2021, ZATCA submitted a Reply that included the following, in summary: With regard to Zakat Payer Appeal on Item (unbilled revenues), ZATCA claimed that this item represents a commercial transaction that is subject to zakat. It further explained that these revenues are derived from the Company core business activity and are equivalent to an income item recognized in the income statement, and deduction of the same from zakat base would result in excluding realized income from zakat base. ZATCA also confirmed that this balance resulted from application of generally accepted accounting policies, including the accrual basis, subject to which revenues and expenses are recognized in the income statement of the relevant period, regardless of whether they are cash or carried forward, in accordance with the accrual principles. Consequently, unbilled revenues are classified as current assets in the audited financial statements. Moreover, the item requested to be deducted from zakat base by Zakat Payer does not comply with provisions of Article (4) of Implementing Regulation for Zakat Collection issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH. Furthermore, ZATCA did not add this item to the adjusted net profit, as the revenues are disclosed in the declaration and audited financial statement as follows:

Note	Amount
Total revenues based on audited financial statements	938,898,241
Total revenues based on Zakat Payer declaration and final assessment	938,898,242



This means that Zakat Payer claimed for deducting a portion of its accounting revenues based on its financial statements provided when submitting its zakat declaration for the purpose of excluding unbilled revenues. Regarding Zakat Payer Appeal on Item (investment differences), ZATCA clarified that it did not deduct Zakat Payer share of profits and losses for the year 2015 AD, with the amount of (SAR 16,302,505), from adjusted net profit. Instead, ZATCA deducted Zakat Payer share in equity from zakat base as at 31 December 2015, with the amount of (SAR 84,790,671), based on the audited financial statements of investee companies. Based on the above, ZATCA confirmed the validity of its action based on the fact that as the maximum limit allowed to be deducted from zakat base for investments is Zakat Payer equity in the investee company.

On Wednesday, 04/12/1442 AH corresponding to 14/07/2021AD, upon reviewing Appeal memoranda and replies thereto, and after examining documents and papers included in Case file, the Department decided that the Case is ready for adjudication and issuance of a Decision, and therefore decided to close pleadings and set a date for adjudication.

Grounds



After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merits: with regard to Zakat Payer Appeal on Item (balances of carried forward provisions), having reviewed Zakat Payer Appeal Brief, the Department found that Zakat Payer failed to provide sufficient evidence to support its claim for adding a balance that contradicts ZATCA assessment. As a result, the Department was satisfied that there are no Grounds to overturn the Primary Department Decision. The Department also did not observe anything that deserved correction or commentary in light of submissions presented to it. Therefore, the Department decided to uphold the Primary Department Decision issued with regard to this item based on the Grounds therein.

With respect to Zakat Payer Appeal on Item (advance payments), having considered the dispute subject matter, the Department found that Zakat Payer failed to provide sufficient evidence to support its claim for excluding the portion of advance payments that was subjected to zakat by ZATCA. Also, Zakat Payer failed to submit documents explaining all components of Item (advance payments), including receipt date of each payment, subsequent transactions, and remaining balance at the end of the year of dispute. As a result, the Department was satisfied that there are no Grounds to overturn the Primary Department Decision. The Department also did not observe anything that deserved correction or commentary in light of submissions presented to it. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the Primary Department Decision issued with regard to this item.

With respect to Zakat Payer Appeal on Item (credit balances), having considered the dispute subject matter and reviewed Case file, the Department found that that Zakat Payer failed to provide sufficient evidence to support its claim for excluding credit balances related to retention amounts of subcontractors. Zakat Payer also did not submit a detailed breakdown of the amounts disclosed in the financial statements and the supporting documents validating all components thereof, including the date of every retention amount paid by subcontractors and the date of payment thereof, Zakat Payer also failed to submit the evidence that the disputed amount was no longer in its possession during 2015 AD, or that it originated during that year and a lunar year has not yet passed thereover. The Department was satisfied that there are no Grounds to overturn the Primary Department Decision being disputed. The Department also did not observe anything that deserved



correction or commentary in light of submissions presented to it. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the Primary Department Decision issued with regard to this item.

With respect to Zakat Payer Appeal on Item (related parties), having considered the dispute subject matter and reviewed Case file along with documents included therein, the Department found that ZATCA acknowledged that the disputed amount represents a current credit account for Company (the company in which the taxpayer made an investment), and that this current credit account is a part of Zakat Payer investment in the investee company. Moreover, Zakat Payer argued that the investee company used to pay zakat to ZATCA, and ZATCA did not deny such argument when presenting Zakat Payer Appeal to it. The Department found no evidence that contradicts Zakat Payer declaration. Therefore, the Department decided to accept Zakat Payer Appeal and overturn the primary Decision issued with regard to this item.

As for Zakat Payer Appeal on Item (unbilled revenues), having considered the dispute subject matter and reviewed the primary Decision along with Zakat Payer Appeal thereon and ZATCA responses thereto, the Department was satisfied that Zakat Payer called for excluding a portion of its accounting revenues, i.e., unbilled revenues, in accordance with its financial statements provided when submitting its zakat declaration. From an accounting perspective, unbilled revenues represent the income earned by an entity from providing services to customers and for which the entity did not submit any invoice to claim the same. Also, recognizing such unbilled revenues as a part of Zakat Payer assets is contingent on to Zakat Payer entitlement thereto, regardless of claiming them, and, therefore, these revenues are classified as amounts due to Zakat Payer from third parties. The Department also found no evidence supporting Zakat Payer inability to collect the unbilled amounts when requested. Consequently, Zakat Payer argument for excluding unbilled revenues from zakat base is deemed invalid. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the Primary Department Decision issued with regard to this item.

With respect to Zakat Payer Appeal on Item (investment differences), having considered the dispute subject matter and reviewed documents included in Case file, the Department found that Zakat Payer claimed that the investee companies had already paid zakat based on their declarations provided to ZATCA. However, ZATCA has deducted Zakat Payer share of equity from zakat base in accordance with audited financial statements of investee companies. Zakat Payer failed to provide sufficient evidence to prove the accuracy the amounts disclosed in his declaration, which contradict the amounts mentioned in audited financial statements of companies investee. It is established by law that Zakat Payer bears the burden of proving the validity of data mentioned in its declaration. The Department also did not observe anything that deserved correction or commentary in light of submissions presented to it. Therefore, the Department decided by majority to dismiss Zakat Payer Appeal and uphold the Primary Department Decision issued with regard to this item.

Decision

First: In form, accept Appeal filed by Zakat Payer/ Company, C.R No. (...), against the Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-9).

Second: On Merits:

1. Dismiss Zakat Payer Appeal on Item (balances of carried forward provisions) and uphold the Primary Department Decision, in accordance with Grounds and merits mentioned herein.
2. Dismiss Zakat Payer Appeal on Item (advance payments) and uphold the Primary Department Decision, in accordance with Grounds and merits mentioned herein.



3. Dismiss Zakat Payer Appeal on Item (credit balances) and uphold the Primary Department Decision, in accordance with Grounds and merits mentioned herein.
4. Accept Zakat Payer Appeal on Item (related parties) and overturn the Primary Department Decision, in accordance with Grounds and merits mentioned herein.
5. Dismiss Zakat Payer Appeal on Item (unbilled revenues) and uphold the Primary Department Decision, in accordance with Grounds and merits mentioned herein.
6. Dismiss Zakat Payer Appeal on Item (investment differences) and uphold the Primary Department Decision, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IAR-2020-111)

Delivered in Appeal No. (Z-1680-2020)

Principle No. 193

Zakat assessment of additional investments does not require that they be documented as a part of the original capital.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 23/03/1442 AH corresponding to 09/11/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article (67.b) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened in Riyadh to consider the Appeal filed on 13/10/1436 AH, by Company against Decision No. (8/29) of 1436 AH delivered by the First Primary Zakat and Tax Objection Committee in Jeddah in Objection No. (196) filed by Appellant against General Authority of Zakat and Tax “GAZT” (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept the objection filed by Company in form for being submitted by a person with legal capacity and within the statutory prescribed period.

Second: On Merits:

1. Uphold GAZT Decision of disallowing deduction of investments in subsidiary companies (current accounts receivable) from zakat base of Zakat Payer for the period (2003-2008 AD).
2. Uphold GAZT Decision of disallowing deduction of the Company share of net annual profits of subsidiary companies (investee companies) from zakat base of Zakat Payer for the years 2007 AD and 2008 AD.
3. Uphold GAZT Decision of disallowing deduction of accumulated unrealized losses of Trading Company Ltd. from zakat base of Zakat Payer for the year 2008 AD.

Dissatisfied with the Decision, the Zakat Payer Company filed an appeal with the Department, the summary of which is as follows:

1. Item (zakat reassessment for the period 2003-2005 AD): Due to absence of any legal basis for zakat reassessment for the years of dispute in accordance with Ministerial Resolution No. (2555) of 1417 AH.
2. Item (investments in ... subsidiary companies): Appellant Company requested that such investments in subsidiary companies not be classified as loans or debts to investee companies to avoid double imposition of zakat on the same funds.
3. Item (revenues of investments that subject to zakat in investee companies): Appellant Company believed that GAZT action of deducting investments after reducing zakat-paid profits in subsidiary companies and then adding such profits to the zakat base of the investee company, constitutes double imposition of zakat on the same funds.



4. Item (difference of accumulated unrealized losses of Trading Company Ltd. with the amount of SAR 87,855,405): Zakat Payer/the Company confirmed that the unrealized losses shall be deducted from zakat base for the year 2008 AD, arguing that GAZT reduced the investments by the unrealized losses. Zakat Payer contended that GAZT assessment is invalid in terms of the amount of losses that shall be deducted from those investments, since GAZT deducted the amount of (SAR 137,545,527) after reducing unrealized losses, rather than before such reduction, and if GAZT had deducted such amount before reducing the unrealized losses, the deducted amount would have been (SAR 255,400,932), rather than (SAR 137,545,527).

GAZT provided a Reply responding to the appeal brief provided by Appellant Company on 08/04/1439 AH, responding to the appealed items as follows:

1. Item (investments in subsidiary companies for the period 2003-2005 AD): GAZT believed that this item represents a current account receivable from ... Trading Company Ltd., rather than an investment in a subsidiary company, due to absence of both conditions of acquisition investments.
2. Item (Company share in net annual profits of subsidiary companies (investee companies) for the years 2007 AD and 2008 AD): GAZT did not deduct the Company share in net profit of its investments in subsidiary companies (investee companies). GAZT clarified that these profits were deducted as a part of investments deductible from zakat base. Since zakat base is greater than annual net profit, such action has no effect on legal zakat conclusion.
3. Item (accumulated unrealized losses of Trading Company Ltd. for the year 2008 AD): GAZT deducted investment value based on the cost before reducing accumulated unrealized losses, which means that they were deducted from the total value of investments deducted from zakat base. It is worth noting that deducting the value of such investments again as requested by Zakat Payer leads to double deduction of the same funds, which have a negative impact on zakat base.

Having taken cognizance of the appeal submissions as well as the case document, the Department established that the case has become ripe for adjudication.

Grounds



Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company, the Department found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On merits, having reviewed Case file, papers and documents contained therein, Appeal Brief, and replies thereto, and upon considering all Appellant arguments, it became clear that the Appeal covers the following items:

1. Item (zakat reassessment by GAZT for the period 2003-2005 AD): Upon careful consideration of the Appeal subject matter with regard to the request for reassessment for the years of dispute, the Department found that the Company defenses rested on its claim that more than five years had passed after the statutory period for reassessment and issuance of the final certificate by GAZT to the Company, especially since the conditions set forth in the ministerial Decision regulating GAZT right to make zakat reassessment were not met in this current case. Upon reviewing the Company Appeal against zakat reassessment for the years of dispute and examining the disputed subject matter raised when considering the dispute before the Primary Committee, the Department found that this request had not been previously raised by the Company when considering the dispute before the Primary Committee. Accordingly, this request constitutes a new request that cannot be introduced for the



first time before the Appellate Department. Therefore, the Appellate Department decided to disregard this request subject matter.

2. Item (investments in subsidiary companies for the period 2003-2008 AD): Upon careful consideration of the Appeal subject matter, the Department was satisfied that Zakat Payer/the Company challenged classification of these investments in subsidiary companies as loans or debts to investee companies because this classification does not apply to additional investments. Zakat Payer argued that such investments shall be treated as equity interests of Zakat Payer/the Company in the investee companies and that considering the existence of the investments based only on the original registered capital could result in double imposition of zakat on the same funds, contrary to GAZT assessment, which was validated by the GAZT Decision. Upon reviewing the primary Decision and its conclusion regarding zakat assessment of such investments along with GAZT perspective in this regard, after careful consideration of the Grounds of Zakat Payer/the Company Appeal on this item and its request for deduction of such investments in subsidiary companies, and based on the conclusion reached in the appealed Decision, it turned out that the Primary Committee validated GAZT Decision of disallowing deduction of investments, based on the fact that these investments were financed by current receivable account in the investee company and were essentially receivables that were paid as loans, debts, and financing to related parties. Zakat Payer confirmed that these investments were not equity investments in the investee companies but rather loans or advances thereto. Moreover, Zakat Payer Appeal centered mainly on its objection to zakat assessment of the investments for the period (2003-2008 AD), as it called for exclusion of its investments in investee companies from zakat base, regardless of their funding source, which were treated by GAZT as loans owed by third parties and shall not be deducted from zakat base. It is worth noting that zakat assessment of additional investments does not require documentation of the same as a part of the original capital, but rather it is sufficient that they confer equity interests on the investing company in order to be classified as investments in the investee companies. Additionally, the Department found no evidence that these amounts were related to loans, financing, or advance agreements, and there were also no repayment schedules that could justify assessment of such amounts as loans or debts as concluded by the Primary Committee Decision. Also, these investments were made to companies that submit zakat declarations to GAZT, which means that the amounts of these loans shall be added to zakat base of the investee companies. Recalculating these amounts as a part of zakat base of the investee company could result in imposing zakat on the same funds twice if the assessment is made as adopted by GAZT and validated by the Primary Committee in its Decision concerning this item. Based on the above, the Department decided to accept Zakat Payer Appeal and overturn the primary Decision issued in this regard. The Department decided also to assess such amounts as investments deductible from zakat base based on the data disclosed in the financial statements of Zakat Payer for the years of dispute and disregard the amendments made by GAZT.
3. Item (revenues of investments that subject to zakat in investee companies): Upon careful consideration of the Appeal subject matter, the Department found that Zakat Payer challenged GAZT action of deducting investments after reducing zakat-paid profits of the investee companies and, at the same time, added these profits to zakat base of the investing company, which means that GAZT imposed zakat on the same profits twice, once in the investing company and then in the investee company, which means that zakat was imposed on the same funds twice. Upon examining GAZT assessment of this item with regard to investment revenues in the investee companies for the years 2007 AD and 2008 AD, the Department found that the Primary Committee issuing the Decision adopted GAZT approach of amending the

assessment of these revenues by deducting such revenues based on the Company share in the annual net profits of the investee companies as a part of Item (investments in subsidiary companies for those two years). Furthermore, Zakat Payer used the equity method for accounting for its investments in subsidiary companies, which requires adding Zakat Payer share in the profits of investee companies to its annual net income and adding this share at the same time to investment balance disclosed in the statement of financial position. A balanced zakat assessment requires that Zakat Payer share in the annual net profit of subsidiary companies (investee companies) for the years 2007 AD and 2008 AD shall not be deducted from the book profit, and that Zakat Payer investments in subsidiary companies for the years of dispute shall be deducted based on the amount disclosed in the statement of financial position at the end of both years, provided that this shall be done based on Zakat Payer declaration with regard to these investments for the years of dispute and based on data mentioned in its financial statements, without considering any adjustments made by GAZT.

4. Item (difference of accumulated unrealized losses of Trading Company Ltd. with the amount of SAR 87,855,405): Upon careful consideration of Zakat Payer Appeal with regard to the this item as summarized previously, and reviewing the primary Decision that rejected Zakat Payer request to deduct unrealized losses in full, the Department found that the Primary Committee issuing the Decision relied on the financial statements of ... Trading Company Ltd. for the year 2008 AD, which indicated that the unrealized losses stemmed from investments in available-for-sale securities traded on joint stock companies on the domestic and foreign stock markets. Moreover, the dispute between both litigants is related to the method of calculating unrealized losses that shall be deducted from zakat base rather than the principle of allowing deduction of the same. Furthermore, Zakat Payer used the equity method for accounting for its investments in subsidiary companies, which requires deducting Zakat Payer share in the losses of these companies from its annual net income and deducting this share at the same time from the investment balance disclosed in the statement of financial position. Therefore, the Department decided to amend the primary Decision by confirming Zakat Payer right to deduct unrealized losses stemmed from its investment in... Trading Company Ltd. for the year 2008 AD from annual profit, provided that such investment shall be deducted based on the amount disclosed in the statement of financial position prepared at the end of the year of dispute, in line with the Department Decision on the first item hereof with regard to investments deducted from zakat base.

Decision

First: In form, accept the Appeal filed by Zakat Payer/ ... Company, C.R. No.(...), against Decision No. (8/29) of 1437 AH delivered by the First Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Disregard consideration of Zakat Payer Appeal on Item (reassessment by GAZT for the period 2003-2005 AD), based on the fact that this request is entirely new and introduced only at before the Appellate Department, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer Appeal on Item (investments in subsidiary companies for the period 2003-2008 AD), overturn the primary Decision issued in this regard, and classify such investments as deductible investments based on data mentioned in Zakat Payer declaration with regard to the years of dispute and based on its financial statements and disregard GAZT amendments to Zakat Payer declarations, in accordance with Grounds and merits mentioned herein.



3. Amend the primary Decision with regard to Item (revenues of investments that subject to zakat in investee companies), so that the verdict shall be as follows: Zakat Payer share of the net annual profit in subsidiary companies (investees) for the years 2007 AD and 2008 AD shall not be deducted from book profit, and Zakat Payer investments in subsidiary companies for the years of dispute shall be deducted based on the amount disclosed in the statement of financial position at the end of both years, disregarding GAZT amendments to such investments.
4. Amend the primary Decision with regard to Item (difference of accumulated unrealized losses of Trading Company Ltd. for the year 2008 AD with the amount of SAR 87,855,405), so that the verdict shall be as follows: Zakat Payer shall have the right to deduct accumulated unrealized losses stemmed from its investments in Trading Company Ltd. for the year 2008 AD, from annual profit, and the investment made in this company shall be deducted for the year of dispute based on the amount disclosed in the statement of financial position of Zakat Payer prepared at the end of that year, disregarding GAZT amendments to such investments.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-50)
Delivered in Appeal No. (Z-1685-2021)

Principle No. 194

From an accounting perspective, differences in financial statement translation shall be recognized as a part of equity interests. Given that equity interest balance is a cumulative balance and is not limited to the amount formed throughout the year, it shall be subject to the same zakat regulations applicable to other equity interest items in terms of addition or exclusion to/from zakat base based on related balance.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday, 08/09/1442 AH corresponding to 20/04/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider appeal filed on 22/08/1437 AH by ... Company against the Second Committee for Zakat and Tax Objections in Jeddah Decision No. (18) of 1437 AH, issued with regard to objection No. (380) dated 24/12/1432 AH and objection No. (1435/22/2127) dated 12/05/1435 submitted by Company against zakat assessment of the fiscal year ending on 28/02/2007 AD, filed by Appellant against General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: In Form:

Accept the objection submitted by Zakat Payer/ ... Company with regard to Zakat assessment for the fiscal year ended on 28/2/2007 AD, in form.

Second: On Merits

1. Dismiss Zakat Payer request for deducting real estate investments of with the amount of (SAR 210,699,068) and other investments of with the amount of (SAR 125,998,046) from its zakat base, in accordance with merits mentioned in the Decision.
2. Dismiss Zakat Payer request for deducting investments and financial assets with the amount of (SAR 24,014,023) from its zakat base, in accordance with merits mentioned in the Decision.
3. Dismiss Zakat Payer request for deducting investments in investment funds with the amount of (SAR 20,701,228) from its zakat base, in accordance with merits mentioned in the Decision.
4. Dismiss Zakat Payer request for deducting payments for purchasing investments in with the amount of (SAR 15,755,110) and investments in with the amount of (SAR 3,500,000) from its zakat base, in accordance with merits mentioned in the Decision.
5. Uphold GAZT Decision of adding long-term Murabaha facilities with the amount of (SAR 55,715,200) to zakat base, in accordance with merits mentioned in the Decision.



6. Uphold GAZT Decision of adding differences in financial statement translation of subsidiary companies with the amount of (SAR 5.627.957) to zakat base, in accordance with merits mentioned in the Decision.
7. Uphold GAZT Decision of adding partner salaries and remuneration based on prevailing market rate and deduct the remaining amount of (SAR 60.000) from zakat base, in accordance with merits mentioned in the Decision.
8. Since Zakat Payer lawyer accepted GAZT assessment in the hearing and discussion session, the dispute shall be deemed settled.
9. Since GAZT accepted Zakat Payer perspective with regard to Item (fixed assets difference), the dispute shall be deemed settled.
10. Since GAZT accepted Zakat Payer perspective with regard to Item (aircraft leasing), the dispute shall be deemed settled.
11. Since Zakat Payer lawyer accepted to withdraw his objection to Item (others), the dispute shall be deemed settled based on Decision merits.

Dissatisfied with the Decision, Zakat Payer (..... Company) filed an appeal with the Department, the summary of which is as follows:

With regard to Item (real estate investments), Zakat Payer filed its Appeal to challenge the Primary Committee Decision, which rejected its request for deducting real estate investments in ... and other investments in ... with the total amount of (SAR 336,687,114) from zakat base. Zakat Payer confirmed its right to deduct the balance of these real estate investments from zakat base in accordance with audited financial statements and zakat declaration, given that such real estate investments are long-term investments. Zakat Payer believed that the conditions of deduction from zakat base are satisfied in these investments, as there is a documented intention from the authorized party indicating that these investments are long-term acquisition assets held for the purpose of generating returns. Moreover, there were no trading transactions involving these real estate assets during the zakat year. Furthermore, Zakat Payer argued that it has provided documents and data proving that those two conditions are met, including the partner resolution proving the Company intention to make the abovementioned investments side by side with financial statements confirming that Zakat Payer has retained the investment in ... for two years without selling any part thereof. Moreover, the auditors classified these investments as long-term assets when reviewing the Company accounts. Zakat Payer also confirmed the invalidity of the Grounds adopted by GAZT and the Primary Committee indicating that the investment in ... project no longer existed in the Company assets in 2008 AD, so it shall be classified as a trading asset. Zakat Payer argued that GAZT and the Primary Committee arguments do not change the fundamental fact that the Company retained the investment for two consecutive years without performing any sales or trading transactions thereon. Zakat Payer also confirmed that the Company did not sell the real estate but rather transferred the same to a partner, as demonstrated in Not. (8) of financial statements. In response to the appealed Decision assertion that the investments are not registered under the Company name, Zakat Payer asserted that these investments claimed to be deducted from zakat base are owned by the Company. Zakat Payer also confirmed that it provided the documents proving ownership of these investments. With regard to the argument raised in the primary Decision indicating that these investments were not funded by the Company, Zakat Payer responded that the investment in ... Project were financed by a partner and the corresponding amount was credited to its current account, and the supporting documents proving the same are attached. Consequently, Zakat Payer believed that in the event of disallowing deduction of real estate investments, the corresponding funding source shall be excluded either.

With regard to Item (investments and financial assets), Zakat Payer challenged the primary Decision, which rejected its request for deducting investments and financial assets with the amount of (SAR 24,014,023) from zakat base. Zakat Payer confirmed its right to deduct



such financial assets from zakat base, arguing that such assets are long-term investments. Zakat Payer also believed that such investments satisfy the required deduction requirements, which are the documented intention of the authorized party indicating that these investments are long-term acquisition assets held for the purpose of generating returns and absence of any trading transactions involving these real estate assets during the zakat year. Furthermore, Zakat Payer argued that it has provided documents and data proving that those two conditions are met, including the partner resolution proving the Company intention to make the abovementioned long-term investments, and also that these assets were classified in the statement of financial position as non-current assets rather than current assets. Moreover, such assets were held by the Company for a long period without making any transactions thereon. In response to the argument raised in the primary Decision being appealed indicating that such assets were subject to a sale transaction during the year, Zakat Payer responded that the reduction, which was considered by the Primary Committee as a transaction, is not a sale transaction involving such assets but rather a decline in the market value of investments and financial assets during the year, and GAZT was provided a detailed statement showing the movement of the balance of these investments and financial assets, which clearly proves that there were no sale transactions involving such assets, but only a decline in their market value. In support of his own argument, Zakat Payer highlighted the accounting policy applicable for recognizing investments and financial assets in financial statements based on total portfolio, as the net difference between fair value and the book value, in case of a temporary decline in market value, is recognized as a part of partners' equity interests. Accordingly, Zakat Payer believed that the investments covered by this item are long-term investments held by the Company for several years and, therefore, shall be considered acquisition assets that shall be deducted from zakat base in accordance with applicable law. In conclusion of its objection, Zakat Payer clarified that such investments and financial assets constitute shares in the capital of local joint-stock companies, are part of the zakat base of those companies, and are subject to zakat as such. Therefore, Zakat Payer contended that such investments shall be deducted to avoid double imposition of zakat. As for Zakat Payer Appeal on Item (investments in investment funds), Zakat Payer challenged the Primary Committee Decision, which rejected its request for deducting investments made in investment funds with the amount of (SAE 20,701,228) from zakat base. Zakat Payer confirmed its right to deduct these investments from zakat base, given that such investments are classified as long-term investments in its financial statements and are held by Zakat Payer for the purpose of generating returns. Also, there were no trading transactions involving these investments. Therefore, these investments shall be considered as acquisition assets and shall be deducted from zakat base. With regard to the primary Decision merits indicating that these investment funds are intended for trading purposes and thus investments made thereon do not represent acquisition assets, Zakat Payer responded that the primary Decision conclusion is invalid and that the purpose of the investment funds, namely Fund and Fund, does not affect the nature of the investment and the recognition method adopted in financial statements, as it was classified as non-current assets after verifying the Company intention and the purpose of this investment by auditors. Moreover, Zakat Payer believed that the legal requirements for deducting these investments are satisfied in its case and that it had provided GAZT with all evidence proving the same, such as the classification of these investments as long-term assets and the absence of any sales transactions involving these investments during the year. Additionally, Zakat Payer adhered to the Saudi Accounting Standard issued by the Saudi Organization for Chartered and Professional Accountants (SOCPA), which states that proper accounting of investment in securities requires classifying the same as either a non-current investment (acquisition assets) or a current investment (trading assets) based on the entity intention with regard to the related investment. The Saudi Accounting



Standard specified that if the Company intention is to keep securities for a period exceeding twelve months, then such securities shall be classified as non-current assets (acquisition assets), which applies to Zakat Payer case. In conclusion of its objection, Zakat Payer argued that funds invested in these investment funds were no longer in its possession, and GAZT refusal to deduct these investments from zakat base would result in requiring the Company to pay zakat on funds that are no longer in its possession, which contradicts legal zakat regulations, noting that these investments were funded from the Company capital and the partner current accounts.

With respect to Item (payments to purchase investments), Zakat Payer Zakat Payer challenged the Primary Committee Decision, which rejected its request for deducting payments to purchase investments in with the amount of (SAR 15,755,110) and investments in with the amount of (SAR 3,500,000) from zakat base. Zakat Payer confirmed its right to deduct these investments from zakat base, given that these funds used to purchase these investments have no longer in the Company possession; therefore, refusing deduction of the same by GAZT would result in requiring the Company to pay zakat on funds that are no longer in its possession, which contradicts legal zakat regulations, noting that these investments were funded from the Company capital and the partner current accounts.

Concerning Zakat Payer Appeal on Item (long-term Murabaha facilities), Zakat Payer challenged the Primary Committee Decision, which upheld GAZT action of adding long-term Murabaha facilities with the amount of (SAE 55,715,200) to zakat base. Zakat Payer confirmed its right to deduct these facilities from zakat base, given that loans used to finance working capital shall not be included in the zakat base in accordance with the recently developed zakat law, which was subject to legal examination and is currently bending Council of Ministers approval (expected to be issued soon). The recently developed zakat law stipulates that loans shall be deducted from zakat base, not added thereto as is currently being done by GAZT, which aligns with the fundamental principle of zakat calculation and provides conclusive evidence of the legal validity of Zakat Payer request of excluding loans from zakat base.

With regard to Zakat Payer Appeal on Item (differences in financial statement translation of subsidiary companies), Zakat Payer challenged the Primary Committee Decision, which upheld GAZT action of adding differences in financial statement translation of subsidiary companies with the amount of (SAR 5.627.957) to zakat base. Zakat Payer confirmed its right to deduct the balance of differences in financial statement translation of subsidiary companies from zakat base. Zakat Payer also mentioned that both GAZT and the Primary Committee have misconstrued Zakat Payer perspective in calculating this item and argued that the correct interpretation is that the balance of differences in financial statement translation of subsidiary companies was deducted from investment balance in the statement of financial position and was recognized as a separate item under equity interests. Consequently, the abovementioned amount constitutes a part of investment balance and was independently recognized under equity interests for recognition and disclosure purposes in accordance with the generally accepted accounting principles and shall be treated in the same way as investment. Therefore, Zakat Payer deducted the balance of differences in financial statement translation of subsidiary companies from zakat base when preparing zakat declaration.

As for Zakat Payer Appeal on Item (salaries and remunerations paid to partners), Zakat Payer challenged the Primary Committee Decision, which upheld GAZT action of adding salaries and remunerations paid to partners based on the prevailing market rate and deducting the remaining amount of (SAR 60.000) from zakat base. Zakat Payer confirmed that salaries and remunerations paid to managers or managing directors in similar companies significantly exceed the amount of (SAR 45,000) monthly. Moreover, Zakat Payer contended that the Primary Committee adoption of GAZT perspective, which



referred to Implementing Regulations of Social Insurance Law, is invalid, and instead, regulations and bylaws issued by GAZT should have been cited. Zakat Payer also added that Fatwa No. (22644) is clear and explicit, as it states that the remuneration of a business owner shall be determined based on remunerations of peers in similar establishments, regardless of the provisions of Implementing Regulations of Social Insurance Law, which determine the maximum salaries and wages subject to Social Insurance Law. In conclusion of its objection, Zakat Payer requested that the entire amount of salaries and remunerations paid to partners be recognized as a deductible expense for Zakat purposes.

On 23/08/1439 AH, corresponding to 08/05/2018 AD, GAZT submitted a Reply responding to Appeal Brief of Zakat Payer with regard to the appealed items, which included the following in summary: With regard to Item (real estate investments), GAZT responded that the investments requested to be deducted by Zakat Payer are not actually share capital in companies but rather investments in real estate projects that fall within the Company core business activity subject to the Company Articles of Association. Additionally, these investments are not registered in the Company name and were not financed by the Company funds. With regard to Zakat Payer claim, evidenced in its Appeal Brief and financial statements notes, that the value of these lands was paid through the partner current account, GAZT clarified that the increase in the partner credit balance does not align with the value of these real estate investments, assuming that the entire increase was used to pay the value of purchased lands. Moreover, GAZT clarified that investments in lands are classified as acquisition assets, which shall not be deducted from zakat base in accordance with Fatwa No. (19382) dated 20/01/1418 AH and Ministerial Letter No. (8676/4) dated 24/12/1410 AH. GAZT added that the investment in... Project shall not be considered an investment in a fixed asset, as Zakat Payer disposed of the same in 2008 AD. This indicates that the investment was purchased with the intention of resale, which contradicts the requirement for considering real estate investment as a long-term investment that shall be deducted from zakat base. With regard to investment in Project, this investment was acquired with the intention of resale and shall be classified as trading assets, given that the Company objectives include purchasing lands to constructing buildings and make investment therein through sale or lease and Zakat Payer failed to provide any evidence of constructing buildings on these lands. Regarding Zakat Payer Appeal on Item (investments and financial assets), GAZT responded that these investments are shares in joint stock companies traded in the stock market and constitute trading assets that shall be subject to zakat in accordance with Fatwa No. (19382) dated 20/11/1418 AH and Ministerial Letter No. (8676/4) dated 24/12/1410 AH. To support its conclusion, GAZT referred to Note (6) of financial statements, which indicates that this item consists of shares in several companies, all of which were acquired through sale transactions, and their value decreased in 2007 AD compared to 2006 AD, except for shares of two companies, namely Al-Madinah Industrial Investments Company with the amount of (SAR 1,200,000), and Saudi Development Company (Tatweer) with the amount of (SAR 1,000,000). Therefore, the sale transactions in these shares prove that they were held for the purpose of Mudarabah rather than long-term investment. GAZT also added that even for the two companies whose shares were not subject to any transaction, recognizing them under the same category means that they are held for Mudarabah. As for Zakat Payer Appeal on Item (investments in investment funds), GAZT responded that the investments covered by this item are investments in investment funds, including the investment in Fund and Company. Based on notes attached to financial statements, specifically note (13), it turned out that Fund is an investment funds for trading. Accordingly, these funds are considered trading assets that shall subject to zakat, rather than acquisition assets. With respect to Zakat Payer Appeal on Item (payments for purchasing investments), GAZT responded that the Company objectives include purchasing land to construct buildings and making investments through sale and lease and



Zakat Payer failed to provide GAZT with any evidence that these investments are intended for constructing buildings or leasing thereof. Moreover, it was evidenced that the investments covered by this item are real estate investments and represent trading assets that shall be subject to zakat. Concerning Zakat Payer Appeal on Item (long-term Murabaha facilities), GAZT responded that the opening balance was added to zakat base because it has completed a year in accordance with Fatwa No. (22665) dated 15/04/1424 AH. As for Zakat Payer Appeal on Item (differences in financial statement translation of subsidiary companies), GAZT responded that this balance represents a valuation of investments in subsidiary companies and translation and adjustment differences, which are not additional real investments that shall be deducted from zakat base. Based on Note (11) attached to zakat declaration, Zakat Payer added foreign exchange differences to investments in subsidiary companies rather than reducing the same, as claimed by Zakat Payer. Based on the statement of financial position, these differences were deducted from equity interests, and this action is invalid. Adding these differences to investments means that they represent profits and, therefore, shall be added to equity interests, not deducted from zakat base, as doing so by Zakat Payer means that it will receive double benefits, once by increasing the value of investments deductible from zakat base and then by deducting it from equity interests that represent a positive component of zakat base. Regarding Zakat Payer Appeal on Item (salaries and remunerations paid to partners), GAZT responded that its action was made in accordance with Fatwa No. (22644) dated 09/03/1424 AH issued by the General Presidency of Islamic Research and Ifta, and GAZT Letter No. (9/6017) dated 30/12/1426 H, which allows for deduction of managing partner remunerations from zakat base, provided that the same shall not exceed prevailing market rate, and based on Article (5.2) Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which permits deduction of business owner salaries and allowances from zakat base, provided that they are registered with the General Organization for Social Insurance (GOSI). Given that the maximum monthly salary shall not exceed the amount of (SAR 45,000), i.e., (SAR 540,000) annually, in accordance with Social Insurance Law, and considering that only (SAR 480,000) out of the total amount of partner remuneration was considered when making the amended assessment, GAZT has no objection to including the remaining amount of (SAR 60,000) in zakat reassessment. On 24/02/1442 AH corresponding to 11/10/2020 AD, the Department asked Zakat Payer to provide any further submissions with regard to the appealed Decision being considered within the period specified by the Department or declare that it is satisfied with his earlier submissions included in its Appeal Brief. Zakat Payer submitted a memorandum dated 03/03/1442 AH corresponding to 19/10/2020 AD, with regard to Item (real estate investments), which did not deviate from its earlier submissions. During its session held on 23/07/1442 AH, corresponding to 07/03/2021 AD, having taken cognizance of appeal memorandums and replies thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication and issuing a Decision on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits: With regard to Zakat Payer Appeal on Item (real estate investments), it is clear that Zakat Payer filed its Appeal calling for deducting the balance of real estate investments in ... Project and investments in ... from zakat base based on audited financial statements and zakat declaration, based on its documented intention to hold the same as long-term



investments and absence of any trading activity thereon. On the other hand, GAZT believed that these investments are not long-term investments that shall be deducted from zakat base because it was evidenced that such assets were disposed of by Zakat Payer, were not registered in Zakat Payer name, and were not financed by the Company funds. Upon careful consideration of the dispute subject matter, the Department found that Zakat Payer provided evidence that the real estate investments under dispute were not offered for sale in their current state at the end of the fiscal year, unlike goods offered for sale in the normal course of business. Also, Zakat Payer classified these assets as non-current assets and provided the Department with a board resolution explaining the purpose of these investments. It is customary that Decisions of selling goods, which are held for trading rather than acquisition, do not require validating the same by the Board of Directors, as they are considered routine administrative Decisions required for the Company management. Moreover, the Primary Committee Decision was solely taken based on the Company Articles of Association, which stipulate that the Company business includes purchasing lands to construct buildings and then selling or leasing the same, and the argument that selling one of these investments by Zakat Payer in a subsequent year indicates that these investments were held for sale, not acquisition. Given the absence of valid documents supporting the Primary Committee Decision, the Department decided by majority to accept Zakat Payer Appeal and overturn the primary Decision taken in this regard.

With regard to Zakat Payer Appeal on Item (investments and financial assets), it is clear that Zakat Payer filed its Appeal calling for deducting these financial assets from zakat base, arguing that these assets are long-term investments that satisfy the requirements for deduction from zakat base, which are the documented intention indicating that these investments are acquisition assets held and maintained for long periods for the purpose of generating returns and absence of any trading transactions involving these real estate assets during the zakat year. On the other hand, GAZT believed that these assets are Mudarabah stocks rather than long-term investments, and this is evidenced by the trading transactions, which involved these assets; therefore, these investments are trading assets that shall subject to zakat.

The Department was satisfied that all the investee companies (except for Company) are Saudi companies registered with GAZT and submit their financial statements to GAZT, and that the relevant investments were classified as non-current assets in the financial statements. The Primary Committee also did not provide evidence that any purchasing and selling transactions involving these investments were performed. Instead, the Primary Committee based its Decision on the decline in the investment balance in the subsequent year, in spite of the detailed statement provided by Zakat Payer proving that such decline was happened due to a decline in their market value rather than sales transactions. It is also established that the investments classified under the category of the Company equity interests are not subject to Zakat unless there is valid evidence that they are held for trading purposes. Additionally, the evidence presented by Zakat Payer does not indicate an intention to trade these investments. Therefore, the Department decided that Zakat Payer has the right to deduct these investments from zakat base.

With regard to the investment in Company, GAZT disallowed deduction of that investment, considering that it is a trading asset. This Decision aligns with GAZT Decision of disallowing deductions of all financial investments, regardless of whether they are domestic or foreign investments, which was upheld by the primary Decision. It is worth noting that this investment is subject to the same regulations applicable to foreign investments in stocks outside KSA, which may be deducted from zakat base provided that Zakat Payer provides financial statements demonstrating that the investee company pays due zakat in the country of investment, but Zakat Payer failed to provide the required financial statements so that the Department could decide its eligibility to request deduction

from the zakat base. Therefore, the Department decided by majority to dismiss Zakat Payer Appeal and uphold the primary Decision taken in this regard.

With regard to Zakat Payer Appeal on Item (investments in investment funds), it is clear that Zakat Payer filed its Appeal calling for deducting these investments from zakat base, arguing that these assets are long-term investments that satisfy the requirements for deduction from zakat base, which are the documented intention indicating that these investments are acquisition assets held and maintained for long periods for the purpose of generating returns and absence of any trading transactions involving these real estate assets during the zakat year. On the other hand, GAZT believed that investments in funds represent trading assets that shall not be deducted from zakat base. Based on financial statements provided by Zakat Payer, the Department found that one of the funds was intended for trading in international stocks, and Zakat Payer failed to explain the nature of investment made in the other fund, which is affiliated with a non-Saudi company. Zakat Payer also failed to provide evidence of zakat payments on these funds and failed to submit financial statements that could be used to calculate zakat thereon. Additionally, it is established that the investments in similar funds are intended for trading by the fund manager, who is authorized to trade in the subscribed stocks in these funds, which means that Zakat Payer subscribes to these funds by authorizing the fund manager to trade in that manner. Consequently, the primary intention here is not acquisition, Zakat Payer subscription to these funds is nothing but a form of trading and flipping of the paid funds through buying and selling thereof based on fund purposes. Therefore, funds intended for investment as such shall be considered trading assets that shall not be deducted from zakat base of Zakat Payer, especially since Zakat Payer did not provide any evidence to the contrary of what is evidenced about the nature of investment in such funds. Based on the above, the Department concluded to include such investment in zakat base of Zakat Payer. Therefore, the Department decided to dismiss Zakat Payer Appeal and uphold the primary Decision taken in this regard.

As for Zakat Payer Appeal on Item (payments for purchasing investments), it is clear that Zakat Payer filed its Appeal calling for deduction of payments incurred for purchasing investments from zakat base since these funds were no longer in possession of the Company and are considered acquisition assets. On the other hand, GAZT believed that Zakat Payer failed to provide any evidence that these investments represent acquisition assets. Based on the merits of the primary Decision, the Department was satisfied that a portion of the disputed amount was used to purchase a real estate investment, and the Department has decided to uphold Zakat Payer Appeal with regard thereto; therefore, the same Decision shall apply to the payments made to acquire these investments after being in the possession of Zakat Payer. Accordingly, Zakat Payer shall have the right to deduct this amount from zakat base. As for the other portion of the amount covered by this item, which is Zakat Payer share in the investment made in another company (..... Company), the Primary Committee decided to uphold GAZT action of disallowing deduction of these investments, assuming that they represent trading assets without a valid documentation supporting the same. Upon reviewing financial statements of Zakat Payer, the Department noted that the assets in dispute were classified as non-current assets and no evidence was submitted to the contrary. Therefore, the Department decided to accept Zakat Payer appeal and overturn the primary Decision taken in this regard.

With respect to Zakat Payer Appeal on Item (long-term Murabaha facilities), it is clear that Zakat Payer filed its Appeal calling for excluding long-term Murabaha facilities from zakat base, given that the due zakat is imposed on creditor rather than debtor. On the other hand, GAZT believed that the opening balance, which has completed a full lunar year, was added in accordance with Fatwa No. (22665) dated 15/04/1424 AH. Having considered the dispute subject matter, the Department found that this disputed item represents a source of funds for Zakat Payer, and Zakat Payer did not raise any objection with regard to the



passage of a complete lunar year; therefore, fatwas governing imposing zakat on borrowed funds held by Zakat Payer for a full lunar year shall be applied in this case. Additionally, the Department does not observe anything that deserves correction or commentary in light of the arguments raised before this Department. Therefore, the Department concluded that there are no Grounds to overturn the primary Decision taken in this regard. Accordingly, the Department decided to dismiss Zakat Payer appeal and uphold the primary Decision taken in this regard.

Regarding Zakat Payer Appeal on Item (differences in financial statement translation of subsidiary companies), it is clear that Zakat Payer filed its Appeal calling for deduction of translation differences from zakat base. On the other hand, GAZT contended that this balance represents a valuation of investments made in subsidiary companies, translation differences, and settlements. As such, it does not constitute additional investments that shall be deducted from zakat base. Having considered the dispute subject matter, the Department found that, from an accounting perspective, differences in financial statement translation shall be recognized as a part of equity interests. Given that equity interest balance is a cumulative balance and is not limited to the amount formed throughout the year, it shall be subject to the same zakat regulations applicable to other equity interest items in terms of addition or exclusion to/from zakat base based on related balance. This does not contradict the Grounds adopted by the Primary Committee to conclude its Decision that Zakat Payer added such differences to investment balance and did not deduct them therefrom, since the amounts added is the component formed during the year, not the entire balance, as evidenced by the decrease in the balance of the translation differences account compared to the previous year. Therefore, the Department decided to accept Zakat Payer appeal and overturn the primary Decision taken in this regard.

As for Zakat Payer Appeal on Item (salaries and remunerations paid to partners), it is clear that Zakat Payer filed its Appeal calling for deduction of salaries and remunerations paid to partners from zakat base even if such funds exceed the amount registered with the General Organization for Social Insurance (GOSI). On the other hand, GZAT believed that the allowed deduction limit shall not exceed subscriber salary subject to Social Insurance Law. Upon careful consideration of the above, it is clear that the dispute between litigants is not related to documentation and that the primary Decision relied on Executive Regulations of Social Insurance Law to determine the salary of peers. Also, there is no legal basis for linking the maximum salaries and remunerations that may be deducted from zakat base to the limit specified in these Regulations. Moreover, it is established that Zakat Payer declarations regarding its expenses are adopted unless there is evidence to the contrary, and that determining the salary of peers is influenced by various factors that vary depending on time, place, and entity business model, nature, and size. Additionally, the Company is a holding company that owns many subsidiary companies and generates substantial revenues; therefore, partners receive high monthly remunerations that exceeds the amount of (SAR 45,000). Therefore, the Department decided to accept Zakat Payer Appeal calling for deduction of all salaries and remunerations paid to workers without being limited by provisions of Executive Regulations of Social Insurance Law and overturn the primary Decision taken in this regard.

Decision

First: In form, accept the Appeal filed by Zakat Payer/ Company, C.R No. (...), against Decision No. (18) of 1437 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept Zakat Payer Appeal with regard to Item (real estate investments) by majority, and uphold the primary Decision taken in this regard in accordance with Grounds and merits mentioned herein.



2. With regard to Item (investments and financial assets),
 - A. Accept Zakat Payer Appeal with regard this Item (except for the investment in Company), and overturn the primary Decision taken in this regard, in accordance with Grounds and merits mentioned herein.
 - B. Dismiss Zakat Payer Appeal with regard this investment in (..... Company) by majority, and uphold the primary Decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
3. Reject Zakat Payer Appeal with regard to Item (investments in investment funds), and uphold the primary Decision taken in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Zakat Payer Appeal with regard to Item (payments for purchasing investments), and overturn the primary Decision taken in this regard, in accordance with Grounds and merits mentioned herein.
5. Reject Zakat Payer Appeal with regard to Item (long-term Murabaha facilities), and uphold the primary Decision taken in this regard, in accordance with Grounds and merits mentioned herein.
6. Accept Zakat Payer Appeal with regard to Item (differences in financial statement translation of subsidiary companies), and overturn the primary Decision taken in this regard, in accordance with Grounds and merits mentioned herein.
7. Accept Zakat Payer Appeal with regard to Item (salaries and remunerations paid to partners), and overturn the primary Decision taken in this regard, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-120)
Delivered in Appeal No. (Z-1687-2021)

Principle No. 195

When assessing investments that shall be deducted from zakat base, unrealized gains shall be recognized and the investment shall be deducted after increasing its book value accordingly.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Thursday 19/10/1442 AH, corresponding to 10/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed by Royal Decree No. (65474) dated 23/12/1439 AH convened at its headquarters in Riyadh to consider the Appeal submitted on 26/0013/1437AH by/ ... Company against the Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (36) of 1436 AH, issued in Objection No. (455) and Objection No. (1559), with regard to zakat assessment for the period (2003-2007AD), filed by Appellant against Zakat, Tax, and Customs Authority (ZATCA), in which the primary Decision ruled as follows:

First: In Form:

Accept the objection filed by Zakat Payer/.... Company to zakat assessment for the period (2003-2007 AD) in form, based on merits mentioned in the Decision.

Second: On Merits

- a. Uphold ZATCA Decision with regard to rejecting Zakat Payer request for deducting book losses for the year 2005 AD from zakat base, based on merits mentioned in the Decision.
- b. Uphold ZATCA Decision with regard to adding loans to zakat base of Zakat Payer for the period (2003-2006 AD), adding the loan that completed a lunar year with the amount of (SAR 4,500,000), and adding the used portion of the loan incurred during the year with the amount of (SAR 1,957,338) to zakat base of Zakat Payer for the year 2007 AD, in accordance with merits mentioned in the Decision.
- c. Uphold ZATCA action with relation to Item (unrealized gains) for the year 2006 AD, and reject Zakat Payer request for adopting investment losses as an expense that may be deducted from its zakat base, in accordance with merits mentioned in the Decision.
- d. Uphold ZATCA Decision with regard to disallowing deduction of losses stemmed from investment of ... Company for the year 2006 AD as an expense that may be deducted from zakat base of Zakat Payer in accordance with merits mentioned in the Decision.

As this Decision was not accepted by Zakat Payer (... Company), Zakat Payer submitted a Statement of Appeal, which included the following:

With regard to Item (credit balances for the years 2003 AD and 2004 AD), Zakat Payer called for deduction of the amount of (SAR 4,127,421) for the year 2003 AD and the



amount of (SAR 4,493,930) for the year 2004 AD from Zakat base, arguing that these amounts partially constitute a loan used to finance a bank deposit to receive its benefits. However, due to changes in the Company business strategy, the Company decided to apply for a loan, but the bank stipulated that the deposit shall be held as loan collateral. Therefore, the Company was unable to pay the funds used to finance the deposit, which made such finance linked to the loan until payment of the loan and liquidation of the deposit, thus imposing zakat both on the loan and financing would lead to double imposition of zakat. Furthermore, a portion of these funds constituted a loan obtained for the purpose of increasing the capital of an investee company (named Company), which means that these funds would be subject to zakat in both companies as a part of their positive components. As for Item (receivables (loans) of relevant parties with the amount of (SAR 8,233,902) and (SAR 4,033,902) for the years 2003 AD and 2004 AD respectively), Zakat Payer called for deduction of the amounts covered by this item because they constitute a loan received for the purpose of lending investee companies (..... Company and Dr..... Office), which will be subject to zakat on its account, which leads to double imposition of zakat. With respect to Item (carried forward losses for the year 2005 AD), Zakat Payer called for deduction of all carried forward losses disclosed in financial statements with the amount of (SAR 2,190,685), rather than a portion thereof as determined by ZATCA. Concerning Item (receivables of relevant parties for the year 2005 AD), Zakat Payer called for deduction of the amount of (SAR 421,655), arguing that the amount has not yet completed a lunar year. Regarding Item (loans for the year 2005 AD), Zakat Payer called for deduction of loan value to avoid double imposition of zakat. As for Item (various Creditors for the year 2005 AD), Zakat Payer mentioned that this item was previously disputed in the objection on loans for the years 2003 AD and 2004 AD. Zakat Payer further confirmed that it has already paid the amount of (SAR 3,633,538) in 2005 AD and that this amount is subject to zakat in Company as a part of its capital. With regard to Item (long-term investments for the year 2006 AD), Zakat Payer confirmed that the unrealized gains resulting from revaluation of investments in ... Company were short-term investments, not long-term investments, so they should not have been deducted from the long-term investment item, and also the investment losses were not supposed to be deducted from the investment item because they pertain to investment funds and represent actual realized losses incurred by the Company. Additionally, Zakat Payer asserted that classification of short-term investments of ... Company was amended in financial statements to become long-term investments, and therefore, the investment in ... Company was an investment for the purpose of acquisition, not sale, so it was supposed to be deducted from zakat base. With respect to Item (loans for the year 2006 AD), Zakat Payer confirmed that it adheres to its statements mentioned in its appeal on Item (loans for the year 2003 AD). Regarding Item (loans for the year 2007 AD), Zakat Payer called for deduction of the value of this item, arguing that a lunar year has not yet elapsed for these loans.

The Department decided to open pleadings, and ZATCA submitted a Reply to Zakat Payer Appeal on 17/07/1439 AH responding to all statements included in the appeal brief of Zakat Payer. With regard to Item (credit balances due to relevant parties and loans for the period 2003-2007 AD), ZATCA responded that these loans are subject to Zakat in accordance with Islamic fatwas issued in this regard and governing imposition of zakat on both lenders and borrowers at the same time. Therefore, ZATCA decided to add these loans to zakat base of Zakat Payer for the period (2003-2006 AD). For the year 2007 AD, ZATCA argued that loans were added during the year against deduction of the corresponding balance of investments added during the year and financed by those loans. The full loan closing balance of the year, with the amount of (SAR 19,500,000) was added, and the investment balance with the amount of (SAR 11,002,516) was deducted. Regarding the item (Retained Losses for 2005), ZATCA responded that it applied Circular No. (92/1)



dated 19/07/1418 AH, which stipulates that the adjusted retained losses shall be deducted according to ZATCA's assessments after adding allocations or reserves. Regarding the item (Investment Losses and Unrealized Profits for 2006), ZATCA responded that Zakat payer did not provide any documents proving that the unrealized profits item is not related to the reassessed adjusted long-term investments deducted from the Zakat base for the year of the objection. Regarding the item (..... Company non-deductible investment for 2006), ZATCA responded that after studying the audited financial statements for 2006, it became clear that Company investment was reclassified into current assets, which are trade offers, and therefore are trade offers and shall be subject to Zakat, and this does not change the reclassification of this item for 2007, in addition to the Company not providing documents proving the acquisition of this asset.

On Thursday, 12/08/1442 AH corresponding to 25/03/2021 AD, the Department decided to hold an e-pleading session for a period of (10) days.

On 15/09/1442 AH corresponding to 27/04/2020 AD, after reviewing the memorandums on the appeal and the response thereto, and after examining the papers and documents contained in the case file, the Department has decided that the case is ready for adjudication and issuing a Decision on its merits.

Grounds

After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On the merits, regarding the item (Retained Losses), it was found that Appeal lies in Zakat payer's claim to deduct the loss carry forwards from its accounts, while ZATCA argues that the adjusted losses have been taken into account according to ZATCA's assessments after adjusting them through allocations that previously reduced its loss in the year of occurrence. Based on the Department's consideration of the subject matter of the dispute, and since the deduction of the adjusted retained losses is the procedure applicable to all other Zakat payers, which is the result of ZATCA adjustments to the year's profits as a result of not recognizing an expense in a particular year. Whereas Zakat payer did not indicate the reason for the adjustment or that its effect does not extend to subsequent years. In light of what was presented before it, the Department does not see any reason to appeal or comment, which leads the Department to conclude that what was presented does not affect the primary Decision regarding this item. Accordingly, the Department decided to dismiss the appeal and uphold the primary Decision on this item.

Regarding the item (Credit Balances for 2003 and 2004), it was found that Appeal lies in Zakat payer's request to deduct the value of the loans for this item as they are amounts borrowed to fund the Investee Company capital on one hand, or amounts that have not reached the end of the year (Hawl) on the other hand, while ZATCA believes that Zakat is obligatory for both Lender and Borrower. Based on the Department's consideration of the subject matter of the dispute, as Primary Committee traced the credit balances and subjected the amounts that have reached the end of the year (Hawl) to Zakat, the Department decides to dismiss the taxpayer's appeal on these credits, except for those amounts that Primary Committee considers to have funded deductible assets by extrapolating the added investments amount. Therefore, the Decision does not apply to them, as Primary Committee did not find a link between the funding amounts and the added assets. Accordingly, the Department concludes that Zakat payer's appeal for the amounts of (SAR 421,655) for 2005 and (SAR 15,000,000) for 2007, for which Zakat payer argued that a year has not passed, is accepted.

Regarding the item (Investment Losses and Unrealized Profits for 2006), it was found that Appeal lies in Zakat payer's request to deduct the losses from the Zakat base for the year 2006 as they are actual losses incurred by the Company, while ZATCA believes that Zakat payer did not provide any documents proving that the unrealized profits item is not related to the reassessed adjusted long-term investments deducted from the Zakat base for the objection year. Based on the Department's consideration of the subject matter of the dispute regarding investment losses, since the financial statements disclosed the existence of these losses, and since the funds' losses are reassessment losses. Therefore, Committee's rejection of them due to lack of documents considering them as actual losses is not sufficient to dismiss Zakat payer's objection in light of the financial statements' disclosure of these losses, and therefore the Department accepts its appeal regarding losses deduction. As for the unrealized profits, ZATCA's deduction and reduction of the investment balance was not justified from an accounting perspective, as the correct procedure in accounting these investments deducted from the base is to recognize the unrealized profits, and deduct the investment after increasing it with these profits. Accordingly, the Department decides to accept Zakat payer's appeal on this item.

Regarding the item (..... Company non-deductible investment for 2006), it was found that Appeal lies in Zakat payer's request to deduct the investment in Company for 2006 as a long-term investment, while ZATCA believes that this investment is zakatable and this does not change its reclassification in the financial statements to be long-term. Based on the Department's consideration of the dispute subject matter and the fact that the reasoning and operative part of the primary Decision does not address the objection subject matter, as Zakat payer's objection is to the investment deducted and not to the investment losses. Therefore, primary Decision was not at the origin of Zakat payer's objection, which renders the litigation unfinished, as required by the Decision operative part. Consequently, Primary Committee did not exhaust its mandate in deciding on the dispute subject matter. Therefore, the Department concluded by deciding to annul the primary Decision and refer the consideration of the dispute subject matter regarding the non-deductible investment in Company for 2006 to the first department for the determination of income tax violations and disputes in Jeddah.

Decision

First: Accepting the appeal in form submitted by Zakat payer/ Company, Commercial Register No. (.....), against the Decision of the Second Primary Zakat Tax Objection Committee in Jeddah No. (36) of 1436 AH.

Second: On Merits:

1. Dismissing Zakat payer's Appeal regarding the item (Retained Losses), and upholding the primary Decision in its conclusion, in accordance with the reasons and rationale set out in this Decision.
2. Regarding the item (Credit Balances for 2003 and 2004):
 - Dismissing Zakat payer's Appeal against credits balances, in accordance with the reasons and rationale set out in this Decision.
 - Accepting Zakat payer's Appeal regarding the amount of (SAR 421,655) for 2005, in accordance with the reasons and rationale set out in this Decision.
 - Accepting Zakat payer's Appeal regarding the amount of (SAR 15,000,000) for 2007, according to the reasons and rationale set out in this Decision.
3. Accepting Zakat payer's Appeal regarding the item (Investment Losses and Unrealized Profits for 2006) and reversing the primary Decision with respect to this item, in accordance with the reasons and rationale set out in this Decision.



4. Canceling the primary Decision and referring the dispute regarding the item (..... Company non-deductible investment for 2006) to the first department for the determination of income tax violations and disputes in Jeddah, in accordance with the reasons and rationale set out in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-81)
Delivered in Appeal No. (Z-1688-2018)

Principle No. 196

It is recognized that deposits made by those engaged in business activities for other reasons do not necessarily need to be classified as revenue, such as loan repayments or deposits from partners for the benefit of Company's activity.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday 22/09/1442 AH corresponding to 04/05/2021 AD, First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, met at its headquarters in Riyadh to consider the Appeal filed on 03/03/1439 AH by GAZT, and the Appeal filed on 03/03/1439 AH by Zakat payer/..... Company, against the Decision of the First Primary Zakat Tax Objection Committee in Jeddah, No. (8/3) for 1437 AH, issued regarding objection No. (49) dated 13/02/1435 AH on the Zakat assessment for the years from 01/02/1430 AH to 29/01/1434 AH, filed by Appellant against GAZT. The primary Decision ruled as follows: First: In Form:

Accepting Zakat payer's objection received by GAZT under Entry No. (49) dated 13/02/1435 AH in form, as it was submitted by a person with standing within the legally prescribed deadline, fulfilling the provisions stipulated in the Implementing Regulation for Zakat collection Law.

Second: On Merits

1. Upholding Zakat payer to add the balance of partners' current account, at the beginning or at the end of the year, whichever is less, to Company's Zakat base for the fiscal period from 01/02/1430 AH to 29/01/1434 AH.
2. Upholding GAZT in adding the hospitality item to Zakat payer's base for the fiscal period ending on 30/01/1432 AH.
3. Upholding GAZT in adding the unsupported retained profits to Zakat payer's base for the fiscal periods ending on 30/01/1432 AH, 30/01/1433 AH and 29/01/1434 AH, respectively.
4. Upholding GAZT in adding the item of personal donations to Zakat payer's base for the fiscal year ending on 30/01/1432 AH.
5. Upholding Zakat payer to not adding (SAR 60,000) to Company's Zakat base for the fiscal year ending on 30/01/1433 AH, and upholding GAZT in adding (SAR 100,000) and (SAR 73,902) to Zakat payer's base for the fiscal years ending on 30/01/1432 AH and 30/01/1433 AH, respectively.
6. Upholding GAZT in adding unauthorized revenues to Zakat payer's base for the fiscal year ending on 29/01/1434 AH.



7. Upholding GAZT in adding rental differences in the amount of (SAR 2,808,334) to Zakat payer's base for the fiscal period ending on 29/01/1434 AH.

As this Decision was not accepted by the parties, each of them submitted a list of appeals to the Department, which included their objections to the following items, summarized below:

With regard to the appeal of General Authority of Zakat & Tax, GAZT disagrees with Primary Committee's Decision in favor of Zakat payer regarding the item (adding the balance of partners' credit current account (at the beginning or at the end of the year, whichever is less) to Company's Zakat base). GAZT affirms the validity of the Zakat assessment issued by GAZT regarding this item, and GAZT believes that Primary Committee relied in its Decision on clause (17) of GAZT Circular No. (35/1) dated 02/03/1413 AH, states that (General Authority of Zakat & Tax decides to add the balance of Zakat payer's current account credit in organizations and companies at the beginning or at the end of the year, whichever is less). It also did not address the current debit account, which is not deducted from the base as it is a debt of the partners according to Sharia Fatwa No. (3077/2) dated 08/11/1426 AH, as well as Sharia Fatwa No. (19643) dated 23/05/1418 AH and GAZT Circular No. (4337/2) dated 16/05/1409 AH, and GAZT Circular No. (4337/2) dated 16/05/1409 AH. which stipulates that (A credit current account of the partners shall be added to the Zakat base in all cases. A debit current account owed to one of the partners shall not be deducted from the Zakat base except to the extent of their share of the retained profits, if any). GAZT emphasizes that Zakat payer did not clarify the nature of this debit current account, whether it represents cash withdrawals, receivables from the partner for the use of Company's hotels, or adjustments to Company's revenues and expenses, especially since the field examination revealed that Zakat payer is processing some of the revenues of the shops in the current account of the partner (.....), who is the owner of the debit current account. Partners' current account statements are hotel-by-hotel, undated, aggregate, and not itemized. Based on the above, GAZT asserts that the Primary Committee's Decision was incorrect in upholding the Decision to add the balance of the partners' current account credit (at the beginning or at the end of the year, whichever is less) to Company's Zakat base for the fiscal period from 01/02/1430 AH to 29/01/1434 AH. Accordingly, GAZT maintains the validity of its procedure.

With regard to GAZT's appeal on the item (adding (SAR 60,000) to Company's Zakat base for the fiscal year ending on 30/01/1433 AH), GAZT disagrees with Primary Committee's Decision supporting Zakat payer in not adding (SAR 60,000) to the Zakat base. GAZT emphasizes the validity of the assessment issued by GAZT, as it represents professional fees for Hotel. GAZT explains that the value of the contract is (SAR 90,000) for a duration of three years and Zakat payer charged the entire amount to the year, whereas the contract is for three years and Zakat payer should have charged the year only. Accordingly, the difference (SAR 60,000) was added to the Zakat base as it is not related to the duration. GAZT responds to what the Committee "the Decision issuer" stated on page (10) of the Decision, paragraph (c) (The Committee's reference to Note (17) on administrative expenses of Company's financial statements for the fiscal year ended on 30/01/1433 AH, it is clear that the item of professional fees is included in the amount of SAR 30,000). GAZT clarifies that this is not disputed by Primary Committee, but the disagreement is that the amount (SAR 60,000) is listed as professional fees for the year, which is in fact not for the year but for the two years following 1433 AH. Here comes the question of why the amount (SAR 60,000) was included in the accrued expenses when it is supposed to be included in advance expenses! At the end of paragraph (e) of page (10) of the Committee's statement, it also stated that it asked Zakat payer's representative to provide an analytical statement of the accrued expenses and their nature, along with a copy of the daily entries



and a copy of proper documents, and they promised to submit them within two weeks, but did not submit any of them until the date of issuing this Decision.

This Decision was not accepted by..... Company, as it filed a list of appeals with the Department that included its objection to the primary Decision as follows:

With regard to the item (Retained Profits), Zakat payer objects to the Decision of Primary Committee supporting GAZT in adding the unsupported retained profits to Zakat payer's base for the fiscal periods ending on 30/01/1432 AH, 30/01/1433 AH, and 29/01/1434 AH, respectively. Zakat payer emphasizes that the financial statements and accounts of Company did not show the existence of retained profits from previous years, as they were closed in partners' current accounts. Accordingly, partners' shares of the annual profits were set aside in partner's current account so that they were withdrawn from it during the two years and all the profits distributed during the year were withdrawn, while no amounts were carried over to the next year. Therefore, it is not subject to Zakat, as a full Hijri year (Hawl) has not passed.

With regard to the item (Undeclared Income), Zakat payer objects to Primary Committee's Decision supporting the GAZT's action in adding undeclared income to the Zakat base for the fiscal year ending on 29/01/1434 AH. Zakat payer asserts that GAZT considered the debit side of the bank to be revenue, and thus a difference arose between what is authorized in the financial statements and what appears in the debit activity from the bank statement. Zakat payer requests not to add undeclared income as they are not revenues, but are represented by opening balances, feeding the bank's balance from their partners' accounts, as well as adjustments made to correct entries, and it is not fair to consider all bank deposits as revenues.

With regard to the item (rent difference), Zakat payer objects to Primary Committee's Decision supporting GAZT in adding the rent difference of (SAR 2,808,334) to the Zakat base for the fiscal period ending on 29/01/1434 AH. Zakat payer asserts that GAZT refunded (SAR 220,000) to the Zakat base, considering that the rent for the Hotel is (SAR 14,000,000) and not (SAR 16,200,000) for the first rental year according to the contract signed with the owner. Zakat payer indicates that the previous contract for the hotel expires on 14/10/1432 AH with an annual rental value of (SAR 8,400,000), then the contract for the hotel was renewed from 15/01/1433 AH with an amount of (SAR 14,000,000). The period from 15/10/1432 AH to 14/01/1433 AH was calculated at (SAR 5,700,000), and the contract for the first year was calculated at (SAR 16,200,000), including the value of the period from 15/10/1432 AH to 14/01/1433 AH. In addition, the previous rent difference was not settled in the budget for the fiscal year ending on 30/01/1433 AH, as it appeared in the budget at the previous value of the rent (SAR 8,400,000). Therefore, Zakat payer emphasizes the need to include the previous period within the rent for 1433 AH.

The General Authority of Zakat & Tax was contacted on 12/10/1441 AH corresponding to 04/06/2020 AD to submit its reply to Zakat payer's appeal, and GAZT received a reply memorandum dated 26/03/1442 AH corresponding to 11/11/2020 AD. GAZT's reply memorandum included a response to the content of Zakat payer's memorandum regarding the items under appeal, as its reply emphasized its viewpoint contained in the memorandum submitted before Primary Committee and the supporting rulings, and that what Plaintiff raised in their appeal did not deviate from what they had previously expressed before Primary Committee and to which GAZT responded at the time. Accordingly, GAZT requests that Zakat payer's appeal be validated in form and rejected in substance.

The Department also wrote to Zakat payer on 25/02/1442 AH, corresponding to 12/10/2020 AD, to respond to the appeal submitted by GAZT, and to submit whatever they wish to add to their appeal within the deadline granted by Department, or to be satisfied with what was submitted. Subsequently, on 06/03/1442 AH corresponding to



22/10/2020 AD, Zakat payer submitted documents including the revenues of hotels and banks and the adjustment entries.

The Department, during its session held on 10/08/1442 AH corresponding to 23/03/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing the case documents, the appeal list submitted Zakat payer, and the appeal submitted by the General Authority of Zakat & Tax (GAZT), the Department found that the conditions for considering the two appeals in form were met in accordance with the conditions stipulated in the relevant Laws, Regulations, and Decisions. Therefore, two appeals are accepted in form as they were submitted by competent persons and within the statutory period prescribed for their conduct.

On the merits of Zakat payer's appeal on the item (Retained Profits), the Department found that the source of the dispute between the two parties is based on Zakat payer's request not to calculate the partners' withdrawals from Zakat payer's base, as they consumed all the profits distributed during the year, and no amounts were carried over to the following years. Therefore, there is no need to calculate zakat on them as detailed in Zakat payer's appeal list. GAZT argues that it added the retained profits to the Zakat base for the years in dispute, as there is no document proving their distribution according to the field examination for the years in dispute. In addition, the statement of changes in equity showed that the profits were closed in the partners' current account and were not added when calculating the partners' credit current account, in addition to the fact that Zakat payer did not provide any document stating that the payment was made. Based on the Department's review of Zakat payer's financial statements, it was found that there was no special-purpose-statement disclosing the existence of retained profits, and that Zakat payer's calculation of annual profits was done by transferring them to the partners' current account. Since the partners' current account is one of the elements that are calculated within the positive portion of Zakat payer's base, the profits that GAZT claims should be added to Zakat payer's base are already calculated within the partners' current account. Therefore, the calculation requested by GAZT would result in the realization of the annual profit twice, as explained above. Accordingly, the Department concluded that Zakat payer's appeal was accepted, and the primary Decision regarding the retained profits was overturned, determining that they shall not be included in Zakat payer's base for the disputed years.

Regarding Zakat payer's appeal on the item (Undeclared Income), the Department found that the dispute between the parties is based on Zakat payer's request not to calculate the amounts of undeclared income for the year 1434 AH, given their opposition to GAZT's approach in its belief that all amounts deposited in the bank for Company's account represent revenue, and that such an approach is not reliable for estimating revenue, especially since there may be advance income that do not belong to the year, and there may also be advance paid expenses and accrued expenses, so the basis of GAZT's assessment is based on the cash basis. Zakat payer uses the accrual basis, recording its revenue in accordance with the accounting standards reflected in Zakat payer's financial statements for the year in question. GAZT argues the field examination showed that the daily hotels revenue deposits are made through two bank accounts. By reviewing the account statements for the disputed fiscal year, it was found that there were differences between the total revenues for that year and what was included in the Zakat declaration submitted by Company, in the amount of (SAR 8,332,885). Zakat payer did not provide any document to support the existence of this difference, and therefore GAZT did not accept Zakat payer's claim before it that this difference represents adjustment entries made to the

bank account in total. Based on the Department's examination of the dispute and the views of Zakat payer and GAZT on the matter, it is clear that it cannot be accepted that the deposits in Zakat payer's banks are properly characterized as revenues related to the activity carried out by Zakat payer. Deposits belonging to those engaged in business activities are usually related to other reasons that do not necessarily require them to be categorized as revenue, such as loan repayments or deposits from partners for the benefit of the company's activity. Whereas GAZT did not provide evidence that the difference it deduced represents with certainty a real income that Zakat payer did not declare, but rather interpretations and possibilities to explain the difference on its part, and where it is a principle that 'evidence that is tainted by a possibility loses its credibility', the Department concluded to accept Zakat payer's appeal, reverse the primary Decision, and not calculate the item of undeclared income for 1434 AH.

Regarding Zakat payer's appeal on the item (Rent Difference), it is clear that the appeal lies in Zakat payer's request not to add the rent difference to the Zakat base as it relates to the fiscal period, and that GAZT also erred in calculating the rents. GAZT believes that the difference was overcharged by (SAR 220,0000) and added to the Zakat base since the rent for Hotel is (SAR 14,000,000) not (SAR 16,200,000) for the first rental year according to the contract signed with the landlord. Based on Department's examination of the above, and since Company's appeal is based on the fact that Primary Committee mistakenly believed that the amount of the rental amount was the same for the rest of the years covered by the contract, which amounted to five years at (SAR 14,000,000) per year, while the first year was different from the other four years, with a total annual rent of (SAR 16,200,000). Based on the Department's review of the case documents, it found that the lease contract detailed the rental value for the first year, which totaled (SAR 16,200,000). Since the rent difference in dispute was for the year 1434 AH, and since this year is included in the calculation of the estimated rental value of (SAR 14,000,000), it is not related to the first year in which the value of the rental amount varied as previously stated in the rental payments under the contract.

Regarding the General Authority for Zakat & Tax (GAZT) appeal on the item (Supporting Zakat payer to add the balance of partners' credit current account (at the beginning or at the end of the year, whichever is less) to Company's zakat base for the fiscal period from 01/02/1430 AH to 29/01/1434 AH), GAZT appeals with regard to this item by emphasizing the incorrectness of Committee's Decision in supporting Zakat payer's objection. According to GAZT's instructions, the partners' current account is supposed to be added to zakat base in all cases, while the current account owed to one of the partners is not deducted from zakat base except to the extent of their share of retained profits, if any. While the fact is that Company did not clarify the nature of this debit current account, and whether it represents cash withdrawals or receivables from Partner for the use of Company's hotels or adjustments to Company's revenues and expenses, especially considering that the field examination showed that Company calculates some revenues for the shops in the partner's (.....) current account, who is the owner of the debit current account. It was also found from the partners' checking account statements that they are undated, aggregate and not itemized for each individual hotel. This confirms the incorrectness of the primary Decision to support Zakat payer in adding the balance of the partners' credit current account (at the beginning or at the end of the year, whichever is less) to Company's Zakat base for the fiscal period from 01/02/1430 AH to 29/01/1434 AH. Based on Department's consideration of the reason for GAZT's appeal against the primary Decision regarding the calculation of difference in the partners' debit current account for the years 1431 AH to 1434 AH, it is clear that Zakat payer does not disagree with GAZT on the issue of adding partners' debit current account balance, but the objection is to the value of what shall be added from this balance to Zakat payer's base. Zakat payer asserts that the partner's debit current account balance shall be deducted from



the credit balance and only the difference shall be added, which GAZT disagrees with as stated in its appeal. Since the basis for dealing with partners' debit and credit current account is to rely on the clearing procedure between them to reach the amount that is added to Company's Zakat base, which is independent in its financial liability from partners' liability when assessing Zakat liability. This shall not affect the accountability of each partner for his own account when calculating zakat. Based on the fact that GAZT's appeal on this item calculation method did not affect the outcome of the Decision, Department concluded to reject GAZT's appeal and uphold the primary Decision on the appealed item.

Regarding the appeal of General Authority for Zakat & Tax (GAZT) on the item (adding an amount of (SAR 60,000) Company's Zakat base for the fiscal year ending on 30/01/1433 AH), it was found that the object of the appeal lies in GAZT's objection to Primary Committee's Decision regarding this item, given that the value of the professional fees represents a total contract amount of (SAR 90,000) for three years, so the share for each year is (SAR 30,000), contrary to the primary Decision which supported Zakat payer in not adding the amount of (SAR 60,000) to the Zakat base for the fiscal year ending on 30/01/1433 AH. Having considered GAZT's appeal and Zakat payer's viewpoint when the dispute was heard before Primary Committee, and considering that the contract term under which the professional fees are paid is for three years, for an amount of (SAR 90,000). Therefore, the correct calculation for Company is to charge each year with its own amount, which is (SAR 30,000). Based on the above, adding the difference of (SAR 60,000) to Zakat payer's base is the correct procedure, as it does not relate to the period associated with the year in dispute for this item. Therefore, Department concluded that GAZT's appeal shall be accepted, the amount of (SAR 60,000) shall be added to Zakat payer's base, and the primary Decision on this item shall be overturned.

Decision

First: Accepting the two appeals submitted in form by General Authority for Zakat & Tax (GAZT) and Zakat payer/..... Company against the Decision of the First Primary Zakat and Tax Objection Committee in Jeddah, No. (8/3) of 1437 AH.

Second: On Merits:

1. Dismissing the appeal submitted by General Authority for Zakat & Tax (GAZT) regarding the item (Supporting Zakat payer to add the balance of partners' credit current account (at the beginning or at the end of the year, whichever is less) to Company's Zakat base), and upholding the primary Decision in accordance with the reasons and rationale provided in this Decision.
2. Accepting the appeal submitted by General Authority for Zakat & Tax (GAZT) regarding the item (adding an amount of (SAR 60,000) to Company's Zakat base for the fiscal year ending on 30/01/1433 AH), and reversing the primary Decision in accordance with the reasons and rationale provided in this Decision.
3. Accepting Zakat payer's appeal regarding the (Retained Profits) item, and reversing the primary Decision with regard to it, in accordance with the reasons and rationale provided in this Decision.
4. Accepting Zakat payer's appeal regarding the (Undeclared Income) item, and reversing the primary Decision with regard to it, in accordance with the reasons and rationale provided in this Decision.
5. Dismissing Zakat payer's appeal regarding the (Rent Difference) item, and upholding the primary Decision with regard to it, in accordance with the reasons and rationale provided in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-25)
Delivered in Appeal No. (Z-1690-2018)

Principle No. 197

According to the calculations, the disputed amounts cannot be considered to include the disputed item in Zakat base as long as there is evidence and proofs that collectively support its exclusion from Zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday, 20/06/1442 AH corresponding to 02/02/2021 AD, the first department for the determination of income tax violations and disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, met at its headquarters in Riyadh to consider the appeal filed on 13/10/1436 AH by Company against the Decision of the First Primary Zakat and Tax Objection Committee in Jeddah, No. (28/8) of 1436 AH, issued in the case of the two zakat assessments for the years 2003 to 2008, submitted by Appellant against General Authority for Zakat & Tax (GAZT). The initial Decision ruled as follows:

First: In Form:

Accepting Zakat payer's two objections received by GAZT under Entry No. (156) dated 18/04/1433 AH and Entry No. (5604/22/1434) dated 18/12/1434 AH in form, for the purpose of submitting them from a person in capacity within the legally prescribed deadline, fulfilling the conditions stipulated in the Implementing Regulation for Zakat collection Law.

Second: On Merits

1. Upholding GAZT's Decision not to deduct investments from associates (debit current accounts) from Zakat payer's base for the years 2003 to 2008.
2. The dispute between Zakat payer and GAZT over the item Investments in long-term securities for 2005 ended with GAZT agreeing to Zakat payer's view on this item.
3. Upholding GAZT's Decision not to deduct Company's share of the year's net profits in associates (investees) from Zakat payer's base for 2007 and 2008.
4. Upholding GAZT's Decision not to deduct the unrealized loss of Trading Company Limited from Zakat payer's base for 2008.
5. The dispute between Zakat payer and GAZT over the item Retained (distributed) Profits for 2008 ended with GAZT agreeing to Zakat payer's view on this item.

Dissatisfied with this Decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

Zakat payer objects to the item "Investments in investee companies for the years 2003 to 2008". Their objection is based on the fact that these investments appear within partners' rights in investee companies for the years in question. They added that they were subjected to Zakat in those (investee) companies, and adding these investments to Company's base means subjecting them to Zakat twice. As for the item "Income from Zakatable



investments in investee companies for 2007 and 2008”, their objection was based on the fact that this income was subjected to Zakat in investee companies, and they request it to be deducted to avoid Zakat duplication. As for the item “..... Company unrealized loss for 2008,” Appellant asserts that GAZT's memorandum, which includes primary Decision appealed against, is incorrect in stating that GAZT has deducted investments after deducting losses.

Since the Department decided to open the pleadings, Department received a reply from Zakat payer dated 12/03/1442 AH, the content of which did not deviate from what was previously stated in the appeal memorandum. Department also received a reply from GAZT dated 30/03/1442 AH, corresponding to 15/11/2020 AD, which included a confirmation of what GAZT submitted before Primary Committee, and requested Department to verify the validity of Zakat payer's submission of the appeal within the statutory period, in addition to verifying that Zakat payer did not submit new requests in violation of Article (186) of Law of Civil Procedure regarding the inadmissibility of new requests before the Court of Appeals.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On the merits of Zakat payer's appeal regarding (Investments in investee companies for the years 2003 to 2008), and after reviewing the case file and papers, as well as appeal list, it became clear that Zakat payer's objection lies in their request of investments full value for the years 2003 to 2008 shall be deducted from Zakat base in order to avoid Zakat duplication. They also assert that these investments shall be deducted as investments in acquisition assets represented by their share of equity in investee companies. GAZT believes that the full value of investments in subsidiaries shall not be deducted from Appellant's Zakat base as they are included under investee companies' debit current accounts. After considering the views of the parties to Appeal, Department found that GAZT's calculation of the disputed amounts, according to its own view, cannot be considered to include the disputed item in Zakat base since there is evidence and proofs that collectively support the consideration of these amounts as an investment in the investee company. Therefore, they shall be excluded from Zakat base, especially since the amounts claimed as loans by GAZT appeared in investee companies' equity, which cannot be considered a debt to be paid to the lending company. This makes it necessary to consider these amounts as profit-making investments rather than loans or commissions, since Department has shown that profits from disputed investments have been realized. Therefore, GAZT shall not rely on their accounting classification, from which it concludes that they are loans that are added to Zakat base, contrary to their reality. GAZT's argument that its calculation of these amounts is based on the assumption that they are treated as debts of Zakat payer to investee companies as long as these amounts were financed from debit current account. Therefore, the Department concludes that it accepts Zakat payer view that these disputed investments amounts shall be deducted from Zakat base for each of the years in dispute.

With regard to Zakat payer's appeal regarding (revenues from zakatable investments in investee companies for 2007 and 2008), the appeal lies in Appellant's request to deduct these revenues for investments since they were subject to zakat in investee companies to avoid zakat duplication. However, Respondent argues that Company's share in the year's net profit of the invested associates amounting to (SAR 86,104,488) and (SAR 101,123,558), respectively, was deducted from Zakat base. After considering the arguments



of the parties to the appeal on this item, the Department considered that the disputed profits were subject to zakat in investee companies as they are registered with GAZT and pay zakat on those revenues according to their declarations. Since these investments are accounted for under the equity method, the proper procedure supported by audited financial statement figures is to deduct these investments accounted for under the equity method from the amount shown in the statement of financial position (Balance Sheet) for the years in dispute, which, according to the equity method of accounting, includes Zakat payer's share of the profits of investee companies, while adding Zakat payer's share of investee companies' profits shown in the income statement prepared for the years in dispute. As a result, these profits no longer affect Zakat payer's base in order to avoid zakat duplication. Since Zakat payer argues that the investments were not deducted according to their amounts shown in the statement of financial position (Balance Sheet) for the disputed years, by comparing the financial statement figures with the assessment figures, they are entitled to deduct these investments profits from the net profit in order to avoid zakat duplication.

With regard to appeal regarding (..... Company unrealized loss for 2008), the dispute between two parties lies in Appellant's request to deduct the unrealized losses of Trading Company Limited amounting to (SAR 32,945,777) from 2008 Zakat base. However, Respondent argues that the unrealized loss of Trading Company for 2008 shall not be deducted. Whereas, after reviewing the Zakat assessment of Company for 2008, the Department found that the deduction in associates investments is (SAR 54,709,665) after reduction by unrealized losses, as these losses were not deducted from adjusted profit. Accordingly, the Department decides to accept Appellant's request to deduct the unrealized loss difference of (SAR 32,945,777) from the adjusted net profit, and to reverse the primary Decision.

Decision

First: Accepting the appeal in form from Zakat payer/..... Company, Commercial Register No. (.....), against the Decision of the First Primary Zakat and Tax Objection Committee in Jeddah, No. (28/8) of 1436 AH.

Second: On Merits:

1. Accepting Zakat payer's appeal regarding the item (Investments in investee companies for the years 2003 to 2008), deducting the amounts of these disputed investments from Zakat base for each of the disputed years, and reversing the primary Decision in this regard, in accordance with the reasons and rationale provided in this Decision.
2. Accepting Zakat payer's appeal regarding the item (Income from Zakat investments in investee companies for the years 2007 and 2008), by deducting Company's in net profit share of the year in the associate (investee) companies for the years 2007 and 2008 from its Zakat base, and reversing the primary Decision in this regard, in accordance with the reasons and rationale provided in this Decision.
3. Accepting Zakat payer's appeal regarding the item (Unrealized Losses of Company for 2008), by deducting the unrealized loss difference in Trading Company Limited amounting to (SAR 32,945,777) from the adjusted net profit, and reversing the primary Decision in this regard, in accordance with the reasons and rationale provided in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-118)
Delivered in Appeal No. (Z-1692-2018)

Principle No. 198

Government fees and subscriptions are intended to benefit and be associated with the office. Similarly, it is unreasonable to charge such expenses to a line item that is not related to the office activity.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Thursday, 29/ 10/1442 AH corresponding to 10/06/2021 AD, the first department for the determination of income tax violations and disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, met at its headquarters in Riyadh to consider the appeal filed on 22/12/1435 AH by Office against the Decision of the Second Primary Zakat and Tax Objection Committee in Jeddah, No. (30) of 1435 AH, issued in Objection No. (72) dated 26/02/1434 AH, regarding zakat reassessment for the years ended on 31/08/2006 and 31/08/2007, as well as the zakat assessment for the years ended on 31/08/2008 and 31/08/2009, filed by Appellant against Zakat, Tax and Customs Authority (ZATCA), in which the primary Decision ruled as follows:

First: Accepting the objection submitted by Zakat payer/ CPA Office, on Zakat reassessment for the years ended on 31/08/2006 and 31/08/2007, as well as Zakat assessment for the years ended on 31/08/2008 and 31/08/2009, in form according to the reasons and rationale of the Decision.

Second: On Merits:

1. Upholding ZATCA's Decision to disallow other allowances, ... salaries, and deductions as a deductible expense according to the reasons and rationale of the Decision.
2. Upholding ZATCA's Decision to disallow government fees and subscriptions as non-deductible expenses according to the reasons and rationale of the Decision.
3. Upholding ZATCA's Decision to disallow computer expenses as non-deductible expenses according to the reasons and rationale of the Decision.
4. Upholding ZATCA's Decision to disallow telephone, postage, water, and electricity expenses as non-deductible expenses according to the reasons and rationale of the Decision.
5. Upholding ZATCA's Decision to disallow automobile expenses as non-deductible expenses according to the reasons and rationale of the Decision.
6. Upholding ZATCA's Decision to disallow communication and correspondence expenses as non-deductible expenses according to the reasons and rationale of the Decision.
7. Upholding ZATCA's Decision to disallow rent expenses as non-deductible expenses according to the reasons and rationale of the Decision.



8. Upholding ZATCA's Decision to disallow maintenance, hospitality, and cleaning expenses as non-deductible expenses according to the reasons and rationale of the Decision.
9. Upholding ZATCA's Decision to disallow insurance and medical treatment as non-deductible expenses according to the reasons and rationale of the Decision.
10. Upholding ZATCA's Decision to disallow uniform allowance as non-deductible expenses according to the reasons and rationale of the Decision.
11. Upholding ZATCA's Decision to disallow training expenses as non-deductible expenses according to the reasons and rationale of the Decision.
12. Upholding ZATCA's Decision to disallow stationery expenses as non-deductible expenses according to the reasons and rationale of the Decision.
13. Upholding ZATCA's Decision to disallow miscellaneous expense as non-deductible expenses according to the reasons and rationale of the Decision.
14. Upholding ZATCA's Decision to disallow deduction of fixed assets from Zakat base, as well as disallowance of their depreciation expenses as non-deductible expenses according to the reasons and rationale of the Decision.

As this Decision was not accepted by Zakat payer (..... Office), they filed a list of appeals, which included the following:

With regard to item (Salaries and Benefits), Zakat payer confirms their right to accept the expenses under this item, which are other allowances, Mr.....'s salary, and job deductions, as deductible expenses. As for item (government fees and subscriptions), Zakat payer requests to deduct all these expenses from their Zakat base for the years 2006 to 2009, and objects to ZATCA's reimbursement of a portion of these expenses, as they are expenses related to government fees for the families of Zakat payer's employees to bear on behalf of their families. With regard to items (Computer Expenses) and (Telephone, Postal, Water and Electricity Expenses), Zakat payer requests dismissing ZATCA action by refunding a portion of these items' expenses, and emphasizes their right to deduct these items full expenses as proven expenses. With regard to items (automobile expenses) and (travel and transportation expenses), Zakat payer requests full expenses of these items be accepted, and none of them be reimbursed, as they are expenses related to employees' work and required by field work to be incurred on behalf of Zakat payer's employees. With regard to item (Rents), Zakat payer objects to ZATCA procedure of refunding an amount of (SAR 49,252) from this item expenses distributed to the years 2007 and 2008, while accepting this expense and deducting it from Zakat base. With regard to item (Maintenance, Hospitality and Cleaning Expenses), Zakat payer requests acceptance of deducting all this item expenses and not just a portion of it as ZATCA did in its assessment, as these expenses are necessary for the activity and there is no business without them. With regard to item (Insurance and Medical Treatment), Zakat payer requests that this item expenses be accepted as a necessary medical care expense for Zakat payer. With regard to item (Uniform Allowance), Zakat payer affirms their right to accept all item expenses and not to refund any of them, as they are vital to Zakat payer's activity and have already been paid. With regard to items (Training Expenses), (Stationery and Publications), and (Miscellaneous Expenses), Zakat payer objects to ZATCA's action to refund a portion of these items' expenses, and requests they be accepted in full, as they are expenses related to the activity, training Zakat payer's employees or related to stationery necessary for the activity and there is no business without them. With regard to item (fixed assets and depreciation difference), Zakat payer objects to ZATCA's action to refund an amount of (SAR 546,246) and (SAR 107,702) from fixed assets and depreciation, distributed over the years 2006 to 2009, on the basis that it is not reasonable that Zakat payer does not have fixed assets that help them in performing their work optimally, such as computers, photocopiers, office furniture and others.



As the Department decided to open the pleadings, ZATCA submitted a memorandum responding to Zakat payer's appeal. ZATCA responded with regard to the item (Salaries and the like), stating ZATCA excluded salaries and benefits that were not approved, due to lack of documentation for some of them as they related to employees who were not on Zakat payer's sponsorship (kafala). With regard to item (government fees and subscriptions, ZATCA responded that it did not approve expenses paid through Office Owner's personal bank account, nor did it approve expenses for unaffiliated employees. With regard to items (computer expenses), (telephone, postage, water and electricity expenses), (automobile expenses), (travel and transportation expenses), (rent), (maintenance, hospitality and cleaning expenses), (insurance and medical treatment), (uniform allowance), (training expenses), (stationery expenses), and (miscellaneous expenses), ZATCA responded that it either did not approve some of these items as they were paid through Office Owner's personal bank account, or they were issued on invoices in which Beneficiary's name was not included, or they were expenses that belonged to Office Owner's personal affairs. With regard to item (Fixed assets and their depreciation), ZATCA responded that some assets were purchased through bank and others with cash, while the documents for bank account and cash account did not indicate either the value or date. Some of checks are not in the name of Office Owner, while some invoices do not contain buyer name and are not documented. In addition, some of them do not belong to Office Owner at all.

On 26/08/1442 AH corresponding to 08/04/2021 AD, the Department decided to hold an E-pleading session for a period of (10) days. The specified period elapsed without submitting an addendum to what Appeal Parties had submitted.

The Department, during its session held on 15/09/1442 AH corresponding to 27/04/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On the merits, with regard to (Salaries and Benefits) item, it was found that the subject of Appeal lies in Zakat payer's request to accept all this item expenses for the years in dispute. However, ZATCA believes that part of this item expenses shall not be accepted due to lack of proper documents for their disbursement, as part of them are related to salaries of an employee who is not on Zakat payer's sponsorship (kafala). Based on Department's consideration of the dispute subject matter, Decision and its rationale, Department found that Primary Committee based its Decision to reject Zakat payer's objection regarding (other allowances within salaries) on the fact that Zakat payer did not provide Committee with the contracts stipulating that the employees would be granted these allowances. Accordingly, it based its Decision to reject (salaries of) on the fact that this employee is not under their sponsorship (kafala). Since the rationale relied upon by Committee were not related to money release from Zakat payer's liability with regard to payment of these allowances and salaries, which is the basis for whether Zakat is due or not. Since obligation of Zakat is contingent on the availability of money in Zakat payer's possession, Department decides to accept the Zakat payer's appeal regarding other allowances and salary of As for (absence and other deductions), since such deductions would reduce these expenses, and since Zakat payer did not submit anything to contradict this, it is decided by Department to reject their appeal regarding the deductions amounts.



With regard to item (government fees and subscriptions), it was found that the subject of Appeal lies in Zakat payer's request to deduct all this item expenses as they relate to the families of Zakat payer's employees, while ZATCA believes these expenses are not supported by proper documents and are not necessary for the activity. Based on Department's examination of the dispute subject matter, ZATCA's objection against Zakat payer was based on the fact that these expenses were paid from Zakat payer's personal accounts, and expenses for employees' families were not stipulated in labor contracts, and also other expenses in this regard were not related to the activity. Since Department was convinced that the purpose of these fees and subscriptions is related to the benefit of the office, and it is rare to charge these expenses to such an item not related to office's activity. Since Committee's reasoning was not related to the payment of money from Zakat payer's liability in relation to reimbursement of these expenses, which is the basis for whether Zakat is payable or not. Since the obligation of Zakat is contingent on the availability of money in their possession. Therefore, Department accepts Zakat payer's appeal and reverses primary Decision in this regard.

With regard to item (Computer Expenses), it was found that the subject of Appeal lies in Zakat payer's request to deduct all this item expenses as they are related to Zakat payer's activity and have been paid, while ZATCA believes that these expenses were not substantiated by proper documents, as well as the payment of these expenses has been made through Zakat payer's bank accounts. Based on Department's examination of the dispute subject matter, as ZATCA's objection to this expense was based on its payment through personal bank accounts, or failure to include Beneficiary's name on this expense documents. Since most office businesses rely on computers and computer supplies, and since it is common to purchase computer supplies with receipts without including Beneficiary's name, Department decided to accept Zakat payer's view on this item by considering the entire expense included in Zakat payer's declaration as deductible from their Zakat base.

With regard to item (telephone, postage and electricity expenses), it was found that the subject of Appeal lies in Zakat payer's request to deduct all this item expenses as they are related to Zakat payer's activity and have been paid, while ZATCA believes that these expenses were paid through Office Owner's bank account, which leads to mixing them with Zakat the taxpayer's own expenses. Based on Department's examination of the dispute subject matter, ZATCA's objection to payment of these expenses from Office Owner's bank accounts and mixing them with Office Owner's housing expenses and personal expenses of him and his son without specification. Since it is common for taxpayers to incur this type of expenses to carry out their activities, and since the dispute was not documentary, and since Committee's reasoning was not related to the payment of money from Zakat payer's liability in relation to reimbursement of these expenses, which is the basis for whether Zakat is payable or not. Since the obligation of Zakat is contingent on the availability of money in their possession. Therefore, Department accepts Zakat payer's appeal and reverses primary Decision in this regard.

With regard to item (Automobile Expenses), it was found that the subject of Appeal lies in Zakat payer's request to deduct all this item expenses as they relate to Zakat payer's activity and have been paid, while ZATCA believes that these expenses were not supported by proper documents to be deducted. Based on Department's examination of the dispute subject matter, as this expense relates to allowances given to office employees when they travel by car to clients' headquarters in different regions, as the nature of office's work requires employees to travel from their headquarters to clients' headquarters, and as these amounts are reasonable to consider as a deductible expense because they are related to office's activity and revenue realization. As ZATCA's response did not contain anything negates Zakat payer's basis for approving this expense as a deductible expense, the Department concluded that the amounts recognized in Zakat payer's declaration shall be



recognized as deductible expenses, as the obligation of Zakat is contingent on the availability of money in Zakat payer's possession. Since there was no documentary dispute, Department accepts Zakat payer's appeal and reverses primary Decision in this regard.

With regard to item (Travel and Transportation Expenses), it was found that the subject of Appeal lies in Zakat payer's request to deduct all this item expenses as they relate to Zakat payer's activity and have been paid, while ZATCA believes that these expenses were not supported by proper documents to be deducted. Based on Department's examination of the dispute subject matter, since the rationale relied upon by Committee were not related to money release from Zakat payer's liability with regard to payment of these expenses, which is the basis for whether Zakat is due or not. Since Committee did not specify the unsupported expense amount, and since Zakat obligation is contingent on the availability of money in Zakat payer's possession, Department decides to accept Zakat payer's appeal and reverse the primary Decision in this regard.

With regard to item (Rents), it was found that the subject of Appeal lies in Zakat payer's request to accept this item expenses as ZATCA did not explain the difference in accepting portion of this expense, while ZATCA considers these expenses were not supported by proper documents to be deducted. Based on Department's examination of the dispute subject matter, and where Zakat payer based their objection before Primary Committee on their lack of knowledge of the way ZATCA calculated this difference. Since ZATCA explained the source of these differences in its view in Primary Decision, and since Zakat payer's appeal did not include their opinion of what ZATCA explained or any other reasons justifying their appeal against Primary Committee's Decision, Department determines that ZATCA's action is correct, and therefore Department concludes to dismiss Zakat payer's appeal and uphold Primary Decision in this regard.

With regard to item (Maintenance, Hospitality and Cleaning Expenses), it was found that the subject of Appeal lies in Zakat payer's request to accept all this item expenses as they are necessary expenses for their activity and have been paid, while ZATCA believes that these expenses were not supported by proper documents for disbursement, and were paid from Zakat payer's personal account. Based on Department's examination of the dispute subject matter, since the rationale relied upon by Committee were not related to money release from Zakat payer's liability with regard to payment of these expenses, which is the basis for whether Zakat is due or not. Since Committee did not specify the unsupported expense amount, and since it is customary for Zakat payers to incur this type of expenses to carry out their activities, Department decides to accept Zakat payer's appeal and reverse primary Decision in this regard.

With regard to item (Insurance and Medical Treatment), it was found that the subject of Appeal lies in Zakat payer's request to accept all this item expenses as they are necessary expenses for their activity and relate to the rights of Zakat payer's employees, while ZATCA believes these expenses were not supported by proper documents for disbursement. Based on Department's examination of the dispute subject matter, since the rationale relied upon by Committee were not related to money release from Zakat payer's liability with regard to payment of these expenses, which is the basis for whether Zakat is due or not. Since Committee did not specify the unsupported expense amount, and since it is customary for Zakat payers to incur this type of expenses to carry out their activities, Department decides to accept Zakat payer's appeal and reverse primary Decision in this regard.

With regard to item (uniform allowance), it was found that the subject of Appeal lies in Zakat payer's request to accept all this item expenses as they expenses incurred by Zakat payer for their activity, while ZATCA believes that these expenses are not related to revenue realization. Based on Department's examination of the dispute subject matter, ZATCA did not object to the fact that Zakat payer incurred this expense, but rather objected to the fact it was not an expense related to revenue realization. Since it is well



known that the office's activity in meeting or going to clients is not incompatible with the existence of this allowance as an expense, Department concluded that this expense is deductible as stated in Zakat payer's declaration. Therefore, Department accepts Zakat payer's appeal and reverses the primary Decision in this regard.

With regard to item (Training Expenses), it was found that the subject of Appeal lies in Zakat payer's request to accept all this item expenses as they expenses incurred by Zakat payer for their activity, while ZATCA believes that these expenses are not substantiated by proper documents. Based on Department's examination of the dispute subject matter, since ZATCA in its action did not approve expenses that were not attached to its contracts with training entities, and since the dispute regarding training expenses was a documentary dispute, Department decided to dismiss Zakat payer's appeal and uphold the primary Decision in this regard.

With regard to item (Stationery and Publications), it was found that the subject of Appeal lies in Zakat payer's request to accept all this item expenses as they expenses incurred by Zakat payer for their activity, while ZATCA believes that these expenses are not substantiated by proper documents. Based on Department's examination of the dispute subject matter, and as it is customary for taxpayers to incur this type of expenses to carry out their activities, Department accepts Zakat payer's appeal and reverses the primary Decision in this regard.

With regard to item (Miscellaneous Expenses), it was found that the subject of Appeal lies in Zakat payer's request to accept all this item expenses as they expenses incurred by Zakat payer for their activity, while ZATCA believes that these expenses are not substantiated by proper documents. Based on Department's examination of the dispute subject matter, since the rationale relied upon by Committee were not related to money release from Zakat payer's liability with regard to payment of these expenses, which is the basis for whether Zakat is due or not. Since Committee did not specify the unsupported expense amount, Department decides to accept Zakat payer's appeal and reverse primary Decision in this regard.

With regard to item (Fixed assets and their depreciation), it was found that the subject of Appeal lies in Zakat payer's request to accept all this item expenses as they expenses incurred by Zakat payer for their activity, while ZATCA believes that these expenses are not substantiated by proper documents. Based on Department's examination of the dispute subject matter, and since the dispute was not about the lack of proof of the amounts spent to purchase those assets necessary for the office to carry out its business, but rather, the dispute was based on the lack of proof of competence of those amounts that Zakat payer claims to have spent to acquire those assets in a clear manner through the accounts of the taxpayer. Since the documents related to these assets purchase were either insufficient to show their jurisdiction and relevance to the acquired assets or they were mixed with Zakat payer's personal accounts, making it impossible to assess them in the manner claimed by Zakat payer, Department concluded that the burden of this expense shall be allocated by deducting it from Zakat payer's base. Therefore, Department concluded to distribute the burden of this expense by deducting 50% of it from Zakat payer's base. Since such calculations are validated by Department's conviction, it is inconceivable that amounts spent to acquire the assets required for the office to carry out its activities cannot be considered, and at the same time, Zakat payer's claims to estimate the value and amounts of these expenses and deduct them from their Zakat base cannot be considered as claimed by Zakat payer. Accordingly, Department concluded that 50% of the total difference in fixed assets amount and their depreciation shall be calculated based on the calculation of this percentage as stated in Zakat payer's declaration, without taking into account their claim that it shall be fully accounted for as part of the deductible expenses from their Zakat base.



Decision

First: Accepting the appeal in form from Zakat payer/ Office against the Decision of the First Primary Zakat and Tax Objection Committee in Jeddah No. (30) of 1435 AH.

Second: On Merits:

1. Accepting Zakat payer's appeal regarding (salaries and benefits) item, except for (absence and other deductions), in accordance with the reasons and rationale set out in this Decision.
2. Accepting Zakat payer's appeal regarding (government fees and subscriptions) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
3. Accepting Zakat payer's appeal regarding (Computer expenses) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
4. Accepting Zakat payer's appeal regarding (Telephone, postal and electricity expenses) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
5. Accepting Zakat payer's appeal regarding (Automobile expenses) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
6. Accepting Zakat payer's appeal regarding (Travel and transportation) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
7. Dismissing Zakat payer's appeal regarding (Rents) item, and upholding primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
8. Accepting Zakat payer's appeal regarding (Maintenance, cleaning and hospitality expenses) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
9. Accepting Zakat payer's appeal regarding (Insurance and medical treatment) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
10. Accepting Zakat payer's appeal regarding (uniform allowance) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
11. Dismissing Zakat payer's appeal regarding (Training expenses) item, and upholding primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
12. Accepting Zakat payer's appeal regarding (Stationery and publications) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
13. Accepting Zakat payer's appeal regarding (Miscellaneous expenses) item, and reversing primary Decision with regard to it, in accordance with the reasons and rationale set out in this Decision.
14. Accepting Zakat payer's appeal regarding (Fixed assets and their depreciation) item, and entitling Zakat payer to deduct 50% of the total difference in the fixed assets amount and their depreciation from the calculation of that percentage, as stated in Zakat payer's declaration, and in accordance with the reasons and rationale set out in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes

Decision No. (IR-2021-23)
Delivered in Appeal No.
(ZI-1698-2018)

Principle No. 199

It is customary for companies to bear the minor expenses in the business environment to save the time of their employees, which necessitates considering these regular expenses as deductible ones for the purposes of calculating Zakat and Tax Base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Sunday, 18/06/1442 AH, corresponding to 31/01/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 17/08/1436 AH, by Company ("Zakat Payer"), against Decision No. (06/21) of 1436 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (231) of 03/06/1433 AH, in connection with Zakat and Tax Assessment for the fiscal year ending on 31/12/2009 AD, filed by Zakat Payer against General Authority of Zakat and Tax ("GAZT"). The appealed Decision ruled as follows:

First: In Form:

Accept Zakat Payer's Objection No. (231) of 03/06/1433 AH, for being filed by a party having capacity and within the prescribed statutory period; meeting the conditions stipulated in Implementing Regulations for the Collection of Zakat, Article (66/A, B) of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, and Articles (60.1) and (60.3) of Implementing Regulations of Income Tax Law issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH.

Second: On Merits

1. Uphold GAZT's Decision regarding item (Addition of Overstated Depreciation Differences of Fixed Asset of "SAR 1,236,700" to Zakat and Tax Base of 2009).
2. Uphold GAZT's Decision regarding item (Addition of Overstated Salary Differences to Zakat and Tax Base of 2009).
3. Uphold GAZT's Decision regarding item (Addition of Cafeteria Expenses to Zakat and Tax Base of 2009).
4. Accept Zakat Payer's objection to item (Deduction of "SAR 20,637" from Other Expenses Revising Zakat and Tax Base of 2009).
5. Accept Zakat Payer's objection to item (Deduction of "SAR 479,519" from Rents Revising Zakat and Tax Base of 2009).
6. Uphold GAZT's Decision regarding item (Non-Deduction of Investments from Zakat and Tax Base of 2009).
7. Uphold GAZT's Decision regarding item (Deduction of Deferred Losses from Zakat and Tax Base of 2009) according to its previous Assessments.



Since Zakat Payer (..... Company) was dissatisfied with this Decision, it submitted a statement of appeal summarized as follows:

1. Item (Overstated Depreciation Differences):

Zakat Payer objects to the Primary Committee's Decision in question for upholding GAZT in adding the depreciation difference in the amount of (SAR 136,668) to the adjusted net profit of 2009, on the Grounds that GAZT was confirmed that such a difference was proven by reviewing Zakat Payer's financial statements and the depreciation schedule it had prepared on which it relied in calculating the depreciation difference, as well as the depreciation schedule prepared by GAZT, in accordance with the provisions of Article (17) of Income Tax Law and GAZT's Circular No. (09/2574) of 14/05/1426 AH. However, GAZT did not prove the addition of such a difference in the amount of (SAR 136,668) to the net fixed assets that must be deducted from Zakat Base to avoid its Zakat Impact, as claimed by GAZT.

In addition, since the Primary Committee approved the addition of the depreciation difference to the net year profit adjusted by GAZT without proving the addition of that difference to the fixed assets that must be deducted from Zakat Base, the same difference should also be added to the net fixed assets to avoid its Zakat Impact. Zakat Payer concluded by affirming its request to exclude the depreciation difference of (SAR 136,668) from the adjusted net profit of 2009 or to add the same to the net fixed assets that must be deducted from Zakat Base to avoid its Zakat Impact.

2. Item (Overstated Salary Differences to Zakat and Tax Base):

Zakat Payer objects to the Primary Committee's Decision in question for upholding GAZT in adding overstated salary difference in the amount of (SAR 12,754,559) to the adjusted net profit for insufficiency of the documents submitted, wherein Zakat Payer clarifies that the Primary Committee did not mention the certificate of the certified public accountant submitted on the validity of salaries, wages, and housing allowance, which is a legal document approved by GAZT when determining salary and wage differences.

In addition, GOSI certificates, in terms of their regularity, are not considered a document that can be used to prove the housing allowance and statutory benefits since these allowances cannot be verified through GOSI certificates, as they do not represent part of the basic and variable salaries and wages.

Moreover, since Zakat is an obligation required by Sharia, and Sharia rulings are established according to the reality of the circumstances, and since that reality, as stated by Zakat Payer, is that these differences are entitlements and benefits granted from Zakat Payer's funds to employees during the year, and it is not necessary to include these allowances in employment contracts as stated by Labor Law; hence, they are considered deductible expenses from profits, the Zakat Payer concluded by requesting exclusion of the salary difference in question from the adjusted net profit, as it is part of the benefits paid to employees.

3. Item (Cafeteria Expenses of 2009):

Zakat Payer objects to the Primary Committee's Decision in question for upholding GAZT in adding the cafeteria expenses in the amount of (284,417), as Zakat provision is (SAR 280,919) and its Zakat due is (SAR 7,023), and Tax provision is (SAR 3,498) and its tax due is (SAR 700), wherein Zakat Payer clarifies that the Primary Committee based its Decision on the fact that Zakat Payer's policy regarding food expenses for employees was approved on 23/10/2010 AD, which is a date subsequent to the date of payment.

In addition, since this procedure was carried out by the Primary Committee supports the deduction of food expenses for employees, and the dispute is only in the retroactivity of its implementation; the Primary Committee, however, has missed that this policy clarifies the rights and benefits of employees, as the criterion is the date of payment and Zakat Payer's evident intention. Zakat Payer concluded by requesting exclusion of the cafeteria expenses in question from the adjusted net profit of 2009, as they are benefits granted to



employees from Zakat Payer's funds and it is not necessary to be included in employment contracts as stated by Labor Law.

4. Item (Other Expenses):

Zakat Payer objects to the Primary Committee's Decision in question for approving the amount of (SAR 20,673) only, out of the amount of (SAR 309,210), which is the adjusted net profit of 2009, on the Grounds that these acceptable amounts are those for which their supporting documents were provided, wherein Zakat Payer clarifies that all of these amounts are actual real expenses paid from Zakat Payer's funds. Zakat Payer concluded by requesting exclusion of these expenses in question from the adjusted net profit of 2009.

5. Item (Rents):

Zakat Payer objects to the Primary Committee's Decision in question for upholding GAZT in approving only an amount of (SAR 479,519) of the rents with which Zakat and Tax Base of 2009 was revised, out of an amount of (SAR 1,205,935), as it represents the only contract signed with Company, while the rest of the rental contracts are not in Zakat Payer's name of but rather in the name of sister companies, wherein Zakat Payer contends that it had to set a place in which to practice its activity before its incorporation, which took eighteen (18) months. In addition, it is not possible to register rental contracts and employment contracts in Zakat Payer's name before its incorporation, as it is considered evidence of the necessity of accepting the rents paid from the account of Company. Moreover, Zakat Payer clarifies that GAZT could have verified that the Company "Zakat Payer" is under incorporation and occupying the rented premise. Zakat Payer concluded by requesting exclusion of the rent difference amounting to (SAR 726,416) from the adjusted net profit of 2009, as it represents an actual expense.

6. Item (Investments):

Zakat Payer objects to the Primary Committee's Decision in question for upholding GAZT in excluding the investment amount of (SAR 109,527,000) from Zakat Base of 2009 for the lack of evident intention of Zakat Payer and the existence of trading operations on those investments during the year in question, wherein Zakat Payer clarifies that Zakat Law and Shariah law stipulate that Zakat shall be collected from net assets by adding capital, reserves, and retained earnings, in exchange for deducting the investments financed from these assets, as the criterion is in the essence of the process and not in its form. Also, deducting these investments results in ceasing the impact on Zakat Base.

In addition, the Decision No. (155) of 1394 AH delivered by the Supreme Judicial Council affirms that the accounts payable financed for capital business and constructions under implementation, if added to Zakat Base, shall be deducted from the corresponding capital business and constructions under implementation, which is the case of Zakat Payer (investments), as failure to deduct these investments in the financial statements classified within current assets results in double payment of Zakat.

Moreover, the Primary Committee's conclusion that these investments represent current trading assets is incorrect, as the concept of trading does not mean carrying out commercial activities, but rather means listing investments in the Capital Market, due to the ease of disposal of. In fact, the classification of investments is not due to the will and intention of Zakat Payer, but rather is an application of paragraph (596) of "General Presentation and Disclosure Standard."

Furthermore, the investment item included, according to the audited financial statements for the year 2010, Zakat Payer's retention of an amount equivalent to (SAR 29,008,000) under the same classification for the fiscal year 2009, which confirms the lapse of more than a year since such an investment. The amount of (SAR 46,800,000) also represents investments that have been in circulation for more than a year. Zakat Payer concluded by requesting deduction of investments in the amount of (SAR 109,527,000) from Zakat Base due to the existence of evident intention of Zakat Payer and payment of its Zakat.

7. Item (Deferred Losses):

Zakat Payer objects to the Primary Committee's Decision in question for upholding GAZT in excluding the deferred losses from Zakat Base of 2009 except within the limits of its Assessment for previous years, as required by the GAZT's Circular No. (01/92) of 19/01/1418 AH, wherein Zakat Payer clarifies that the Zakat Assessment of 2008 was objected to, and among the contested items that affected the adjusted net profit were the deferred losses. Accordingly, the deferred losses amounting to (SAR 30,302,000) were not yet final due to the absence of a final Decision on the validity of the amendments made by GAZT to Zakat Assessment of 2008. Zakat Payer concluded by requesting deduction of the deferred losses in question from Zakat and Tax Base.

Since the Department decided opening pleadings, the Department addressed Zakat Payer on 28/05/1441 AH, corresponding to 23/01/2020 AD, and also on 30/03/1442 AH, corresponding to 15/11/2020 AD, to provide any additional submissions it wishes to add to its appeal within the specified period or to be satisfied with earlier ones, wherein Zakat Payer submitted a number of invoices and documents related to items (Salary), (Cafeteria Expenses), and (Other Expenses).

The Department also addressed GAZT on 24/01/1442 AH, corresponding to 11/09/2020 AD, to submit its response to Zakat Payer's appeal. The period elapsed without any response from GAZT; and since the appeal restores the case to the same status it had prior to the issuance of the appeal Decision thereto, which entails the Department to take into consideration the statements and pleas presented by GAZT before the Primary Committee.

The Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits: As for Zakat Payer's appeal regarding item (Overstated Depreciation Differences), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested exclusion of the depreciation difference from Zakat Base, as Zakat was calculated according to Statement No. (4) included in Zakat and Tax Declaration, or addition of that difference to the deductible assets from Zakat Base, while GAZT argued that the depreciation was calculated according to the group ratios approved by GAZT and applied to all Zakat Payers, while the profit was adjusted by an amount of (SAR 1,236,700), and that Zakat Impact of that depreciation is null and void, as it was re-deducted by returning the same to the assets deducted from Zakat Base, in application of the provisions of Article (17) of Income Tax Law and GAZT's Circular No. (09/2574) of 14/05/1426 AH.

The Department, having taken cognizance of documents included in Case file and the appealed Decision, found that, since GAZT has stated that the difference had been returned to the assets deducted from Zakat Base, and that its Zakat Impact had been removed, which is the subject matter of Zakat Payer request; and since GAZT has failed to provide evidence of the basis on which those differences between Zakat Payer's Declaration and GAZT's claim of the correct method applied by Law to calculate the depreciation differences had occurred; and since the appealed Decision has failed to clarify the details of the method by which GAZT arrived at determining the calculation of the depreciation differences, which the Primary Committee was satisfied to approve and



disregard Zakat Payer's Declaration, which determines that the Primary Committee's conclusion in upholding GAZT's Decision without any evidence supports making the Assessment on Zakat Payer by adjusting the depreciation ratios in the manner it had claimed, is incorrect; and since the appealed Decision was devoid of any statement of the Grounds on which GAZT based its viewpoint; and since there is no evidence preventing the calculation of depreciation differences as per Zakat Payer's Declaration for the year in question, as it is considered the basis for their calculation due to the absence of valid evidence to disregard Zakat Payer's Declaration; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Overstated Salary Differences), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested exclusion of the overstated salary difference from Zakat and Tax Base, as they represent part of the entitlements and benefits granted to employees during the year in question, while the GAZT argued that the overstated salaries were rejected as they are not subject to social insurance pursuant to Circular No. (02/8133) of 27/12/1401 AH and GOSI's Circular No. (05/01/12073) of 05/11/1421 AH.

The Department, having taken cognizance of documents included in Case file and the appealed Decision, found that, since Zakat Payer has provided all evidence proving the validity of those overstated salaries through contracts and a certificate issued by a certified public accountant; and since GAZT had no basis for rejecting part of the salaries and wages except certificate issued by GOSI; and since that certificate does not include all expenses related to employee services; and since GAZT did not examine Zakat Payer's documents nor did verify the amounts actually paid to employees, which determines that which GAZT's procedure is groundless of any fact or valid evidence; and since the aforementioned is not affected by GAZT's inferencing to Circular No. (02/8133) of 27/12/1401 AH, since that Circular relates to submission of the certificate required to settle salary insurance for each company or institution, and also to determine social insurance expenses, while it did not address determining the total salaries or wages and relevant benefits subject of dispute; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Cafeteria Expenses), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested deduction of the cafeteria expenses from Zakat and Tax Base, as they represent food expenses for employees that were paid in cash to specialized catering companies and restaurants, and also among services provided to employees according to Zakat Payer's policies, while the GAZT argued that these expenses should not be deducted from Zakat and Tax Base for absence of provision of any meals or benefits associated thereto included in the employment contracts of employees; thus, they are considered nondeductible expenses.

The Department, having taken cognizance of documents included in Case file and the appealed Decision, found that, since it is established that regular and necessary expenses from the Tax Base if they are proven as actual expenses supported by documents and necessary to carry out the activity; and since Zakat Payer has provided documents proving these claimed expenses represented by restaurant bills, checks, and payment receipts, which determines that these expenses are of deductible nature; and since the aforementioned is not affected by GAZT's claim of lack of inclusion of these expenses in employment contracts, as some minor expenses of employees do not necessarily be included in employment contracts, such as food expenses provided by companies to their employees, as it is customary for companies to bear such minor expenses in the business environment to save the time of their employees, which necessitates considering these regular expenses as deductible ones for the purposes of calculating Zakat and Tax Base; Therefore, the



Department satisfies to accept Zakat Payer's appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Other Expenses), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested deduction of these expenses from Zakat and Tax Base, as they represent fees for members of the audit committee and expenses related to employees' business trips, while GAZT argued that they should not be deducted from Zakat and Tax Base for lack of support by documents.

The Department, having taken cognizance of documents included in Case file and the appealed Decision, found that, since it is established that regular and necessary expenses from the Tax Base if they are proven as actual expenses supported by documents and related to carry out the activity; and since Zakat Payer has failed to submit documents proving these claimed expenses; and since the Primary Committee upheld GAZT in calculating a portion of these expenses supported by documents and rejected those who were not supported by documents; and since this Department may take the Grounds of the Decision in question without addition whenever it deems that these Grounds were sufficient to provide any further addition, as the appealed Decision was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary; and since the Department did not find any requirement for correction or further response in light of submissions presented thereto; Therefore, the Department satisfies to decide that the foregoing does not affect the Primary Committee's Decision as to conclusion it had in this regard, and by extension, to dismiss Zakat Payer's appeal and uphold the appealed Decision on the item in question.

As for Zakat Payer's appeal regarding item (Rents), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested deduction of all rent expenses from Zakat and Tax Base, as they represent actual expenses related to renting sites used by Zakat Payer, while GAZT argued that they should not be deducted from Zakat and Tax Base, as the rental contracts are not in Zakat Payer's name, and that contracts included the following provision: "Tenants may not sublet or waive the property or any part thereof."

The Department, having taken cognizance of documents included in Case file and the appealed Decision, found that, since the rental contracts submitted by Zakat Payer pertain to other related enterprises and not to Zakat Payer; and since these contracts explicitly prohibit tenants from subletting these properties, which determines that the rental expenses in question are not the responsibility of Zakat Payer; and since these expenses may be included in the accounts of those enterprises that rented these properties; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Investments), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested deduction of investments from Zakat and Tax Base for generating revenues that were subject to Zakat within Zakat Base and for which their Zakat was paid in the investee companies, and they represent acquisition investments, and that their classification in the financial statements was due to the application of "General Presentation and Disclosure Standard," while GAZT argued that they should not be deducted from Zakat Base, as they represent trading investments, which is confirmed by their classification in the financial statements within current assets and the existence of a sale activity during the year in question, and that the documents submitted indicate that they represent units in investment funds for the purpose of trading and short-term investments.

The Department, having taken cognizance of documents included in Case file and the appealed Decision, found that, since the appealed Decision stated: "Since the statement of financial position of Zakat Payer has shown that the investments were included in current

assets in the amount of (SAR 109,527,000),” and also stated: “Since Note No. (6) to the financial statements of 2009 submitted by Zakat Payer has shown that the investments were titled under the name of investments held for trading (Investment in Funds managed by Zakat Payer of “SAR 26,940,000” – Short-Term Investments of “SAR 82,587,000” with a Total Amount of “SAR 109,527,000”);” and since the Primary Committee, having reviewed the activity of investments held for trading, found that there was an activity during the fiscal year of 2009; and since the appealed Decision was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary; and since the Department did not find any requirement for correction or further response in light of submissions presented thereto; Therefore, the Department satisfies to decide that the foregoing does not affect the Primary Committee’s Decision as to conclusion it had in this regard, and by extension, to dismiss Zakat Payer’s appeal and uphold the appealed Decision on the item in question.

As for Zakat Payer’s appeal regarding item (Deferred Losses), which includes its objection to the Primary Committee’s Decision regarding the same, wherein Zakat Payer requested deduction of deferred losses from Zakat and Tax Base of 2009, in application of Circular No. (01/02/8443/02) of 08/08/1392 AH and Article (21) of Income Tax Law and Article (11) of its Implementing Regulations, while GAZT argued that they were adjusted from the accounts for the period ending 31/12/2008 AD to an adjusted profit; thus, there are no deferred losses to be deducted from Zakat Base.

The Department, having taken cognizance of documents included in Case file and the appealed Decision, found that, since it is established that the deferred losses are calculated according to Assessments made by GAZT; and since Zakat Payer stated that it had previously objected to the Zakat and Tax Assessment of 2008, and among the contested items that affected the adjusted net profit were the deferred losses, and that the deferred losses amounting to (SAR 30,302,000) were not yet final due to the absence of a final Decision on the validity of the amendments made by GAZT to Zakat and Tax Assessment of 2008; Therefore, the Department satisfies to bind the adjudication of the item in question with the conclusion reached in the final Decision issued on Zakat Payer’s objection to Zakat and Tax Assessment of 2008, whereby accepting its appeal on the item in question requires prior acceptance of its appeal on Zakat and Tax Assessment of 2008, and dismissing its appeal on the item in question requires prior dismissal of its appeal on Zakat and Tax Assessment of 2008.

Decision

First In Form:

Accept Zakat Payer’s (..... Company, C.R. No.) appeal against Decision No. (06/21) of 1436 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in form, for the Grounds stated herein.

Second: On Merits:

1. Accept Zakat Payer’s appeal on item (Depreciation Differences of 2009) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Accept Zakat Payer’s appeal on item (Overstated Salary Differences to Zakat and Tax Base of 2009) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Accept Zakat Payer’s appeal on item (Cafeteria Expenses of 2009) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Dismiss Zakat Payer’s appeal on item (Other Expenses) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
5. Dismiss Zakat Payer’s appeal on item (Rents) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



6. Dismiss Zakat Payer's appeal on item (Investments) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
7. Bind the adjudication of Zakat Payer's appeal on item (Deferred Losses) with the conclusion reached in the final Decision issued on Zakat Payer's objection to Zakat and Tax Assessment of 2008, whereby accepting its appeal on the item in question requires prior acceptance of its appeal on Zakat and Tax Assessment of 2008, and dismissing its appeal on the item in question requires prior dismissal of its appeal on Zakat and Tax Assessment of 2008.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-36)
Delivered in Appeal No.
(ZW-1707-2018)

Principle No. 200

Loans that have not passed a full lunar year (i.e., Hawl) and have not financed any fixed assets shall not be included in Zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Thursday, 19/08/1442 AH corresponding to 01/04/2021 AD, First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, met at its headquarters in Riyadh, to consider the appeal filed on 06/07/1437 AH by Company (.....), against the Decision of the Third Primary Zakat and Tax Objection Committee in Riyadh, No. (6) of 1437 AH, issued regarding Appeal No. (110/3) related to Company, filed by Appellant against Zakat, Tax, and Customs Authority (ZATCA). The primary Decision ruled as follows:

First: In Form:

Accepting Zakat payer's objection in form, according to the reasoning of the Decision.

Second: On Merits

1. Dispute over adding accrued vacation pay to Zakat base ended with ZATCA agreeing to Zakat payer's point of view.
2. Dismissing Zakat payer's objection to full end-of-term credit from short-term loans, according to the reasoning of the Decision.
3. Dispute between two parties over adding Zakat provision to Zakat base twice ended with ZATCA agreeing to Zakat payer's point of view.
4. Upholding Zakat payer's objection to not deducting the depreciation differences for previous years (starting from 2000) from Zakat base, according to the reasoning of the Decision.
5. Dismissing Zakat payer's objection to withholding tax on amounts paid as interconnection fees, according to the reasoning of the Decision.
6. Dismissing Zakat payer's objection to taxation of payments made to Emirates Data Clearing House, according to the reasoning of the Decision.
7. Regarding late penalties:
 - a. Dismissing Zakat payer's objection to imposing a late penalty on the withholding tax imposed on performance incentive paid to association for the year 2010 in the amount of (SAR 3,221,197), and for the year 2011 in the amount of (SAR 1,700,231), according to the reasoning of the Decision.
 - b. Dismissing Zakat payer's objection to imposing a late penalty on withholding tax imposed on interconnection fees and on the amounts paid to Data Clearing House, according to the reasoning of the Decision.

Since this Decision was not acceptable to Plaintiff (..... Company), it submitted an appeal to the Department, which included the following summary:

With regard to item (Adding short-term loans that have not passed full lunar year 'Hawl' to Zakat base", Zakat payer objects to Primary Committee's Decision to dismiss objection to adding entire end-of-term balance of the short-term loans to Zakat base. Zakat payer asserts that Primary Committee's Decision contradicts ZATCA's view before it, as Decision was based on the fact that the entire amount of the loan had passed a full lunar year (hawl), while ZATCA's view was based on the fact that only portion of the loan (SAR 376,632,000) had passed full lunar year (hawl). Zakat payer states that the contested Decision did not take into account Company's documented arguments proving that a full lunar year (hawl) has not passed for the opening balance. At the conclusion of its objection to this item, it requests that its view be upheld that the opening balance of (SAR 376,632,000) shall not be added to Zakat base, as it has not passed a full lunar year (hawl), in addition to dismissing primary Decision in this regard.

With regard to item (Imposing a withholding tax on interconnection fees paid to non-resident companies), Zakat payer objects to Primary Committee's upholding ZATCA Decision to impose a withholding tax on interconnection fees paid to non-resident companies. Zakat payer states that this interconnection is not subject to withholding tax, that none of the conditions and circumstances specified in Article (5) of Income Tax Law to consider income taxable on fees for using other countries' networks apply, and that Saudi taxability criterion does not apply to the disputed interconnection services, as they are not a service provided through a permanent establishment or provided within the Kingdom or other restrictions set forth in Income Tax Law. Company emphasizes that the service is performed entirely outside Saudi Arabia and consists of transferring calls to recipients outside the Kingdom. In addition, the amounts paid in this regard to foreign companies cannot be considered royalties, nor is it considered a technical service.

With regard to item (Imposing a withholding tax on payments made to Data Clearing House), Zakat payer objects to Primary Committee's Decision upholding ZATCA to impose a 15% withholding tax on payments made to Data Clearing House. Zakat payer states that these amounts are not subject to withholding tax, as the amounts paid to companies that are resident in countries with which the Kingdom has double taxation avoidance agreements in force are considered business profits that are not subject to tax in the absence of a permanent establishment in the Kingdom.

With regard to item (Imposing a withholding tax and late penalty on the performance incentive paid to Telecom Association), Zakat payer objects to Committee's Decision to dismiss their objection to this item. Zakat payer states that the services related to this item were performed entirely outside Saudi Arabia and therefore shall not be subject to tax.

With regard to item (Imposing a late penalty on the disputed withholding tax), Zakat payer objects to the Decision of Primary Committee in upholding the imposition of a late penalty on the unpaid tax difference due for previous items. Zakat payer argues that ZATCA should not have imposed a late penalty in the event of a technical dispute and a difference of opinion between Zakat payer and ZATCA, as the obligation here is the result of a difference of opinion.

Department decided to open the door for pleadings, and Zakat payer was notified on 30/03/1442 AH, corresponding to 15/11/2020 AD, to submit any additions to its appeal against the Decision under consideration, within the deadline granted by Department, or to be satisfied with what was submitted in the appeal memorandum. It is noteworthy that the specified period has passed without adding to what was stated in the appeal memorandum. The response of Zakat, Tax and Customs Authority (ZATCA) dated 29/06/1442 AH corresponding to 11/02/2021 AD, that with regard to item (adding short-term loans that have not passed a full lunar year (Hawl) to Zakat base), ZATCA responded

that there is no basis for Zakat payer's statement in its appeal that there are discrepancies in the terms of the Decision with ZATCA's action, as the entire value of fixed assets was deducted from the base, and in return, its financing source was added in addition to the opening balance that has passed a full lunar year (Hawl). It also refers to ZATCA's view contained in Primary Decision and its previous response on appeal. With regard to item (Withholding tax on interconnection fees paid to non-resident companies), ZATCA responded that these amounts were subject to withholding tax on interconnection fees, which represent international telecommunications services provided by non-resident international telecommunications companies in accordance with Article (5/A/68) of Income Tax Law, which stipulates that payments for international telecommunications services are subject to a 5% withholding tax.

With regard to items (withholding tax on payments made to the Data Clearing House), (withholding tax and late penalty on performance incentive), and (late penalty on withholding tax on interconnection fees and payments made to Emirates Data Clearing House). ZATCA responded that in order to prevent repetition, it refers to its previously filed response with previous Appellate Committee and the Decision of Primary Committee.

The Department, during its session held on 02/07/1442 AH corresponding to 14/02/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On the merits, with regard to Zakat payer's appeal regarding (adding short-term loans that have not passed a full lunar year 'hawl' to Zakat base), based on Department's examination of the appeal before it, it was found that Zakat payer objects to the Decision of Primary Committee, which upheld ZATCA action of adding short-term loans (SAR 599,350,000) to Zakat base in the year 2010. Whereas, Zakat payer believes that a full lunar year (hawl) has not passed on the entire amount. Therefore, Zakat payer's request is to deduct short-term loans that have not passed a full lunar year (hawl) from Zakat base. ZATCA is of the opinion that these loans should be subject to Zakat as they financed fixed assets and have passed the full lunar year (hawl). Based on Zakat payer's financial statements, Department established that Zakat payer paid the opening balance, and the entire closing balance for the year represents a loan obtained in the fourth quarter of the same year. Therefore, the condition of completing a full lunar year (Hawl) to impose Zakat on the opening balance has not been met, which is why Department considers that Zakat payer's appeal shall be accepted in its request not to add opening balance of the short-term loans (SAR 376,632,000) to Zakat base, and that the primary Decision shall be reversed.

With regard to Zakat payer's appeal regarding the item (Withholding tax on interconnection fees paid to non-resident companies), it was found that Zakat payer objects to the Decision of the Primary Committee to uphold ZATCA's action of imposing a withholding tax on interconnection fees paid to non-resident companies for using the networks of foreign telecom companies, based on Article (68) of Income Tax Law and Article (63/1) of its Implementing Regulations. Dispute lies in Appellant's request not to levy withholding tax on interconnection charges paid to non-resident companies based on the fact that service related to such charges was fully performed outside KSA and therefore not subject to withholding tax, while Appellee considers that these amounts should be



subject to a 5% withholding tax as an international telephone service. Since it is established that dispute lies in verification of income source in KSA. Article 6 of the Implementing Regulations of Income Tax Law provides that: “The following services shall be considered performed in the Kingdom ... If work required for a service is carried out, in full or in part, within the Kingdom even if the service is remotely performed. The physical presence of a service provider is not required”. Since the service is rental of external networks for international communication services to enable Company’s customers to enable customers to carry out external international communication through networks in the Kingdom, and therefore the income is verified from an activity carried out in the Kingdom through rental of external networks connected to networks within the Kingdom that provide a service within the Kingdom to Zakat Payer’s customers. Accordingly, use of external networks is linked to use of Zakat Payer’s own networks to provide telecommunications services originating in the Kingdom. Therefore, they shall be considered costs of international telephone communication services and a 5% withholding tax is imposed thereon. Since the appealed Decision is in accordance with valid Grounds on which it is based and is sufficient to support its ruling, as the committee that issued it examined source of dispute and reached conclusions in its wording. Since the Department did not observe any requirement for correction or further comment based the arguments raised, this Department concludes that the submissions made do not affect the outcome of the primary Decision regarding this item. Therefore, this Department, by a majority, dismisses Zakat Payer’s appeal on this item and upholds the primary Decision in respect of this item.

With regard to the item (Withholding Tax on Amounts Paid to Data Clearing House), it is evident that Zakat Payer objects to the Primary Committee Decision upholding ZATCA’s action in imposing a 15% withholding tax on amounts paid to ... Data Clearing House in return for data clearing expenses. Since ... Data Clearing House is affiliated with Telecommunications Corporation and owns 35% of capital of ... Emirates Company. In accordance with Article 5.A.7 of the Income Tax Law, “7. Amounts paid against services rendered by a resident company to the company’s head office or to an affiliate thereof”. Appellant’s request lies in not to impose withholding tax on amounts paid to Data Clearing House, because they are services that were fully performed outside the Kingdom and therefore are not subject to withholding tax in the Kingdom. However, ZATCA considers that these amounts should be subject to a 15% withholding tax as royalties paid to Communications Corporation. Since the Committee issuing the Decision based its Decision on the fact that House is an affiliated entity. Based on Grounds of appealed Decision, it was found that ownership percentage of ... House in ... Institution is 35%, and since ... Institution only owns 27,45% in (...) Company, and therefore it is not considered an affiliated entity according to provisions of Article 64 of the Income Tax Law. Moreover, ZATCA based its amendment to Zakat Payer’s declaration on the Grounds that these amounts represent a royalty without relying on a substantial basis. Since the Committee did not address in its Decision the reason for imposing the tax in principle, since the established rule is that tax is not due unless it is clear that the source of income is from the Kingdom, which ZATCA did not prove when imposing the tax. Since there was no reason to deviate from that established rule in the light of facts of verifying validity of Zakat Payer’s claim when considering the dispute. Therefore, the Department decides to accept Zakat Payer’s appeal and to overrule the primary Decision in its conclusion.

With regard to the item (Withholding Tax and Late Payment Fine on Performance Incentive), it was found that Zakat Payer objects to the Primary Committee Decision dismissing his objection to this item based on Article 77.A of the Income Tax Law and Article 1.68.A of the Implementing Regulations thereof. Zakat Payer’s request lies in not to impose late payment fine on withholding tax on performance incentive paid to Telecommunications Corporation for 2009. Zakat Payer indicated in his appeal that he had



already appealed this item in his appeal submitted before Appeal Committee against Decision of the Primary Zakat and Tax Objection Committee with regard to tax zakat assessment of 2009. The Department perused the aforementioned Decision and found that it was Decision (1886) of 1439 AH, which ruled to dismiss Zakat Payer's appeal regarding his request not to impose a withholding tax on amounts paid to the ... Telecommunications Corporation. Since fine, whether existing or not, is related to acceptance or rejection of the item relating thereto, the Department concludes to dismiss Zakat Payer's appeal, uphold the primary Decision concluded with regard to disputed fines, and amend the Decision regarding the date of calculating late fine to be calculated from the date Zakat Payer's is notified of assessment until the date of payment, as Zakat Payer's knowledge of due tax is realized on that date.

With regard to Zakat Payer's appeal against the item (Late Fine on Contested Withholding Tax), it was found that Zakat Payer objects to the Primary Committee Decision upholding ZATCA's action in imposing a fine on tax difference payable arising from the items on which Appellee was upheld. Zakat Payer's request lies in not to impose a late fine on contested withholding tax due to a difference in viewpoints. However, Appellee believes that a late fine should be imposed on the unpaid tax in accordance with the Law. The Department has established from facts of the Case and content of the Decision under appeal that the dispute between Appellant and Appellee in tax items is a dispute arising from a difference in interpretation of legal texts, which does not make it clear to Zakat Payer the true tax due from him until a final Decision is issued in the disputed items. Therefore, the Department, by a majority, Chamber considers it valid to impose a late fine on Zakat Payer in the items on which the appeal was dismissed as of the date of this Department's Decision issuance. On that date, Zakat Payer becomes aware of tax due thereon. Therefore, the Department unanimously decided to cancel imposition of fines on the items for which he has upheld, as they are canceled with cancelation of its origin.

Decision

First: Accept the appeal in form filed by Zakat Payer/.... Company, C.R No. .(....) against the Third Primary Committee for Zakat and Tax Objections in Riyadh Decision.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item (Addition of Short-Term Loans that Have not Completed a Full Year to Zakat Base), in his request not to add the opening balance of short-term loans in the amount of SAR (376,632,000) to zakat base, and to overturn the primary Decision in this regard, in accordance with Grounds and reasons set forth in this Decision.
2. Dismiss Zakat Payer's appeal regarding the item (Withholding Tax on Interconnection Expenses Paid to Non-Resident Companies), and uphold the primary Decision in this regard, in accordance with Grounds and reasons set forth in this Decision.
3. Accept Zakat Payer's regarding the item (Withholding Tax on Amounts Paid to Data Clearing House), and overturn the primary Decision on this matter, in accordance with Grounds and reasons set forth in this Decision.
4. Dismiss Zakat Payer's appeal regarding the item (Withholding Tax and Late Fine on Performance Incentive), uphold the primary Decision in this regard, while amending the Decision regarding late fine so that the fine is calculated from the date Zakat Payer is notified of assessment until the date of payment, in accordance with Grounds and reasons set forth in this Decision.
5. Accept Zakat Payer's appeal regarding the item (Late Fine on Contested Withholding Tax), with the Department deciding by majority validity of late fine imposed on Zakat Payer in the items on which the appeal was dismissed from the date of issuance of the Department's Decision, and unanimously decided to cancel imposition of fines on



items for which it was upheld, in accordance with Grounds and reasons set forth in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-66)
Delivered in Appeal No. (Z-1708-2018)

Principle No. 201

Legal obligation to pay zakat is linked to Zakat Payer's retention of money until the end of lunar year. The system allowing Zakat Payers to select the fiscal year based on the Gregorian calendar year is an extension to arrange and control the accounting matters of their activities, without affecting the obligation to pay zakat when its legal requirement is met.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 28/01/1442 AH corresponding to 16/09/2020 AD, First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH based on Article 67.B of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh, to consider appeal filed on 03/05/1436 AH corresponding to 22/02/2015 AD by / Group Company, on Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh No. (7) of 1437 AH, issued in Objection No. (307), filed by the Appellant against ZATCA, in which the primary Decision ruled as follows:

First: Accept the objection, in form, filed by Company ... to raise a revised zakat assessment for the years 2005 and 2006 and amended zakat assessment for the years 2007 and 2008, in accordance with Grounds of the Decision.

Second: On Merits:

1. Uphold ZATCA's action to raise a revised zakat assessment for the years 2005 and 2006, in accordance with Grounds of the Decision.
2. Uphold ZATCA's action in not responding to Zakat Payer's request to deduct the additional investment from his zakat base for the years 2005 to 2008, in accordance with Grounds of the Decision.
3. Uphold ZATCA's action in adding dividends amounting to SAR (10,000,000), which completed a full lunar year to zakat base, in accordance with Grounds of the Decision.

Dissatisfied with this Decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

1. The item of raising a revised zakat assessment of the Company for the years 2005 and 2006, since Zakat Payer Company considers that the Committee' reliance, when it upheld raising a revised zakat assessment of the Company, on what was stated in Ministerial Resolution No. (2555) dated 19/01/1417 AH, was not a correct reliance, given that raising a revised assessment five years after the final notification of assessment was accepted by ZATCA, only occurs when there was an error in application of legal texts or instructions or when there are accounting errors resulting



from non-application of recognized assets and accounting principles, and that ZATCA did not take into account entirety of that ministerial Decision, as raising a revised assessment was based on ZATCA's deviation from contents of Zakat Payer's declaration regarding calculating additional investments in the investee companies, and not accepting exclusion of their amounts from the investing company's base in the amount that was paid as investments in the companies in which those funds were paid and recorded in the partners' current account in those companies, as this was the procedure followed by ZATCA before it deviated from this procedure, even though ZATCA's circular No. (1733/9) dated 28/03/1426 AH, was explicit in adopting this method when dealing with amounts of investments recorded in the current account of creditor partners in the investee companies on which ZATCA's assessment is carried out. Therefore, raising a revised assessment and the case stated is not justified after those funds are no longer in the Company's liability and transferred to the investee companies, whose zakat declaration includes calculation of those amounts recorded in the partners' current account, which will result in zakat being doubled, if ZATCA does not deduct amounts of those additional investments from Appellant Company's base. Furthermore, third paragraph of the aforementioned ministerial resolution stated that ZATCA has no right to raise the final assessment in cases not governed by specific legal rules and instructions after ZATCA has conducted analysis and inquiry before conducting the final assessment, which is what ZATCA did. Accordingly, it concludes that there is no data or information that ZATCA did not have at the date of assessment, so it is not valid that ZATCA raise a revised assessment for the years 2005 and 2006, as previously indicated.

2. The item of Zakat Payer's additional investment balance from 2005 to 2008, since Zakat Payer's appeal lies in his objection to the Committee's upholding of ZATCA's action in not deducting Zakat Payer's additional investment balance in my (...) and (...) companies, since Zakat Payer deems it valid to deduct the same from his zakat base, given that amounts of those investments are included in partners' current account in the investee companies, so those amounts are calculated within the zakat base of those companies. Therefore, investment amount paid by the investing company is not calculated in order to avoid zakat duplication, especially since amounts paid for such investments are no longer in the Company's financial liability, even if articles of association of those companies have not been amended to match the amount of that investment, as long as amounts of such investments are included in the base of investee companies that submit their declarations to ZATCA, and this is in accordance with ZATCA's Circular No. (1733/9) dated 28/03/1426 AH, which is also in conformity with accounting standards, which consider such contributions provided from owners as additional capital that shall be considered as such the capital without being considered as loans to be repaid by the receiving company. The purpose of paying those amounts is long-term investment, which the company retains for many years, and it is considered as acquisition assets to be deducted from zakat base of the investing company. This treatment is consistent with Sharia view of not imposing zakat twice on the same money in the same year.
3. The item of dividends for 2008, Zakat Payer's appeal lies in his objection to the primary Decision upholding ZATCA's action in adding dividends amounting to SAR 10,000,000 to zakat base for the year ending on 31/12/2008. The Decision was made to take into account the lunar year, despite the fact that Sharia Zakat Law applicable in the Kingdom did not provide for refusal to deduct dividends to partners if they were distributed at the end of the fiscal year of the Company, because the lesson is that those funds have become at the disposal of partners and that the Company is prohibited from withdrawing and disposing thereof, until distributions are deducted on the last days of fiscal year, because they are no longer in the Company's financial



liability before the end of that year. In addition, certain items that appear in the Company's accounts cannot be selected and apply lunar year thereto without others, because the Company's adoption of Gregorian year as the basis for measurement of its operations and accounting results requires considering the Gregorian year as the basis for its accounting. Therefore, issuance of such distributions at the end of the Company's fiscal year requires that the amounts of such distributions should not be calculated within the Company's zakat base.

Since the Department requested ZATCA to submit a response to the Appellant's memorandum related to the contested items, which included ZATCA's confirmation in its response of its point of view presented before the Primary Committee, when considering the objection of Zakat Payer Company. ZATCA requested upholding the appealed Decision, confirming the validity and soundness of its actions, given that issues raised by Zakat Payer Company did not differ from those previously articulated during review of its objection before the Primary Committee, to which ZATCA had already responded at that time.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On Merits, having taken cognizance of Case file, documents included therein and statement of appeal, and upon considering all of Appellant's arguments regarding the contested items, the Department addressed it as follows:

1. The item of raising a revised zakat assessment of the Company for the years 2005 and 2006, having considered entire contents of Appellant's protest against raising a revised assessment for the two years in dispute, having considered the primary Decision and ZATCA's position regarding raising a revised assessment, and the Committee's upholding of ZATCA action regarding raising a revised assessment, the basis for raising a revised assessment is based on rules contained in regulations and instructions for approving raising a revised assessment. Since document of raising a revised assessment was Ministerial Decision No. (2555) of 19/01/1417 H, since it was established that more than five years had passed after Zakat Payer was notified of the final assessment letters after ZATCA had inquired and investigated some of the issues related to the items included in that declaration. Since the Department did not find any reasons that led to ZATCA's discovery of information or data that was not known thereto when examining Zakat Payer's declarations and after notifying him of the final assessment, but rather ZATCA's approach was based on its departure from its previous approach of not adding the amounts of additional investments to zakat base of Zakat Payers if their amounts were added to zakat base of the investee companies. Since this approach was not due to violations to legal instructions and specific rules, but was in violation of ZATCA's aforementioned approach, as it considers through the amended assessment after its opening that amounts of those investments should be added to zakat base of Zakat Payer Company. This approach does not mean that there is a legal violation requiring a revised assessment, and there was nothing to prove that Zakat Payer Company had departed from commitment to accounting standards to prove those investments as unrestricted property rights within the ownership of original capital. Since the Department did not notice any legal violation in calculating



- zakat in the manner stated in declaration of Zakat Payer Company, ZATCA's action to raise a revised assessment in the aforementioned case is not justified. Therefore, the Department decided to uphold the Appellant by accepting his objection to ZATCA's approach in raising a revised assessment for the years 2005 and 2006, and keep zakat obligations of Zakat Payer as stated in zakat statement prior to the amended assessment resulting from raising a revised assessment that was decided to be invalid.
2. The item of Zakat Payer's additional investment balance for the years 2005 to 2008. Having considered entire content of Appellant's protest and ZATCA's position in the primary Decision on this item, since the Department decided that ZATCA's action regarding raising a revised assessment for 2005 and 2006 as detailed in the discussion of item one of this Decision is invalid, and having examined Grounds for appeal and ZATCA's objection as set forth in the primary Decision under appeal, the Department shall conclude that the appeal is concerned with those additional investments for the years 2007-2008, and the dispute between Appellant and ZATCA is concerned with deducting or adding them to zakat base of Zakat Payer Company. Since amounts paid by Zakat Payer Company as an additional investment in (...) and (...) Companies have been recognized in partners' current accounts of the two investee companies. Since additional investment is considered as contributions by owners to finance participation in the investee company, which requires it to be considered an investment when calculating zakat base of the company that provided those funds, it is not included in its base, but rather funds paid are calculated within zakat base of the investee companies that submit their zakat declarations to ZATCA, which is in accordance with ZATCA's instructions as contained in its Circular No. (1733/9) dated 28/03/1426 AH. This does not diminish necessity for this increase to be recorded in the capital by following the methods legally required to record and document this increase if the essence of operation represents a real investment that is consistent with what is required by the reality of commercial and investment work, supported by the accounting standards as an investment linked to property rights of the Company's owners when financing such a long-term investment. Such approach to consider such additional investment as the amount to be deducted from zakat base of Zakat Payer Company cannot be refuted by ZATCA's adoption thereof, as it was supported by the Primary Committee, considering such amounts as a debt or loan to be calculated within the zakat base of Zakat Payer Company, since the reality of such long-term investment cannot be considered as a loan payable to the investee companies, especially since ZATCA did not provide any documents proving that these amounts are considered debts and loans arising from commercial transactions, and there was no evidence of any payments made or scheduled for repayment. Accordingly, the Department decided to consider amounts of Zakat Payer Company's investments in the two investee companies a deductible investment when calculating Zakat Payer Company's zakat base for the disputed years. Therefore, it was decided to accept Zakat Payer's appeal and overturn the primary Decision regarding this item.
 3. The item of dividends of 2008, having considered the Appellant's objection to this item as stated above; and since the primary Decision confirmed that the dividends amounting to SAR 10,000,000 are added to the Zakat Payer's zakat base for the year 2008 AD; and since the primary Decision has given sufficient response to the Appellant's arguments, whereby it attempted to challenge the committee's Decision to adopt the lunar year for charging zakat on the money held in possession of the zakat payer for a full lunar year; and since this the Department has no comment or adjustment to the conclusion reached by the primary committee in light of the defenses submitted by the Appellant that don't bring anything new beyond the arguments raised before the primary committee. This conclusion also is not affected by the Appellant's attempting to challenge the Authority's approach -which is upheld by the primary



committee- that there is unjustified selectivity in adopting the Gregorian calendar for fiscal years when preparing the financial statements for the Zakat Payer's fiscal year, and measuring and recording the financial events that occurred during it and on the other hand adopting the lunar calendar for charging zakat, because the legal obligation of zakat is contingent upon the zakatable funds being held in the zakat payer for a full lunar year while allowing zakat payers to adopt Gregorian calendar for fiscal years aims at facilitating their financial and accounting work without having any effect on the obligation to pay Zakat when falls due. Accordingly, this Department decides to dismiss the Zakat Payer's appeal regarding this item, and to uphold the primary Decision in respect of this matter.

Decision

First: Accept in form the Appeal filed by Zakat Payer/.... Company, (.... LTD. Company, Currently), C.R No. (...), against Decision No. (7) of 1436 AH, issued by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item of raising a revised zakat assessment of the Company's for the years 2005 and 2006, and overturn the primary Decision to raise a revised zakat assessment for the two years in dispute, in accordance with reasons and Grounds set forth in this Decision.
2. With regard to the item of Zakat Payer's additional investment balance for the period from 2005 to 2008:
 - a. Accept Zakat Payer's appeal with respect to the item of Zakat Payer's additional investment balance for 2005 and 2006, due to not raising revised zakat assessments for those years, as stipulated in Item (1) of this Decision, and overturn the primary Decision in this regard, in accordance with reasons and Grounds set forth in this Decision.
 - b. Accept Zakat Payer's appeal with respect to the item of Zakat Payer's additional investment balance for 2007 and 2008, and overturn the primary Decision in this regard and decide not to calculate it within his zakat base, in accordance with reasons and Grounds set forth in this Decision.
3. Dismiss Zakat Payer's appeal concerning the item of dividends of 2008, and uphold the primary Decision concluded in this regard, in accordance with reasons and Grounds set forth in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-68)
Delivered in Appeal No. (Z-1711-2018)

Principle No. 202

The established rule is to calculate depreciation differences based on Zakat Payer's zakat declaration because of the lack of valid evidence and correct proof for conversion to something other than what is stated in Zakat Payer's zakat declaration.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Wednesday, 28/01/1442 AH corresponding to 16/09/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened in Riyadh to consider the appeal filed on 12/03/1437 AH, corresponding to 23/12/2015 AD, by ... Company, against the Second Primary Zakat and Tax Objection Committee in Dammam Decision No. (28) of 1436 AH delivered by in Case No.(7) filed by Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary Decision ruled as follows:

First: Accept the objection in form filed by Company to ZATCA zakat assessment for years from 2008 to 2009.

Second: On Merits:

1. Uphold ZATCA in calculating depreciation differences for 2008 and 2009.
2. Uphold ZATCA in calculating the net residual value of fixed assets for the years 2008 and 2009.

Dissatisfied with this Decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

1. The item of calculating depreciation difference for the years 2008 and 2009, since Zakat Payer objects to ZATCA's action regarding deduction of depreciation differences in the amount of SAR (2,711,206) and SAR (1,888,472) from the net profit for the years 2008 and 2009, respectively. ZATCA did not explain how these amounts were achieved and that the amounts to be deducted from the net profit are as shown in table (4) (depreciation), and certified financial statements for the years 2008 and 2009 amounting to SAR (3,709,053) and SAR (3,023,316), for the two years respectively. Therefore, it is necessary to take amounts shown in zakat declaration because the primary Decision that stated that dispute resulted from difference in classification of fixed assets and what is related to their additions and deductions between different groups according to statement and percentages of depreciation specified in accordance with ZATCA instructions. Moreover, Appellant included, within notes in his financial statements, alleged notes to strengthen his position, as contained in those notes regarding fixed assets included in the certified financial statements, which confirms the



presence of an error in calculating depreciation differences by ZATCA, and thus failure to properly calculate legal zakat.

2. The item of calculating the net residual value of fixed assets for the years 2008 and 2009, since Zakat Payer objects that ZATCA has deducted the residual value of fixed assets in the amount of SAR (103,796,838) and SAR (108,357,277) for the years 2008 and 2009 respectively from zakat base. In fact, amount supposed to be deducted is SAR (120,932,766), and SAR (123,130,1533) respectively, as stated in financial statements and depreciation tables, as the Company does not agree with ZATCA in the method of calculating fixed assets deducted from zakat base according to equation and method adopted by ZATCA in this regard, because the Company's accumulated profits that are added to its zakat base are according to the Company's accounting records after calculating book depreciation, because any adjustments to book value of the fixed assets affect the debit side of zakat base and also lead to an unreal increase in the creditor side of that base. This leads to calculation of zakat in excess of amount due to the Company, which means reviewing equation of the fixed assets by calculating the net assets for the purpose of zakat, as was the case with the previous method applied by ZATCA to achieve fairness in calculation of legal zakat.

Since the Department requested ZATCA to respond to statement of the Appellant regarding the item subject to the objection within (10) days from the date of submitting that application to ZATCA, which was signed on 07/09/1441 AH, corresponding to 30/04/2020 AD. Since the Department did not receive a response from ZATCA regarding what was requested thereof to respond to what was included in Zakat Payer Company's statement of appeal of reasons for the appeal regarding the item that Zakat Payer objects to ZATCA's assessment in their regard, after expiry of the period granted thereto, without explanation of delay, given that the appeal conveys the case to its initial state upon consideration at the time of the appeal, this would entail reliance on statements and responses received from ZATCA on the primary Decision on items under consideration.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, having reviewed the Case file, its contents, and the statement of appeal, and upon considering all of the Appellant's arguments, the following is evident:

With regard to the first item (Depreciation Differences for 2008 and 2009): It is clear from the content of Zakat Payer's protest that he requests to rely on information contained in his declaration or to be provided with ZATCA's depreciation calculation statements in order to identify these differences. Since what the committee issuing the Decision did is to compare the scheduled depreciation differences with what ZATCA claims to be according to the law and to compare the same with contents of the financial statements. However, the committee issuing the Decision did not ask ZATCA to indicate the basis on which those differences occurred between what Zakat Payer submitted in its declaration and what ZATCA claims to be the correct method applied under the law for calculating depreciation differences thereon, without the Decision detailing the method by which ZATCA determined calculation of depreciation differences on Zakat Payer, which the Committee was convinced to adopt and deviate from what contents of Zakat Payer's declaration. Therefore, reasoning of the Department for its Decision on this item concluded by upholding ZATCA's position by emphasizing that Zakat Payer did not submit evidence that ZATCA had miscalculated depreciation differences for the two years in dispute, is a reversal of the burden of proof, while ZATCA should have provided evidence of Zakat



Payer's error in calculating depreciation differences based on his zakat declaration and countered that error with what would support ZATCA in carrying out the assessment on Zakat Payer by adjusting depreciation rates in the manner that ZATCA claims is the method consistent with the law. In addition, the primary Decision was devoid of statement supporting ZATCA's point of view, and the primary Decision was satisfied with merely presenting the tables between calculation of depreciation differences from the Appellant's point of view, and what ZATCA considers as calculating the amounts of depreciation differences without stating the alleged basis for the validity of ZATCA's method in determining depreciation differences subject to the dispute. The Department concluded that there is nothing to reverse submission made by the Appellant Company in its zakat declarations regarding calculation of depreciation differences for the two years in dispute, since that is the basis for its calculation due to the lack of valid evidence and correct proof for shift to something other than what was stated in Zakat Payer's zakat declaration. Therefore, the Department, with regard to this item, concluded to accept Zakat Payer's appeal by calculating depreciation differences for 2008 and 2009 based on his declaration, and to overturn the primary Decision concluded with regard to this item.

With regard to Zakat Payer's appeal on the second item (Net Value of Fixed Assets of 2008 and 2009): It is clear from the content of Zakat Payer's protest that he requests to deduct the amount of SAR (120,932,766) and SAR (123,130,153) for two years, respectively, as contained in the financial statements and depreciation tables prepared by him, according to reasons indicated in the manner previously stated in this Decision. Since ZATCA's point of view regarding objection to this item is based on its association with the preceding item, since that result was achieved by following the same rule according to which depreciation differences were calculated in accordance with ZATCA's Circulars Nos. (2574/9) dated 14/05/1426 AH, (1427/9) dated 24/03/1427 AH, and that content of those circulars for calculating value of assets deducted from zakat base was accepted by Zakat Payer and no objection was raised, and they are the same as those applicable to all Zakat Payers. Zakat Payer indicated that the content of those circulars would not apply to zakat assessments unless zakat assessment does not 100% apply to Zakat Payer, i.e. when the assessment is zakat and tax on Zakat Payer, because the Minister of Finance had approved application of certain provisions and accounting rules contained in the Tax Law to Zakat Payer, in order to unify procedures, including Article 17 on the method of calculating depreciation, which was confirmed by the aforementioned circular of ZATCA no. (2574/914) dated 14/05/1426 AH. Since it is obtained from ZATCA's Circular No. (3299/16/434) dated 26/05/1436 AH, that it allows companies to follow depreciation rules that were applicable before issuance of Circular No. (2574/9) dated 14/05/1426 AH, which are based on straight line method, taking into account use of groups and depreciation rates specified in Article (17) of the Tax Law. Accordingly, provisions of Article 17 of the Tax Law do not apply to determination of fixed assets' value, which means that ZATCA is not accurate in applying provisions of the Tax Law contained in Article 17 thereof to Zakat Payers, in the light of ZATCA's failure to provide what it sees as a proper orientation for its position, in the light of set of Decisions and circulars issued after two circulars it included confirming soundness of its position in calculating amount of assets deduction to reach their net value when calculated in zakat base of Zakat Payer for the years 2008 and 2009. Therefore, ZATCA did not submit what would reassure the Department's conviction to deviate from contents of Zakat Payer's declarations in addition to taking them in account in order to clarify to the Department validity of ZATCA's request to calculate amounts of the net remaining value of fixed assets when amending the assessment contrary to contents of Zakat Payer's declarations. Accordingly, the Department concluded to uphold Zakat Payer's point of view regarding taking contents of his declarations into account regarding this contested item, and to overturn the primary Decision concluded in this regard.



Decision

First: Accept the appeal in form filed by Zakat Payer (... Company) against Primary Committee for Zakat and Tax Objections in Dammam Decision No. (28) of 1436 AH.

Second: On Merits:

1. Accept appeal filed by Zakat Payer regarding the item of depreciation differences of 2008 and 2009, and overturn the primary Decision in this is regard, according to reasons and Grounds stated herein.
2. Accept appeal filed by Zakat Payer regarding the item of net fixed assets of 2008 and 2009, treat that item according to Zakat Payer's declaration when assessing it, and overturn the primary Decision in this is regard, according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-125)

Delivered in Appeal No. (Z-1712-2018)

Principle No. 203

Proper sequence of zakat treatment associated with the fixed assets item, establishment expenses, and depreciation differences are related to each other.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Saturday, 13/04/1442 AD Corresponding to 28/11/2020 AD, First Appellate Department for Income Tax Violations and Disputes, formed under Royal Decree No. (65474) dated 23/12/1439 AH, in accordance with Article 67.B of Income Tax Law, promulgated under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended under Royal Decree No. (M/113) dated 02/11/1438 AH, met at its headquarters in Riyadh, to consider appeal submitted on 15/04/1437 AH, by Company, and, against Decision No. (5) of 1437 AH of the Second Primary Committee for Zakat and Tax Objections issued in objection No. (59) and (266) filed by the Appellant against ZATCA. The primary Decision ruled as follows:

First: Dismiss the objection in form submitted by Zakat Payer/... Company, and, to the Zakat assessment made by ZATCA for the years from 2001 to 2008.

Second: On Merits:

1. Uphold ZATCA in not responding to Zakat Payer's request to deduct the value of machinery and equipment from his zakat base for the years subject to objection, according to Grounds of the Decision.
2. Uphold ZATCA in not accepting workers' salaries for the period before the beginning of activity as a deductible expense from Zakat Payer's zakat base, according to Grounds of the Decision.
3. ZATCA shall recalculate depreciation for subsequent years to take into account the difference of 2001, according to Grounds of the Decision.
4. Uphold ZATCA in not accepting car expenses as deductible expenses from Zakat Payer's zakat base for the years 2001 to 2004, according to Grounds of the Decision.
5. Uphold ZATCA in not accepting computer expenses as a deductible expense from Zakat Payer's zakat base of 2001, according to Grounds of the Decision.
6. Given that ZATCA accepted Zakat Payer's point of view on currency differences, the dispute between the Parties no longer existed on this item.
7. Given that ZATCA accepted Zakat Payer's point of view on miscellaneous expense item, the dispute between the Parties no longer existed on this item.
8. Uphold ZATCA in not accepting worker's salary (..... Salary) as a deductible expense from Zakat Payer's zakat and tax base for the years 2001 to 2006, according to Decision's reasoning.



9. Uphold ZATCA's Decision to consider the import difference as undeclared imports in Zakat Payer's return, and subsequently assess Zakat Payer on this difference for all years, according to Decision's reasoning.
10. Uphold ZATCA in adding accounts payable to Zakat Payer's zakat base for the years 2005 to 2008, according to Grounds of the Decision.
11. Uphold ZATCA in adding zakat provision to Zakat Payer's zakat base for the years 2002, 2006 and 2007, according to Grounds of the Decision.

Since some of items of this Decision was not accepted by (... Company, and ...), they submitted an Appeal to the Department, which included the following summary:

1. (The Item of Depreciation Difference Amounting to SAR 2,734,652): In its Decision, the Committee upheld ZATCA in adding depreciation differences to zakat base for all years from 2001 to 2008, as the total differences amounted to SAR (2,734,652). The Company objects to this procedure, because the factory calculated depreciation in accordance with the recognized accounting principles, and that this depreciation relates to depreciation of machines which ZATCA excluded from the fixed assets, bearing in mind that these assets are the factory in fact. If ZATCA excluded the same, it would be as if the factory had become completely non-existent. The Company requests not to add these differences, and therefore to cancel the resulting zakat and tax differences.
2. (The Item of Car Expenses Amounting to SAR 28,497): The committee issuing the Decision upheld ZATCA in its refusal to accept this item, on the Grounds that the Company's assets do not include cars. In fact, these are actual expenses, which are supported by supporting documents and not of a capital nature. Reality of the Company's work is industrial activity and nature of factories' work necessitates the presence of cars, whether for sales and marketing representatives or employees. Furthermore, the Tax Law supports deduction of these expenses from zakat and tax base, in accordance with Articles 12 and 13 of the Law and Article 13 of its Implementing Regulations, since these expenses are related to achieving income, and not from expenses that cannot be deducted as mentioned in the above articles.
3. (The Item of Computer Expenses Amounting to SAR 1,175): The Committee upheld ZATCA in not accepting this item, on the Grounds that the Company's assets do not contain computers. The Company objects to this procedure, as they are actual expenses incurred that are necessary for the activity and supported by supporting documents and not of a capital nature. Moreover, since its establishment, the Company has been committed to submitting financial statements to ZATCA, which are outputs from the accounting system. Furthermore, the Tax Law uphold deduction of these expenses from zakat and tax base, in accordance with Articles 12 and 13 of the Law and Article 13 of the Implementing Regulations, since these expenses are related to achieving income, and not from expenses that cannot be deducted as mentioned in the above articles.
4. (The Item of Imbalat Salary (nicknamed ...)): The Committee upheld ZATCA in its refusal to accept Imbalat salaries, nicknamed ... To zakat and tax base for the years 2001 to 2006, considering that the employee is not sponsored by the Company. However, the Company maintains its previous arguments, as the aforementioned employee is sponsored by the Company and works for it. The company has previously attached a copy of his residence issued from Jeddah Passports no. (...), which indicates that his legal sponsor (employer) is Company, and Saudi Kabrari. Therefore, it is not legally correct to add his salary to zakat base as such a procedure and the case mentioned is irregular.
5. (The Item of Import Differences and Import Differences Profits Amounting to SAR 6,229,063): The committee issuing the Decision upheld ZATCA's procedure regarding this item, on the Grounds that the Company had previously stated in its declarations



on internal and external purchases. This was confirmed by the Company in its previous memorandum, as follows: In some years, internal purchases were inadvertently declared. This is an inadvertent mistake that will be corrected, as long as there is evidence to prove it. Moreover, in some years, classification was not accurate for internal and external purchases, as there was an overlap in numbers, but in the end the total amount of purchases remains true and identical to books. Therefore, purchase differences and purchase difference profits added by ZATCA to zakat and tax base are incorrect.

6. (The Item of Accounts payable Amounting to SAR 2,376): The committee issuing the Decision upheld ZATCA in subjecting it to this item by adding the same to Zakat Payer's base. The Company maintains its point of view on this item, as it represents current trade receivables that have not yet passed a year. Therefore, it is not included in zakat base, and the Company requests not to add it to zakat base and to cancel the resulting zakat differences.
7. (The Item of Zakat Due Amounting to SAR (34,906): The committee that issued the Decision upheld GAZT's inclusion of the zakat payable for the year 2002, and the years 2006 and 2007, in zakat base. The Company objects to this procedure, arguing that zakat is not obligatory on zakat funds even if they have been held for a year, and therefore, adding it to zakat base is contrary to Islamic law. Furthermore, year's profit has already been subject to zakat and tax before deduction, so adding zakat to the base again results in duplication of zakat.
8. (The Item of Fixed Assets Amount to SAR (24,323,370): The committee issuing the Decision upheld ZATCA in not deducting the full amount of fixed assets due to its exclusion of machines and equipment from fixed assets, on the Grounds that in-kind share did not include those assets, as the value of machines amounted to SAR (4,010,000), and they were excluded from zakat base, in addition to their depreciation for all years, resulting in a cumulative effect of the excluded assets amounting to SAR (24,323,370). The Company objects to this action, as these machines are factory-owned assets acquired during 2001. Invoices issued by Corporation have already been submitted for supply of such machines to the Company with full details of each machine. Accordingly, there is no statutory basis for upholding ZATCA derecognition of such machines, given that they are the only machines utilized in production, as no factory can operate without machines. In addition, ZATCA added the corresponding financing for such machines, outlined in the shareholders' equity, to zakat base, which requires their deduction from zakat base in accordance with the applicable law, which mandates deducting acquisition assets from zakat base, as they are not subject to zakat according to Sharia.
9. (Incorporation Expenses Amounting to SAR 1,473,637) Item: The Primary Committee upheld ZATCA approach outlined in disallowing certain incorporation expenses, specifically salaries for some employees during the period preceding the start of business activity. The contested assessment indicated that such expenses were duplicated within general and administrative expenses. In addition, the Company objects to this procedure, arguing that ZATCA conclusion is invalid. In addition, the incorporation expenses are considered intangible assets and should be deducted from zakat base according to the regulations applicable by ZATCA in this regard.
10. Moreover, ZATCA answer to Zakat Payer's statement of appeal dated 02/08/1439 AH that included ZATCA stance on appeal items was as follows:
11. (Depreciation Variances for all Years) Item: ZATCA asserts that such variances ensue from derecognition of equipment and incorporation expenses, given the lack of evidence on the existence of equipment and machinery in the first place. In addition, the reason for derecognition of such assets will be elaborated when addressing (Eight) and (Nine) of ZATCA memorandum.



12. (Vehicle Expenses for Years from 2001 to 2004) Item: ZATCA states that this item is not recognized due the fact that there are no vehicles among Company's assets, as noted in the first item and as will be further addressed in relation to (Eight) and (Nine) of this memorandum.
13. (Computer Expenses for 2001) Item: ZATCA did not recognized this item due to the fact there are not computers within fixed assets.
14. (Salary of Ambalat ..., known as (...), for Years from 2001 to 2006) Item: ZATCA states that the employee is not under Company's sponsorship, and the name stated in the payroll is ..., rather than Ambalat. The name listed in the payroll should be that of the employee, rather than his title. In addition, employee's name provided by the Company is not listed in passport printout attached to the file, nor in residency document submitted in its version No. (3), which expires on 30/12/1434 AH. This indicates that version No. (1), which outlines the first issuance of residency permit, was in 1431 AH corresponding to 2010 AD, and the employee had no relationship with the Company during the previous years from 2001 to 2008.
15. (Import Variance for all Years) Item: ZATCA states that the declarations specify the value of purchases from inside the Kingdom and the value of purchases from abroad. In addition, such declarations are signed and certified by Company's auditor, which means that such declarations were audited before certification. Accordingly, ZATCA procedure in holding Zakat Payer accountable for import variances ensuing from the review and comparison is valid.
16. (Accounts Payable for Years from 2005 to 2008) Item: ZATCA states that such amounts related to this item are fixed and show no movement according to the analyses provided by the Company, as indicated for 2005 and 2006, noting that the amounts listed in the assessment are SAR 950 and SAR 250, rather than SAR 484, SAR 836 and SAR 220 as stated in the objection. In addition, the amounts were added in accordance with Fatwa No. (22656) of 1424 AH.
17. (Zakat Provision for 2002, 2006 and 2007) Item: ZATCA confirms that the amounts withheld in Company's custody for ZATCA have not been paid and completed a full lunar year. Therefore, such amounts should be added to zakat base in accordance with ZATCA Circular No. (8843) of 1392 AH, as stipulated in (First) of Paragraph (4) of that Circular.
18. (Fixed Assets for all Years) Item: ZATCA confirms that according to articles of association, the in-kind contribution provided by the Enterprise did not include any machinery. In addition, the invoice provided by the Company does not include any adjusted equipment.
19. (Incorporation Expenses for all Years) Item: ZATCA states that the derecognition of salaries listed under incorporation expenses was due to the fact that, according to the documents provided by the Company, there is a duplication in expenses, as such salaries are included in the general expenses for 2001, which indicates the existence of this duplication, in addition to the employees who are not under Company's sponsorship. In addition, the Company provided two different analyses for the same item.

In addition, ZATCA concluded its memorandum by insisting on upholding its procedure regarding the contested items and its reply to the statement of appeal.

Having decided to open the pleadings, the Department asked both parties if they would like to add further statements or documents regarding Zakat Payer's statement of appeal and ZATCA answer to the statement of appeal. However, the Department did not receive any submissions from Zakat Payer following the correspondence sent via e-mail on 09/11/1441 AH. On the other hand, ZATCA responded to the Department that it sent an answer to the statement of appeal submitted by Zakat Payer.



Grounds

Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company, the Department found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits: Having taken cognizance of Case file, documents included therein and the statement of appeal, the Department found, at the time of discussing subject matter of appeal and its items, in addition to the categorization and classification of the contested items in the primary Decision, that the proper sequence for zakat calculation related to fixed assets is incorporation expenses and depreciation variances. Accordingly, adjudication on the dispute between Zakat Payer and ZATCA requires taking into account the completeness and order of zakat calculation in order to come up with the amount that can be accounted for within Zakat Payer's zakat base and the amounts that may be deductible from such base.

Regarding (Fixed Assets) item, the Department found that the appeal involves Company's claim to deduct the full amount of fixed assets reflected in the financial statements, as such machines were acquired in 2001. Accordingly, there is no legal basis for disallowing deduction of such assets. On the other hand, ZATCA argues that, according to articles of association, the in-kind contributions provided by the Enterprise do not include machinery. In addition, the invoice provided by the Company does not include any adjusted equipment. Since Zakat Payer claims deducting net fixed assets according to Zakat Payer's financial statements. Since the Primary Committee based its ruling on the conclusion reached from articles of association, which stated that the in-kind contributions amounted to SAR 8,275,000 comprise of SAR 6,000,000 for (), SAR 2,000,000 for buildings and SAR 275,000 for parking and services, with no other assets included. Considering the first audited financial statements issued for Zakat Payer Company at its establishment in 2001 and all subsequent years in dispute indicate, through Note No. (1), that Company's capital was set at SAR 13,150,000, divided into in-kind shares of SAR 8,275,000 and cash contribution of SAR 4,875,000. In addition, Note No. (5) "Fixed Assets" shows that the Company has equipment added throughout the year amounting to SAR 4,716,000, as well as tools and equipment worth SAR 5,289, furniture and decorations worth SAR 3,644 during 2001. This is further underlined by the statement of cash flow, which reflects a cash inflow from investment activities amounting to SAR 12,999,993, including in-kind contributions and other assets. In addition, Company's current assets (cash and inventory) amount only SAR 429,357, confirming that the cash contributions were used to purchase fixed assets. As such, it is not sufficient to rely solely on the valuation of in-kind contributions stated in articles of association to ensure the existence of fixed assets without considering value of cash contributions, which were utilized by the Company to acquire such fixed assets. Accordingly, the Department concludes that the basis for calculating fixed assets should follow Zakat Payer's declaration, as supported by the evidence mentioned in the details of this item. Thereupon, ZATCA conclusion is unsubstantiated. Therefore, the Department accepts Zakat Payer's appeal and overturns the primary Decision regarding this item.

Regarding (Incorporation Expenses) item, the Department found that the appeal involves Appellant's claim to allow deduction of all incorporation expenses from zakat base, which include salaries of some employees during the period prior to the commencement of business activity. On the other hand, ZATCA maintains that, according to the documents provided by the Company, there is a duplication of expenses, as such salaries are already included in the general expenses for 2001. In addition, the Department found that some of the employees are not under Company's sponsorship. Since it turns out from the facts

of appealed Decision and the statement of appeal that the nature of the dispute involves the fact that the expenses rejected by ZATCA are salaries of employees that Appellant Company claims that were paid during the period preceding the establishment of the Company. Since it is established, according to articles of association, that Appellant Company was a branch of ... Enterprise for Agriculture and Industry, which was converted into a company. Since such a situation does not require the existence of preparatory activity carried out by a number of employees before the actual operation of the Enterprise, as the activity is ongoing and continuous. Since ZATCA has deducted the expenses necessary for converting Enterprise into a company, such as licensing fees, fees for obtaining articles of association and commercial registration fees. Since Appellant has not provided any documents that support the claim of no duplication between employees' salaries classified as administrative expenses and salaries included as incorporation expenses. Therefore, the Department dismisses Zakat Payer's appeal and upholds the primary Decision. However, regarding salary expenses for Company's employees, which ZATCA objects to the deduction thereof based on the fact that such expenses were included in administrative expenses outlined in general expenses for 2001, in addition to the employees that are not under Company's sponsorship. Since the reliance on the employment situation of such employees in disallowing addition of their salaries as expenses for the years in question does not take into account examining such expenses and their realization during such years. Since merely asserting that such employees are not sponsored by the Company does not negate the existence of expenses regardless of any regulatory violations related to employing workers who are not sponsored by the Company. Therefore, the Department amends the primary Decision by allowing deduction of expenses related to salaries of employees who are not sponsored by the Company for 2001, and dismisses Zakat Payer's appeal regarding the remaining amounts claimed to be part of incorporation expenses.

Regarding (Depreciation Variance Amounting to SAR 2,734,652) item: Having taken cognizance of Zakat Payer's appeal regarding this item, ZATCA reply to the appeal as stated in the statement of appeal and ZATCA answer, the Department found that the appeal involves Appellant Company's claim to disallow adding depreciation variances for all the years in question, as such depreciation amounts pertain to the machinery that ZATCA derecognized from fixed assets as if the Factory did not exist. On the other hand, ZATCA argues that such variances ensue from derecognition of equipment and incorporation expenses since the existence of any equipment or machinery has not been proven on the ground that, according to in-kind contribution provided by the Enterprise, such expenses do not include any machinery or equipment. Furthermore, the invoice provided by the Company does not include any equipment, and ZATCA insists that its procedure is valid. Since the Decision of this Department, as previously stated, is based on accepting Zakat Payer's appeal regarding the deduction of (Fixed Assets) item, and dismissing Zakat Payer's appeal regarding the claim of allowing deduction of incorporation expenses, as detailed in the discussion of that item. Since the consideration of depreciation variances is related to Department's Decision regarding the aforementioned two items. Since the Department concluded that the existence of assets at the Company has been established. Accordingly, it became necessary to allow deduction of the amounts related to depreciation of such assets, without responding to Zakat Payer's claim for allowing deduction of depreciations related to incorporation expenses based on this Department's ruling regarding incorporation expenses as previously stated. Therefore, the Department amends the primary Decision by allowing deduction of depreciations related to (Fixed Assets) item and disallowing deduction of depreciations related to (Incorporation Expenses) item.

Regarding (Vehicle Expenses Amounting to SAR 28,497 for Years from 2001 to 2004) item: Having taken cognizance of Zakat Payer's appeal regarding this item and ZATCA answer in this regard, the Department, after reviewing the primary Decision, found that



the subject matter of dispute involves Zakat Payer's claim to deduct the expenses associated with this item, as such expenses are actual expenses necessary for the business activity and supported by supporting documents. On the other hand, ZATCA argues that such expenses should not be deducted due to the fact that there are not assets in Company's balance sheet that would justify the recognition of such expenses as claimed by Appellant. Since the dispute between both parties is based on the existence of evidence on realization of such expenses for the purpose of their deduction. Since the nature of such expenses does not necessarily depend on the existence of vehicles owned by Zakat Payer. Since it is customary for enterprises to provide transportation allowances and to utilize employees' personal vehicles either in the form of allowances or as part of their wages. Since the dispute between both parties is based on the existence of supporting documents that confirm the realization of such expense. Since the primary Decision upheld ZATCA position outlined in disallowing deduction of such expenses due to the fact that such expenses are not related to assets owned by Zakat Payer, without considering Zakat Payer's assertion regarding the existence of actual supporting documents for realization of such expense, independent of whether the vehicles are owned by them. Thereupon, the Department concluded that ZATCA rejection to accept that expense is groundless. Therefore, the Department accepts Zakat Payer's appeal by allowing deduction of vehicle expenses as stated in Zakat Payer's declaration and overturns the primary Decision regarding this item.

Regarding the item of Computer Expenses in the amount of SAR (1,175) of 2001, having considered the content of appeal submitted by Zakat Payer on this item and ZATCA's response thereto. Having reviewed conclusions of the primary Decision, the Department found that subject of the dispute lies in the Appellant's request that the expenses associated with this item be deducted because they are actual expenses that do not require the presence of computers among the Company's assets to be accepted as an expense. In contrast, ZATCA believes that the Company's assets do not include computers among the fixed assets, and since subject of these expenses is not necessarily related to the presence of computers with Zakat Payer and thus calculating them among his fixed assets. Since result of this was that the dispute between both parties was based on the existence of documents supporting verification of this expense. Furthermore, the result of primary Decision was based on upholding ZATCA's Decision not to deduct such expenses because they were not connected to the assets of Zakat Payer, without considering the Appellant's statement that there were actual documents supporting realization of such expense, without relying on existence of computers held by him, which led the Department to decide that ZATCA's rejection of that expense was not based on a valid reason. Therefore, the Department concluded to accept Zakat Payer's appeal to deduct computer expenses, as stated in his declaration, and to overturn the primary Decision on that item.

With regard to the item of salary of Ambalat ... (... nicknamed), having considered the content of appeal submitted by Zakat Payer on this item and ZATCA's response thereto, and having reviewed outcome of the initial Decision, it is evident that subject of the dispute lies in Appellant's request to deduct salaries of employees mentioned in this item from zakat and tax base of 2001 to 2006. Since ZATCA's non-acceptance to deduct those salaries through what was stated in their response to Zakat Payer's appeal and ZATCA's point of view thereon, which was supported by the Decision under appeal, is based on lack of Company's sponsorship for that employee in the disputed years, and that therefore the employee has no relationship with the Company during those years, which entails deduction of his salaries from Zakat Payer's zakat and tax base is not accepted. Moreover, since lack of Company's sponsorship for its employees or not, and the fact that violation has been proven or not proven against Appellant, does not negate consideration of the salaries paid to him as deductible expenses when calculating the zakat base for Zakat Payer. Since ZATCA did not provide evidence to deny that Zakat Payer incurred those expenses,



as it was satisfied with the claim that the aforementioned worker was not sponsored by Zakat Payer Company. Accordingly, the Department decided that ZATCA's rejection of such expense was not based on a valid reason. Therefore, the Department concluded to accept Zakat Payer's appeal to deduct salaries as stated in his declaration, and overturn the primary Decision on this item.

With regard to the item of Import Differences and Import Difference Profits amounting to SAR (6,229,063), having considered content of the appeal filed by Zakat Payer on this item and ZATCA's response thereto, and having reviewed the primary Decision, it is evident that subject of the dispute lies in the Appellant's request to deduct import differences and import difference profits. Since the Department is not to be blamed for taking into account Grounds of the appealed Decision without adding thereto, whenever it had determined that those Grounds were sufficient, because in supporting the same on those Grounds, it became certain that it did not find in objections to the Decision regarding the item under consideration, anything that deserves a response thereto more than those Grounds. Based on the foregoing, since it is established that the appealed Decision was consistent with the established Grounds on which it was based and that were sufficient to support its ruling, as the Committee that issued such Decision undertook to scrutinize source of the dispute therein and concluded the result it reached in its wording. Since the Appeals Department had not noted any Grounds for correction or comment in the light of pleadings raised before it, which led the Department to decide that they did not affect outcome of the Decision. This does not affect the reasons the Company presented to contest the Decision by saying that what Zakat Payer claims is that in some years the declaration of internal purchases was inadvertently made, and that this is an unintentional error that can be corrected as long as there is evidence of this, and that classifications in some years for the internal and external purchases items created an overlap in the numbers to match Zakat Payer's commercial books, because such allegation did not discuss what could undermine the stronger presumption applicable to Zakat Payer's situation after numbers of the amounts of those imports were approved by the Company, and then existence of the approval of the Company's external auditor on those data after auditing them. Based on the foregoing, the Department concluded to dismiss Zakat Payer's appeal and uphold the primary Decision regarding the item under consideration.

With regard to the item of Accounts Payable amounting to SAR 2,376, having considered content of the appeal filed by Zakat Payer on this item and ZATCA's response thereto, and having reviewed the primary Decision, it is evident that subject of the dispute lies in the Appellant's request to deduct the accounts payable from zakat base. Since the Department is not to be blamed for taking into account Grounds of the appealed Decision without adding thereto, whenever it had determined that those Grounds were sufficient, because in supporting the same on those Grounds, it became certain that it did not find in objections to the Decision regarding the item under consideration, anything that deserves a response thereto more than those Grounds. Based on the foregoing, since it is established that the appealed Decision was consistent with the established Grounds on which it was based and that were sufficient to support its ruling, as the Committee that issued such Decision undertook to scrutinize source of the dispute therein and concluded the result it reached in its wording. Since the Appeals Department had not noted any Grounds for correction or comment in the light of pleadings raised before it, which led the Department to decide that they did not affect outcome of the Decision. This does not affect reasons and pleas raised by Zakat Payer to satisfy his request not to add amounts of that item from his zakat base for the years to which that item is related from 2005 to 2008, by claiming that those accounts payable constitute commercial accounts that are not included in zakat base because they are current and a year has not passed thereon in light of ZATCA's verification that those amounts are fixed in 2005 and 2006, and therefore their presence in Zakat Payer's accounts necessitates adding them to zakat base as debts owed by Zakat

Payer to others. Since the Appellant did not provide, among what he stated in reasons of his appeal against this Decision, anything to support his request in light of what was established by the primary Decision, contrary to what the Appellant claims in his statements included in his statement of appeal regarding this item, the Department therefore decided to dismiss Zakat Payer's appeal and uphold the primary Decision regarding the item under consideration.

With regard to item of Zakat Due in the amount of SAR 34,906, having considered content of the appeal filed by Zakat Payer regarding this item and ZATCA's response thereto, and having reviewed the primary Decision, it turned out that subject of the dispute lies in the Appellant's request to deduct the amount of zakat due from him, and not to add it to his zakat base, by claiming that the amount due as zakat is not legally permissible to be added to his base for the years 2002, 2006 and 2007. Since these funds, although related to Zakat Payer's liability as a duty that must be paid as the amount specified for each year in dispute, this does not negate the fact that the amounts of these zakat dues represent funds held by Zakat Payer, and that estimating the amount due to be paid does not conflict with including all of these funds that are held by Zakat Payer when a year passed thereon, as Zakat Payer delay in paying zakat amount does not negate the existence of these funds with him and necessity of adding the same within his base. Therefore, the Department concluded to dismiss Zakat Payer's appeal and to uphold the primary Decision regarding the item under consideration.

Decision

First: Accept the Appeal in form filed by Zakat Payer/ ... Company and ..., C.R. No. (...), against Decision No. (5) of 1437 AH, issued by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the Fixed Assets item in the amount of SAR 24,323,370 for all years, dismiss the primary Decision in this regard, and calculate fixed assets as stated in the Appellant's statement, according to reasons and Grounds set forth herein.
2. Amend the primary Decision, by a majority, regarding the Establishment Expenses item in the amount of SAR (1,473,637) for all years, by deciding to deduct expenses related to salaries of workers who are not sponsored by the Company of 2001 without other expenses, according to reasons and Grounds set forth herein.
3. Amend the primary Decision on Depreciation Difference item amounting to SAR (2,734,652) for all years, by deciding to deduct depreciation in respect of the Fixed Assets item without depreciation in respect of the Establishment Expenses item, according to reasons and Grounds set forth herein.
4. Accept Zakat Payer's appeal regarding the item of Car Expenses in the amount of SAR (28,497) of 2001-2004, and decide to deduct car expenses as stipulated in his declaration, and overturn the primary Decision in this regard, according to reasons and Grounds set forth herein.
5. Accept Zakat Payer's appeal regarding the item of Computer Expenses in the amount of SAR (1,175) of 2001, and decide to deduct computer expenses as stipulated in his declaration, and overturn the primary Decision in this regard, according to reasons and Grounds set forth herein.
6. Accept Zakat Payer's appeal by majority regarding the item of salary of Ambalat ... (nicknamed ...), and decide to deduct salaries for the years 2001 to 2006, as stated in Zakat Payer's declaration, and overturn the primary Decision in this regard, according to reasons and Grounds set forth herein.



7. Dismiss Zakat Payer's appeal regarding Import Differences and Import Differences Profits item in the amount of SAR (6,229,063) for all years, and uphold the primary Decision in this regard, according to reasons and Grounds set forth herein.
8. Dismiss Zakat Payer's appeal regarding the item of Accounts Payable in the amount of SAR (2,376) of 2005 to 2008, and uphold the primary Decision in this regard, according to reasons and Grounds set forth herein.
9. Dismiss Zakat Payer's appeal regarding the item of Zakat Due in the amount of SAR (34,906), for the years 2002, 2006, and 2007, and uphold the primary Decision in this regard, according to reasons and Grounds set forth herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-123)

Delivered in Appeal No. (Z-1718-2018)

Principle No. 204

Non-sale intention of real estate is not affected by the presence of some movement and sale in different investments, as long as it is not proven to affect the full conversion of intention from investment to sale and trading by Zakat Payer Company.

Facts:

First: Accept the Objection filed by Zakat Payer/ ... in form.

Second: On Merits:

Dismiss, by majority, Zakat Payer's objection to subjecting investments to zakat, in accordance with reasons stated in the Decision.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

The Company's appeal is based on the fact that the Committee's Decision was general and did not include any details that could be relied upon in the Committee's opinion, and that the Committee did not take into account extensive details provided by the Company, which clearly state the status of each of the said investments separately. The Committee, which issued the Decision, should have expressed the technical and legal opinion on each investment separately, as the Company provided details confirming its point of view that these investments must be deducted for the purposes of Sharia zakat, based on details provided by the Company in its objection. Furthermore, movement on investment does not mean that investment is for the purpose of trading, as there are situations and circumstances that require owner of investment to sell it, as in the case of the investor needing funds necessary to facilitate his business. Therefore, the Committee's statements, regarding the fact that there is an active sales movement that removes these projects from being considered as acquisition assets to trading assets on which zakat is due, is inconsistent with the reality of these investments, for which the Company provided evidence of Board of Directors' Decisions supporting them as long-term investments, through documentation of intention regarding them and working on their basis, which is also proven by feasibility studies, obtaining necessary licenses for building and erecting residential apartments, commercial complexes and hotels. The Company concluded its statement of appeal by requesting that its investments, subject of the dispute with GAZT in the years in which zakat assessment was made, be considered as acquisition assets that must be deducted for the purposes of Sharia zakat. Although the Company was forced to sell some investments, majority of investments, as indicated in the details, have not been sold.

Since the Department requested GAZT to submit a response to the Appellant's memorandum related to the contested items, which included GAZT's confirmation in its response dated 29/03/1442 AH, of its point of view presented before the Primary



Committee, when considering the objection of Zakat Payer Company. GAZT requested upholding the appealed Decision, confirming the validity and soundness of its actions, given that issues raised by Zakat Payer Company did not differ from those previously articulated during review of its objection before the Primary Committee, to which GAZT had already responded at that time.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

First: Upon reviewing Case documents and statement of appeal submitted by Zakat Payer Company, the Department found that conditions of appeal 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 statutory prescribed period.

Second: Since the Case is ripe for judgment, the Department decided to rule on the appeal filed by Zakat Payer Company regarding the item under objection. Having considered subject of the dispute between Zakat Payer Company and GAZT, the Department found that dispute lies in Zakat Payer Company's objection to the Primary Committee Decision upholding GAZT's direction to calculate real estate investments for various projects covered by the Decision in its judgment as part of trading assets and to include them in Zakat Payer's zakat base. However, Zakat Payer argues that such real estate investments in various projects cannot be considered as if they were assets intended for trade and sale in the condition in which the lands were purchased at the time, in accordance with reasons stated in statement of appeal.

Third: Having considered GAZT's point of view contained in facts of primary Decision, and having considered details of real estate investments subject of dispute in the light of facts contained in the primary Decision that are referred thereto regarding each investment separately, being satisfied with statement and analysis contained in the primary Decision in order to avoid repetition, the Department found that these real estate investments were not intended for sale by Zakat Payer, but rather for the purpose and intent of investment, development and then sale after completion of projects on which they were based.

Fourth: This intention was documented by the Company's board of directors regarding documenting that intention proving non-diversion of its intention to sell those properties without creating investment projects thereon. This intention was confirmed by existence of licenses for constructing these buildings and projects on these lands.

Fifth: Sum of evidence confirms that establishment of these projects on these real estate properties must be considered as those projects are prepared for acquisition purposes and were not prepared before completion for trading.

Sixth: Since this intention is not affected by the presence of some movement and sale in different investments, as long as it is not proved that it affects the full transformation of intention from investment to sale and trading by Zakat Payer Company, especially since that sale was in limited parts for financing purposes to complete investment projects or to meet expenses and costs that the Company wants to pay through money it owns. Since the Department did not ascertain that GAZT has proven with physical evidence that Zakat Payer had sold the remaining investments in a manner that would achieve a shift in his intention from investment to trading in the real estate investments he owns.

Seventh: Since the Decision-making committee was satisfied with noting the existence of a sale movement in certain investments in the years of objection is not sufficient for the proper determination of inclusion of all these investments in zakat base of Zakat Payer and to consider them as trading assets, and not acquisition assets.



Eighth: Since revenues from this limited sale in some real estate properties, whose sales revenues were included in calculation of Zakat Payer's zakat base, do not make all these investments trading assets, as long as other material aspects are not achieved that support the fact that Zakat Payer continued sale of those investments and his intention was transformed to make them trading assets to justify inclusion of their amounts in his zakat base. Therefore, the Department concluded that arguments raised by Appellant are likely to change result reached by the primary Decision. Accordingly, the Department decided to accept Zakat Payer's appeal, overturn the primary Decision in this regard, and not to subject investments of Zakat Payer Company to zakat, and consider these investments acquisition assets that are deductible from zakat base for the disputed years.

Decision

First: Accept the Appeal in form filed by Zakat Payer/ ... Company C.R. No. (...), TIN No. (...), against Decision No. (22) of 1436 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

Accept appeal of Zakat Payer Company, overturn the primary Decision delivered in this regard, and decide not to subject investments of Zakat Payer Company to zakat, and consider it acquisition assets that are deductible from zakat base for the years in dispute, in accordance for Grounds and reasons set forth in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-20)
Delivered in Appeal No.
(ZI-1733-2018)

Principle No. 205

The established rule in imposing zakat on investments in another company extent to which these investments are subject to zakat in other companies and classifying these investments as acquisition assets or trading assets.

Facts:

First: In Form:

Accept, in form, the objection filed Zakat Payer/ on zakat assessment made by GAZT of 2003 and 2004.

Second: On Merits

1. Other Investments Item:

- Uphold GAZT's procedure regarding not deducting investment in the amount of SAR (2,553,866) from zakat base for the two years subject to objection.
- Uphold GAZT's procedure regarding not deducting investment in land development projects in the amount of SAR (6,300,000) of 2003 and 2004 from zakat base.
- Uphold GAZT's procedure regarding not deducting additions to other investments of 2003 and 2004 from zakat base.
- Settle dispute between the two parties regarding non-deduction of investment in the amount of SAR (1,250,937) of 2003 and 2004, as Zakat Payer accepted GAZT's point of view.

2. Uphold GAZT's procedure regarding not deducting the amount of SAR (2,630,580) and SAR (100,600) from the retained earnings of 2003 and 2004 respectively.

3. Deduct amount of donations amounting to SAR (1,330,000) of 2003 and SAR (2,306,500) of 2004.

4. Item of Received Dividends:

- Uphold GAZT's procedure in subjecting dividends from to zakat of 2003 and 2004.
- Uphold GAZT's procedure in subjecting interim dividends from Saudi banks and some other companies to zakat for the years 2003 and 2004.

5. Uphold GAZT's procedure regarding adding a loan from an affiliated entities to zakat base for the years 2003 and 2004.

6. Uphold GAZT's procedure regarding not deducting loans to affiliated entities from zakat base for the years 2003 and 2004.

Dissatisfied with the Decision, the Plaintiff (....) filed a statement of appeal, in which she submitted that:

With regard to its appeal against the item (Other Investments), the Company objects to the Primary Committee Decision to reject deduction of investments, details of which are as follows: In 2003, there was an investment amounting to SAR (10,104,408) that was

rejected to be deducted. During this year, investments increased by SAR (114,413,354) riyals, to be a total of SAR (124,518,157). In 2004, there was an investment amounting to SAR (10,104,803), and investments during this year increased by SAR (103,176,829), so that the total for this year is SAR (113,281,632). Investments that were previously rejected to be deducted amount to SAR (2,553,866) for the years 2001 and 2002, as well as SAR (6,300,000) as an investment in land projects sold in 2003. The Appellant Company requests a deduction of an amount of SAR (6,300,000) and correct GAZT's mistake regarding investment sold during 2003. As for investments for previous years in the amount of SAR (2,553,866), the net increase in investments that occurred during the year amounting to (114,413,354) of 2003 and SAR (103,176,829) of 2004 must be deducted because they are intended for long-term investment.

With regard to the item (Received Dividends not Approved for Deduction), the Company objects to the Committee's Decision upholding GAZT's procedure in subjecting dividends from ... Company to zakat for the years 2003 and 2004. Appellant Company states that it received dividends from ..., in the amount of SAR 3,437,886 and SAR 407,098 for the years 2003 and 2004 respectively, which are profits received from this year's profits and was subject to zakat with the investee company and Appellant Company claims the same to be deducted.

Regarding the item (Loans to Affiliated Entities), the Company objects to the Committee's Decision upholding GAZT in not deducting loans to affiliated entities from zakat base for the years 2003 and 2004. Appellant Company demands that loans amounting to SAR (7,348,000) and SAR (5,898,000) be deducted for the years 2003 and 2004 respectively, as these loans were subject to zakat in the borrowing parties and subjecting them again in the lending parties is considered a zakat duplication.

The Department decided to open up court proceedings, on 19/03/1442 AH, corresponding to 04/11/2020 AD, requesting Zakat Payer to submit any additional submissions to its appeal on the Decision under consideration, within the period set by the Department or to be satisfied with its earlier appeal memorandum. The specified deadline passed without any further submissions. In addition, GAZT was addressed to provide its response to Zakat Payer's appeal, and its response was submitted on 16/06/1442 in a reply summarized as follows:

With regard to the item (Other Investments), GAZT replied that these investments consist of previous investments. Since Zakat Payer objected to deduction of the amount of SAR (2,553,866), deduction of long-term foreign investment is acceptable if they are subject to zakat and proven in accordance with Ministerial Decision No. 1005 dated 28/04/142 AH, which confirmed that Zakat Payer must submit audited accounts certified by a chartered accountant in order to calculate zakat due for foreign investments or to prove payment thereof. As for investments in funds are current investments, and are not deducted from the base. Investments added during the year in the amount of SAR (114,413,354) of 2003 and SAR (103,176,829) of 2004, they were not deducted because they were not subject to zakat in the investing entities because a year has not passed thereon. Therefore, subjecting the same to zakat in the investee company is not a zakat duplication. GAZT states that Zakat Payer did not provide documents proving its point of view, which is the matter on which GAZT issued its Decision to dismiss his objection.

With regard to the item (Paid Dividends), GAZT replied to Zakat Payer's appeal that such dividends were not excluded because they are no longer in the investee company's liability and are therefore subject to zakat in the investing company, pursuant to Circular No. 122/1 dated 19/08/1414 AH and GAZT Circular No. 530/9 dated 24/01/1420 AH, which affirms that the investing company's revenues may not be reduced by investment profits except after verifying that these profits have been declared within revenues of the investing company, and that they were subject to zakat in the investing company. Besides, GAZT



states that Zakat Payer did not provide any evidence that dividends were from the retained earnings account, which is why it did not approve deduction of these dividends. Regarding the item (Loans to Affiliated Entities), GAZT responded that addition of these loans is an application of fatwas that confirmed addition of loans to zakat base for the company's benefit, whether a year has passed thereon or they were used to finance non-current assets, whether these funds are from government fund, commercial banks, loans from partners, related entities or creditor banks. In general, addition of any beneficiary funds used by the company in financing fixed assets or ongoing activity, since content of shariah fatwas is addition of these funds that the company obtains, whether in the form of cash or trading assets, and the part used to finance working capital is used in current assets resulting in cash and trading assets. Therefore, zakat is due on this part of money from this money as money used in the company's ongoing and fixed activity, and it does not entail a duplication that is prohibited by virtue of shariah. Since the basis for dealing with loans for the purpose of calculating zakat base is that zakat is due on loans when calculating zakat base for lender and borrower, as they are entities with a legal personality and an independent financial liability, even if there is a direct or indirect ownership relationship between them. As for the lender, indicating the loan as a balance in the financial statements shows that the loan represents a debt owed by a solvent person if there is no proof in the income statement that such loan is written off, and therefore zakat is due thereon as a debt that is expected to be paid. As for the borrower, disclosing the loan statement of financial position means that such loan represents another source of finance, like capital. Having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.

Grounds

Having perused appeal memorandum and the contested Decision, with regard to Zakat Payer's appeal on the item (Other Investments), it is evident that dispute with regard to investment in land in the amount of SAR (6,300,000) lies in Zakat Payer's request to remedy the material error related to this investment, which was disposed of in 2003. Zakat Payer confirmed that investment in land development projects, amounting to SAR (6,300,000) represents a balance that was excluded (disposed of) during 2003 and was not included in the declaration. Therefore, exclusion of this investment during 2003 results in it not being deducted from zakat base for the disputed years (2003 and 2004 AD) due to lack of investment during the years 2003 and 2004.

Second: Since Zakat Payer confirmed, in his point of view included in the primary Decision, his request to ZATCA to correct its material error related to such investment. Since the Decision-issuing committee upheld ZATCA's procedure regarding investment in lands without specifying the content of that procedure, and the primary Decision did not include ZATCA's point of view on adjudicated procedure. In addition, the Department did not find out the nature of procedure upheld by the Decision-issuing committee, which renders the dispute unsettled on its merits, as provided for in wording of that Decision, and therefore it did not exhaust its mandate to decide on subject of the dispute. Accordingly, the Department concluded to cancel Decision subject of appeal regarding land investment in the amount of SAR (6,300,000), and refer the case to First Department for the Determination of Income Tax Violations and Disputes in Dammam to reconsider it, after hearing ZATCA's point of view on this subject.

With regard to Zakat Payer's appeal regarding net increase in investment during the year, Zakat Payer's appeal lies in his request to deduct net increase in investments of 2003 and 2004 from zakat base, considering that those investments are in companies registered in KSA, and that the majority of those companies are registered in the Saudi Exchange and



are subject to zakat in those companies, and that these investments are long-term investments and not for the purpose of trading.

Third: ZATCA believes that the increase in investments has not been subject to zakat in the investee companies because a year has not passed thereon. Given the Appellant's total defenses and having perused provided documents, it is evident that most of the increase in investments is in the form of investments in public joint-stock companies registered in KSA, and by tracking the investment movement, it is clear that investment balance in the disputed years is increasing and there is no movement of decline, in addition to the availability of documented intention of authorized person to invest long-term in these, as confirmed by the partners' Decision issued on 15/01/2004, which includes partners' assurance that investments registered and unregistered investments in capital markets will be retained on a long-term basis, and this is not affected by ZATCA's argument that the invested funds were not subject to zakat in the investee companies as a year has not passed thereon.

Fourth: Since the established rule in imposing zakat on investments in another company is the extent to which these investments are subject to zakat in other companies and classifying these investments as acquisition assets or trading assets.

Fifth: Zakat Payer argued that these investments are in Saudi companies registered with GAZT, and proved the intention of long-term investment in these companies. The Department decided that Zakat Payer is entitled to deduct investments in Saudi companies from his zakat base in the amount of SAR (113,915,178) of 2003 and SAR (97,229,579) of 2004, and refused to deduct the rest of claimed amount, as he did not provide evidence of paying zakat on those investments in the country of investment, nor did he provide financial statements for those investments through which GAZT can determine zakat base and zakat due thereon.

Sixth: With regard to Zakat Payer's appeal regarding the item (Received Dividends not Approved for Deduction), it is evident that appeal lies in Zakat Payer's (Appellant's) disapproval of subjecting profit dividends from ... Ltd. to zakat for the years 2003 and 2004. Zakat Payer believes that dividends paid by ... were subject to zakat in Company. He states that he submitted evidence that dividends were distributed from the profit of the year, while GAZT believes that those profits should not be excluded from zakat base because they are no longer in the invitee company's liability, and they became in the liability of investing company and therefore are subject to zakat. Since it is established that investments in companies inside the Kingdom are not subject to zakat in the investing company because they are subject to zakat in the investee company, in order to avoid zakat being doubled. Since the adjusted profits in zakat assessment of the investee company were subject to zakat for the years 2003 and 2004, the Department has decided that Zakat Payer is entitled to deduct those profits from zakat base in order to avoid zakat being doubled. Therefore, the Department concluded to accept Zakat Payer's appeal and to overturn the primary Decision concluded in this regard.

Seventh: Regarding Zakat Payer's appeal on the item (Loans to Affiliated Entities), it is found that appeal lies in the fact that Zakat Payer does not agree with the Primary Committee Decision upholding GAZT's procedure not to approve deduction of loans granted to affiliated entities, as they are subject to zakat in affiliated companies, and therefore must be deducted to avoid zakat being doubled. However, GAZT believes that adding these loans is an application of Fatwas that confirmed the addition of loans to zakat base for the company's benefit, whether a year has passed thereon or they were used to finance non-current assets in accordance with Sharia Fatwa No. (22665).

Eighth: The Department found that the disputed amounts constitute loans to affiliated entities and are not in addition to investee amounts.

Ninth: The Department found that these entities are subject to zakat and submit their declarations to GAZT. Based on investment relationship between Zakat Payer and those



affiliated entities, the Department decided that loans provided to these entities require special zakat treatment to avoid zakat duplication, as part of the loans (according to investment rate) do not represent a loan to another party. Therefore, Appellant (lender) may deduct part of loans provided to affiliated entities from his zakat base in an amount equal to percentage of his investment in those entities to which the loan was provided, and this does not affect what GAZT argued in its reply.

Tenth: Since its argument lies in loans received from affiliated entities, a matter that was not subject to Zakat Payer's appeal. Therefore, the Department decided to amend the primary Decision by determining Zakat Payer's right to deduct loans to affiliate entities an amount equivalent to percentage of his ownership in them from his zakat base.

Decision

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

First: Accept in form the Appeal filed by the Zakat Payer, Commercial Register No. (...), TIN (...), against Decision of the Primary Committee for Zakat and Tax Objections in Dammam No. (13) of 1436 AH.

Second: On Merits:

1. Cancel the primary Decision regarding the item (Other Investments) in the land in the amount of SAR (6,300,000), and refer the case to the First Department for the Determination of Income Tax Violations and Disputes in Dammam for reconsideration, according to reasons and Grounds provided in this Decision.
2. Accept Zakat Payer's appeal regarding net increase in investment during the disputed years, and decide Zakat Payer's right to deduct investments in Saudi companies from his zakat base in the amount of SAR (113,915,178) of 2003 and SAR (97,229,579) of 2004, and refuse to deduct the rest of claimed amount, in accordance with reasons and Grounds set forth in this Decision.
3. Accept Zakat Payer's appeal regarding the item (Received Dividends not Approved for Deduction), and overturn the primary Decision in this regard, in accordance with reasons and Grounds set forth in this Decision.
4. Amend the Primary Committee Decision on the item (Loans to Affiliated Entities), and determine Zakat Payer's right to deduct loans to affiliated entities with the equivalent of his ownership from his zakat base, in accordance with reasons and Grounds set forth in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-119)
Delivered in Appeal No. (Z-
1773-2018)

Principle No. 206

The point in calculating loans within zakat base is what they lead to.

Facts:

First: In Form:

Accept, in form, the objection filed by Zakat Payer on zakat assessment made by GAZT of 2010 and 2011.

Second: On Merits

1. Uphold GAZT in adding overstated social insurance premiums difference to results of 2010 and 2011.
2. Uphold GAZT in adding loans to zakat base of 2010 and 2011.
3. Uphold GAZT in adding amounts received in advance from customers to zakat base of 2010 and 2011.
4. Settle the dispute with GAZT accepting Zakat Payer's point of view and amend the item (Creditors Who Have Completed a Full Year) of 2010 and 2011.
5. Uphold GAZT's procedure in not deducting land from zakat base of 2010 and 2011.
6. Uphold GAZT's procedure in deducting investment from zakat base of 2010 and 2011 at cost.
7. Settle dispute with GAZT accepting Zakat Payer's point of view in the contract of the Ministry of Municipal and Rural Affairs of 2011.

Dissatisfied with this Decision, Zakat Payer (...) submitted a statement of appeal summarized as follows:

Zakat Payer appeals the Primary Committee Decision in six items. With regard to the item (Overstated Social Insurance Premiums Amounting to SAR (390,803) of 2010, and its zakat amounting to SAR (9,770) and the amount of SAR (562,825) of 2011 and its zakat SAR (14,071), Zakat Payer validity of what he stated before the committee - issuing the Decision - and confirms that according to social insurance certificate, contribution fees and fines paid are no longer in Zakat Payer's liability and no longer his property. With regard to the item (Loans that Completed a Full Year in the amount of SAR (6,197,451) of 2010, in the amount of SAR (154,936) of 2011, in the amount of SAR (57,078,100) and its zakat SAR (1,426,953), Zakat Payer confirms his right to deduct these amounts from zakat base, because they are no longer the full property of the Company, and zakat is only due on full property of the Company. Regarding the item (Advance Payments from Customers that completed a full year in the amount of SAR (104,039,249) of 2010 and SAR (2,600,981), SAR (96,174,917) of 2011 and its zakat is SAR (2,404,373), Zakat Payer bases his appeal regarding this item on the fact that amounts of advance payments from customers are paid by way of deduction from our payments throughout the project implementation period. However, under the circumstances of war, some of our projects in Jizan schools have been disrupted, and we did not obtain payment requests to pay the



advance payments from customers. With regard to the item (Creditors Who Completed a Full Year of 2010 in the amount of SAR (38,697,185) and of 2011 in the amount of SAR (41,528,174+2,855,742), with a total zakat difference amounting to SAR (212,236) after adjustment, Zakat Payer bases his appeal regarding this item on the fact that these amounts referred to are materials required by the company's operational activity which were included within expenses in the Company's profit and loss, and in exchange for these materials, payment requests were issued, which were included as revenues in the Company's profit and loss account, which are considered trading assets, so zakat is due thereon, and zakat is paid thereon upon evaluation at the end of the year. Zakat Payer objects to GAZT's procedure of calculating zakat on the book balance of commercial creditors, since the Company does not have money, and also subjecting proceeds of these loans to zakat is considered a duplication of zakat. With regard to the item (Lands Amounting to SAR (61,959,665) of 2010 and 2011 and its zakat during the two years in the amount of SAR (1,548,991)), Zakat Payer responds to GAZT's claim that these lands are in the name of ... Enterprise is an incorrect claim, as records show that these lands were purchased from ... Enterprise, and that the deeds are in the name of ..., and not in the name of ... Enterprise. With regard to the item (Not Deducting Investment of 2010 and 2011), Zakat Payer confirms his right to deduct the value of this item from his zakat base, because it was subject to zakat in the investee company.

The Department decided to open the pleadings, therefore, GAZT submitted a reply memorandum dated 21/03/1442 AH corresponding to 06/11/2020 AD, in response to Zakat Payer's appeal regarding the appealed items, by affirming its position previously presented to the Primary Committee. GAZT also reaffirms that Zakat Payer's appeal is not new to what had been previously submitted before the Primary Committee and addressed by GAZT. Accordingly, GAZT insists on accuracy and correctness of its procedures and requests that Zakat Payer's appeal not be dismissed and that the primary Decision be upheld.

On Thursday, 19/08/1442 AH corresponding to 01/04/2021 AD, the Department decided to hold a 10-day electronic hearing, during which an addendum note was received from Zakat Payer that did not deviate in its content from what was previously submitted, and GAZT did not submit anything in addition to the foregoing.

On 14/09/1442 AH, corresponding to 26/4/2020, after reviewing the Appeal briefs and responses, and examining the documents and records in case file, the Department determined that the case is ready for adjudication and issuance of a Decision on its merits.

Grounds



After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merits, with regard to Zakat Payer's appeal regarding the item (Overstated Social Insurance Premiums of 2010 and 2011), It turned out that appeal lies in Zakat Payer's refusal to allow GAZT to add amounts of this item to the zakat base, since these amounts are no longer in the Company's liability, according to social insurance certificates submitted to GAZT. However, GAZT considers that the statutory insurance that must be added to the Company's accounts is (11%) of Saudis' salaries and (2%) of non-Saudis' salaries, and anything in excess of these percentages is considered a legally unacceptable increased expenses. Having considered subject of the dispute, since the disputed sums were no longer in Zakat Payer's liability according to social insurance certificates provided by him to GAZT. Since the established basis is what Zakat Payer presented in his declaration, and there was no reason that required departing from this basis in light of verifying validity of



Zakat Payer Company's claim when examining the dispute. Since GAZT's argument was not related to the fact that money is no longer in Zakat Payer's liability with regard to payment of such expenses, which is the basis for whether or not zakat is due. When examining the appeal, there was nothing to confirm GAZT's denial of disbursing the amounts stated in Zakat Payer's declaration. Therefore, the Department concluded to accept Zakat Payer's appeal, overturn the primary Decision, and decide to take into account contents of Zakat Payer's declaration with regard to the disputed social insurance expenses without any additional amounts of 2010 and 2011.

With regard to the item (Loans that Completed a Full Year of 2010 and 2011), since subject of appeal lies in Zakat Payer's request not to add this item to zakat base, as it is not subject to zakat, because it is money that was paid out of the Company's liability and is no longer the Company's property, nor has it completed a full year while it is in the Company's property. However, ZATCA believes that movement of loans indicates that a year has passed thereon and thus they are added to zakat base. Having perused subject of the dispute, the Decision issued therein and the Grounds on which it was based, the Department found that conclusion reached by the Committee issuing the appealed Decision was correct, and the reasons on which it based its Decision are sufficient to support this Decision. This does not affect what Zakat Payer indicated regarding spending those loans, as adding loans to the base does not mean that they were directly subject to zakat, since the lesson in calculating loans within zakat base is what they are paid for, if they are paid for acquisition assets, they are deducted from the base. Accordingly, the Department decided that the foregoing does not affect outcome of the primary Decision in this regard. Therefore, the Department concludes to dismiss the appeal and uphold conclusion of the primary Decision on this item, subject to the reasons thereof in addition to reasons of this Decision.

With regard to the item (Customer Payments that Completed a Full Year of 2010 and 2011), it was found that subject of appeal lies in Zakat Payer's refusal to add this item to zakat base, since these amounts represent bank guarantee balances requested by government agencies that own the projects and do not represent actual outstanding balances of these payments, and are treated as revenues received in advance. However, ZATCA considers these amounts as loans to Zakat Payer and a year has passed thereon, and therefore must be added to zakat base. Having considered subject of the dispute, since Zakat Payer did not dispute the passage of one year on disputed amounts, and since there are amounts owed by "contract clients" in Zakat Payer's accounts, the Department decided that Zakat Payer is entitled to offset the amount of "customer payments" within Zakat Payer's obligations with the amount of "contract clients" within Zakat Payer's assets. The amount added to the base is the amount of "customer payments" in excess of the amount of "contract clients" for each year of dispute.

Regarding the item (Creditors Completed a Full Year of 2010 and 2011 and Zakat Differences), subject of appeal lies in Zakat Payer's refusal to add this item to zakat base, as these are amounts that were fully disbursed on projects and the income statement was affected thereby and included among the elements of zakat base, and to prevent duplication, they should not be added to the base. However, ZATCA considers that some of these amounts have completed a full year and must therefore be added to zakat base. Having considered the primary Decision, since the Decision indicated that the dispute has settled with ZATCA's acceptance of Zakat Payer's point of view, and since the Department found that Zakat Payer's point of view is the objection to the amount regardless of the passage of a full year thereon, irrespective of the status of the transfer, while what ZATCA accepted was to amend the assessment to include the discounted amounts that have completed a full year, which proves that the dispute has not settled regarding the subject thereof. Since Zakat Payer requests not to add the full amount, it is clear that the Primary Committee has not exhausted its mandate to settle subject of the



dispute, which makes the dispute not settled in its subject matter. Therefore, the Department decides to revoke the primary Decision and to refer the subject of dispute to the First Department for the Determination of Income Tax Violations and Disputes in Dammam.

With regard to the item (Lands of 2010 and 2011), since subject of appeal lies in Zakat Payer's refusal to deduct all lands from zakat base, as he considers that ZATCA's exclusion of lands from zakat base entails its exclusion from the current account for financing land from that current account. However, ZATCA considers that the added lands are not registered in the name of the Company and ZATCA does not find that lands have been financed from the current account. Having considered subject of dispute, and since land financing is added in the base as part of mandatory items, which requires, when the land deduction is not accepted, the corresponding financing should be excluded from the base in order to achieve budget balance, which ZATCA did not do. Therefore, the Department decided to accept Zakat Payer's appeal, and that Zakat Payer is entitled to deduct lands amounts from his zakat base and to overturn the primary Decision in this regard.

With regard to the item (Non-Deduction of the Investment of 2010 and 2011), subject of Zakat Payer's appeal lies in his refusal to deduct the investment at cost, in order to prevent double payment of zakat, since the current account of the creditor partner in the investee Company was subject to zakat. ZATCA considers that it has deducted the investment based on the financial statements of the investee companies, and since the current account of creditor partner in the investee company is a loan, it was excluded from value of the investment. Having considered subject of the dispute, and since the matter of zakat dealing with investments paid by Zakat Payer and appear in the partners' creditor account must be considered and treated as an investment representing its ownership rights and not be limited to amounts that represent ownership shares in the original capital or which increase was proven and documented, as long as Zakat Payer's financial statements show reality of paying those amounts to the investee company, and in fact did not represent a loan paid by Zakat Payer to the investee company. In light of the foregoing, amounts of these investments must be deducted from Zakat Payer's zakat base to avoid zakat being doubled, as well as the investee companies submit their zakat declarations to ZATCA, and the amount of the partners' current balance is calculated within their zakat base. This does not affect the claim that payment of these amounts actually represents a loan, as there is no evidence of a loan agreement or emergence of payments related to the alleged loan to Zakat Payer on the investee company. Therefore, the Department concluded to accept Zakat Payer's appeal by deciding to deduct the investment amount included in its financial statements from its zakat base, and to overturn the primary Decision in this regard.

Decision

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

First: Accept in form the Appeal filed by Zakat Payer/ ..., TIN No. (...), against the Primary Committee for Zakat and Tax Objections in Dammam Decision No. (30) of 1437 AH.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item (Social Insurance Overloaded with Increase of 2010 and 2011), by deciding to take into account contents of Zakat Payer's declaration with regard to the social insurance expense subject of dispute without charging any additional amounts of 2010 and 2011, and overturn the primary Decision in this regard, in accordance with Grounds and reasons set forth herein.
2. Dismiss Zakat Payer's appeal regarding the item (Loans that Completed a Full Year of 2010 and 2011), and uphold the primary Decision concluded in this regard, in accordance with Grounds and reasons set forth herein.



3. Amend the primary Decision on the item (Customer Payments that Completed a Full Year of 2010 and 2011), by deciding that Zakat Payer has the right to set-off the amount of “Customer Payments” within Zakat Payer’s obligations with the amount of “contract clients” within Zakat Payer’s assets. The amount added to the base shall be the amount of “Customer Payments” in excess of the amount of “contract clients” for each year of dispute, in accordance with Grounds and reasons set forth herein.
4. Overturn the primary Decision on the item (Creditors that Have Completed a Full Year of 2010 and 2011, and Zakat Differences), and refer consideration of this item to the First Department for the Determination of Income Tax Violations and Disputes in Dammam.
5. Accept Zakat Payer’s appeal with regard to the item (Lands of 2010 and 2011), and overturn the primary Decision concluded in this regard, in accordance with Grounds and reasons set forth herein.
6. Accept Zakat Payer’s appeal regarding the item (Non-Deduction of Investment of 2010 and 2011), by deciding to deduct the amount of investment included in Zakat Payer’s financial statements from his zakat base, and overturn the primary Decision concluded in this regard, in accordance with Grounds and reasons set forth herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-101)

Delivered in Appeal No. (Z-1774-2018)

Principle No. 207

It is well known that when zakat funds are assessed, their value is taken into consideration in accordance with the reality of their assessment when zakat is due thereon.

Facts:

First: Accept the objection in form filed by Zakat Payer/ ..., on zakat assessment of 01/05/2008 AD to 30/04/2011 AD.

Second: On Merits:

1. Uphold ZATCA's procedure regarding adding import differences of 01/05/2008 AD to 30/04/2011 AD to Zakat Payer's zakat base, in accordance with Grounds of the Decision.
2. Uphold ZATCA's procedure in not responding to Zakat Payer's request to deduct fixed asset differences of 2009 from Zakat Payer's zakat base, in accordance with Grounds of the Decision.
3. Uphold ZATCA's procedure in not responding to Zakat Payer's request to consider differences in foreign currency translation of 2009 as a deductible expense from his zakat base, in accordance with Grounds of the Decision.

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

1. (The Item of Import differences from 2009 to 2011): The Establishment objects to calculating these differences by protesting the fact that the Committee, which issued the Decision, relied on customs data to prove these differences without taking into account the Establishment's justification for the existence of these differences' amounts, without ascertaining the reasons for their existence. The Committee justified its rejection of reasons expressed by the Establishment by stating that it is difficult to recognize the same, even though these reasons are linked to the Ministry of Health's pricing, cost of imported goods, and the differences in commissions when value of goods are paid, which are influential reasons on the existence of these differences.
2. (The Item of Fixed Assets Difference of 2009): The Establishment objects to ZATCA's failure to deduct the difference amounting to SAR (800,000) arising from the value of land recorded in the Establishment's accounts in the amount of SAR (1,550,000), and its value recorded in the title deed in the amount of SAR (750,000), since that land was in fact not related to the Establishment's activity and belonged to its owner and was excluded during 2010 from the Establishment's books to show its assets and liabilities, given that exclusion of land value from fixed assets was in exchange for its exclusion from the owner's current account.
3. (The Item of Foreign Currency Differences Loss of 2009): The Establishment objects to the Committee's upholding of ZATCA in not accepting the loss difference because currencies assessed at the end of the year were not sold, so they are potential losses



and not actual losses, and they are considered a provision that is not considered as a deductible expense. However, the fact of that loss arises from revaluation of year-end currency balances, which is in accordance with the generally accepted accounting principles for calculation of such losses, as provided for in the Foreign Currency Standard in paragraph (106), and this item was the subject of field examination of the Establishment's accounts from 2009 to 2011.

Since the Department requested ZATCA to respond to contents of Appellant's memorandum regarding items subject to the objection, and since the Department received the reply from ZATCA dated 11/04/1442 AH regarding its request to respond to the Grounds contained in Zakat Payer Establishment's statement of appeal on items that Zakat Payer objects to ZATCA's assessment thereon. The reply confirmed ZATCA's position regarding its point of view on the appeal submitted on its subject, as it included ZATCA's response regarding the import differences item, stating that the Establishment had incorporated the value of foreign purchases in excess of their value, thereby inflating the cost. With regard to Zakat Payer's claiming that those differences were the result of currency conversion, it is an unconvincing claim, as the differences of 2011 exceeded 35%, according to statement of Customs Authority. In such a case, the data provided by the Customs Authority is the most accurate. With regard to the fixed assets item, ZATCA explains that in 2009, the land value was accepted according to the value stated in the deed, amounting to SAR (750,000), and was deducted from Zakat Payer's zakat base on this basis. Regarding the foreign currency translation differences item of 2009, ZATCA's view on this item is that the loss claimed by Zakat Payer is not actual, as it results from the valuation of foreign customer balances at the end of the year. In addition, ZATCA confirms that according to generally accepted accounting standards, this loss is not an actual loss once it is evaluated at the end of the year due to the non-occurrence of the sale process, which is what the actual loss is achieved therewith, and that what ZATCA has done and worked on is to consider those differences as not calculated within the deductible expenses of Zakat Payer's zakat base.

Having taken cognizance of the appeal submissions as well as the case document, the Department established that the case has become ripe for adjudication.

Grounds

Having examined the case file, documents therein, statement of appeal and response thereto pursuant to ZATCA's reply as indicated above, and having considered the Appellant's total defenses to the foregoing items, the Department concluded to rule on the same as follows:

First: (The Item of Import differences from 2009 to 2011, totaling SAR (8,708,983)): Having considered the appeal filed in respect of this item, the Department found that the Committee issuing the Decision had taken into account the evidence of import differences through the data issued by Customs Authority, and the Committee had not investigated the reasons with which the Appellant justified the existence of those differences by stating that such import related to the Ministry of Health's pricing and cost of imported goods and differences in currency when goods value was paid. Since the Committee issuing the Decision decided not to take such reasons into account on the ground that they were not consistent with its reasonableness, that the importer sold at prices below the import value under instructions given by the Ministry of Health related to determining the sale value and that the value of currency difference could not reach the threshold claimed by the Appellant before that Committee, which is consistent with ZATCA's opinion indicated in its reply to the Appellant's statement of appeal. Since the data issued by Customs is considered as evidence that can be compared with other evidence that does not make it inevitable to resort to conclusions it shows, since this Department did not find that ZATCA or the Committee had followed the path of ascertaining the authenticity of what



the appellant's allegation or its merits in light of its failure to ask the Ministry of Health about what the appellant claims, in particular since the entity connected with such imports at that time was the Saudi Customs Authority. The Authority and ZATCA were affiliated with the Ministry of Finance, and ZATCA could have verified the appellant's claim in the light of its appended memorandum dated 08/09/1439 AH, confirming his communication with the Customs Authority to confirm his claim. However, the Customs Authority refused to provide him with any substantiation of his point of view and requested him to do so through an official authority. Furthermore, ZATCA and the Committee did not verify the exchange rate that was claimed to have some differences based on its change, and it was possible for them to confront the Appellant with those prices, contrary to what he claimed before ZATCA and the Committee when discussing his objection to that item. Since the pleas made by Appellant render the presumption based solely on import data at Customs Authority to calculate differences from his zakat base uncertain for the soundness of assessment of those differences as decided by the primary Decision, given the reasons available to conviction of this Department to propose the adoption of that presumption and not to rely on mere customs data and to disregard the reasons provided by the Appellant to ZATCA that were not properly discussed in order to disregard the same.

Based on the foregoing, this requires considering that the original is what the Appellant submitted through his zakat declaration to calculate amounts of foreign imports within his zakat base to conduct assessment thereon. Therefore, the Department concluded to accept the Appellant's appeal and overturn the primary Decision ruled in that regard.

Second: (The Item of Fixed Asset Difference of 2009 in the Amount of SAR (800,000)): Having considered Zakat Payer's appeal on that item, it turned out that Zakat Payer's statement was a repetition of what he had already raised before the Primary Committee when discussing the objection to that item, and since this department did not find anything that would require a correction or comment on the result that the Decision reached in light of the pleadings submitted by the Appellant regarding that item, the Department concluded to dismiss Zakat Payer's appeal and uphold the primary Decision thereon based on its Grounds.

Third: (The Item of Foreign Currency Differences Loss): Having perused the pleas made by the Establishment regarding realization of its loss resulting from valuation of its balances in foreign currencies by the end of 2009, and since ZATCA objects to deducting such losses on the Grounds that they are not real losses, and that ZATCA adheres to the validity of its assessment through what was included in its point of view recorded in stating facts of the primary Decision and what was included in the reply submitted thereby in response to Zakat Payer's appeal regarding that item. Since it is established with regard to evaluation of such loss that it is a real loss that results in revaluation of balances or assets estimated at their value through what is stipulated by the accounting principles of the foreign currency standard. Since it was known that when evaluating zakatable funds, their value should be taken into account corresponding to the reality of their valuation when zakat was due thereon, and since Zakat Payer's accounts on the basis of which zakat is required are denominated in local currency, and since it is decided to consider these differences in Zakat Payer's foreign currency valuation as realizing losses to be calculated when determining Zakat Payer's zakat base. Therefore, the Department decided to accept Zakat Payer's appeal regarding calculating the foreign currency differences loss of 2009, and overturn the primary Decision regarding not calculating those losses in the manner stipulated by wording thereof in this regard.

Decision

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



First: Accept in form the appeal submitted by Zakat Payer/..., C.R. No. (...), TIN No. (...), against Decision No. (19) of 1437 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

Accept Zakat Payer's appeal with regard to the item of Import Differences from 2009 to 2011, totaling SAR (8,708,983), take into account what was stated in Zakat Payer's declaration in estimating the amount of imports, and overturn the primary Decision, in accordance with Grounds and reasons set forth in the Decision.

Dismiss Zakat Payer's appeal with respect to the item of Fixed Asset Difference of 2009 in the amount of SAR (800,000), and uphold the primary Decision, in accordance with Grounds and reasons set forth in the Decision.

Accept Zakat Payer's appeal with respect to the item of Foreign Currency Differences Loss and report of calculating foreign currency differences loss of 2009, and overrule the primary Decision, in accordance with Grounds and reasons set forth in the Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-107)

Delivered in Appeal No. (Z-1831-2018)

Principle No. 208

Charitable organizations' investment in commercial companies can be traced and their share can be deducted from zakat base of Zakat Payers who are affected by the amount of charitable organizations' contribution and participation therein directly or indirectly.

Facts:

First: Accept the Objection filed by ... Company in form to zakat assessment from 2008 to 2011 AD.

Second: On Merits:

Uphold Zakat Payer in not subjecting the percentage of indirect participation of (...) charitable organization in the capital of Company.

Since GAZT dissatisfied with this Decision, it submitted a statement of appeal to the Department summarized as follows:

ZATCA appeals the primary Decision being based on the Sharia fatwa that is based on general principle that Zakat may not be levied on public Waqf (endowments), on the funds of charitable organizations, or funds collected to be spent on charitable causes, nor on their profits, because they are not fully owned by specific persons. ZATCA argued that it doesn't claim zakat from charitable organizations, but rather from businesses in which they invest, and that the fatwa did not exempt the shares owned by charities in businesses from zakat, as the Zakat Payer company is independent with regard to its zakat and tax obligations. It is not a charity and thus its funds should be subject to zakat. ZATCA also argued that it is the business (.....Company) in which the charity holds shares that is supposed to apply for exemption from zakat, and that the said company is a commercial company that had submitted its declarations without any request for exemption, and that Appellant is not authorized to submit such request, and any determination to the contrary would result in an endless loop of exemptions based on that ground on which Zakat Payer Company claims the exemption for the indirect participation of a charitable organization in its capital, when zakat base is calculated.

The Department, having reviewed the statement of appeal, and having examined the papers and documents contained in the case file, decided that the case was ripe for adjudication and delivery of its Decision.

Grounds

Upon reviewing Case documents and statement of appeal submitted by GAZT, the Department found that conditions of appeal 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 statutory prescribed period.



As on Merits, the Department, having reviewed the case file and papers contained therein as well as the statement of appeal; and since the Department may decide to adopt the Grounds of the appealed Decision without looking for further Grounds if it satisfied with those Grounds considering that those Grounds are sufficient to respond to the challenges raised against that Decision. Accordingly, and given that the appealed Decision was based on sufficient and compelling grounding, where the department that delivered the Decision has duly examined the aspects of dispute reaching its Decision as included in the operative part. Since the Department did not find anything that warrants comment or rectification in light of the submissions made before it, it therefore determines that those submissions do not affect the appealed judgment conclusion. This however should not be affected by ZATCA's challenge that the commercial companies have their independent financial liabilities compared to charities. This can be countered by stating that detecting the money invested whether directly or indirectly in a company is not difficult or impossible having verified what is contained in the Zakat Payer's declarations to prove such contribution /investment in the charity. The amounts invested by charities in the companies can be traced and deducted from the zakat base for zakat payers who are affected by the existence of such investment / contribution. Nonetheless, this conclusion cannot be affected by the fact that Company which is the company that is directly invested in by the charity did not request for the exemption. On this ground, ZATCA based its conclusion that the Zakat Payer's is not concerned with that request. However, the Department believes that the Zakat Payer has the right clam for anything it is entitled to in order to preserve its funds including not paying more than the amount it should pay to ZATCA, as long as such claims are based on sound Grounds. This conclusion is not impaired by the fact that the company which the Zakat Payer hold shares in did not claim its right before ZATCA as to deducting the contribution of the charity from its zakat. Accordingly, this Department concluded to dismiss ZATCA's appeal for not being based on valid Grounds and to uphold the primary Decision in this respect.

Decision

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

First: Accept in from the appeal filed by GAZT against Decision No. (12) of 1438 AH, delivered by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

Dismiss the appeal of GAZT and uphold the primary Decision for the Grounds stated above.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-122)

Delivered in Appeal No. (Z-1878-2018)

Principle No. 209

Non-ownership of land is not a justification for not calculating the expenses required to prepare the land and for being considered as expenses to be deducted from Zakat Payer's base.

Facts:

First: Accept, in form, Zakat Payer's objection, in accordance with the rationale of the Decision.

Second: On Merits:

Uphold Zakat Payer's objection to non-deduction of projects under implementation of 2005 and 2007 from his zakat base, according to reasons of the Decision.

Since GAZT dissatisfied with this Decision, it submitted a statement of appeal to the Department summarized as follows:

ZATCA appeals against the primary Decision, by stating that in addition to what has been stated from ZATCA's point of view during consideration of Zakat Payer's objection before the Primary Committee, these projects are in fact short-term projects, as they are located on rented land and the company implements its projects thereon, paying annual rents to the owner, i.e., they are not owned by the Company. Therefore, these projects do not represent acquisition assets in the form of fixed assets. This fact is confirmed by the terms of contracts concluded between Zakat Payer Company and the owner, in which it was agreed that the architectural, electrical, and sanitary works and any amendments to the property will be made at the Company's expense and it would not have the right to claim financial compensation from the owner for the work that was performed. The property will be owned by the owner after the contract expires or is terminated. It was also agreed that the Company would hand over the rental site to the landlord free of damage and all fixed assets. Therefore, ZATCA affirms that such projects and works under implementation are not related to acquisition assets, so they are not fixed assets of the Company, and therefore there is no justification to deduct the same from the base. This tendency is supported by the provisions of the Executive Regulations for the Collection of Zakat issued by Ministerial Decision in 1438 AH, which specified what is included in the fixed assets that are deducted from the base. Provisions of this Regulations specified what is included in the deduction as Zakat Payer's capital constructions under implementation that are constructed for use in the activity and not for the purpose of sale. ZATCA concluded its appeal by requesting that these construction under implementation be added to zakat base of Zakat Payer Company, and overturning the primary Decision regarding not calculating the same within zakat base of Zakat Payer Company.

The Department, having reviewed the statement of appeal as well as the documents contained in the case file, established that the case was ripe for adjudication and delivery of its Decision.



Grounds

Upon reviewing Case documents and statement of appeal submitted by GAZT, the Department found that conditions of appeal have been fulfilled in form in accordance with the 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 statutory prescribed period.

On merits, having reviewed the case file, documents contained therein and statement of appeal, the Department is not to be blamed for taking into account the reasons of Decision subject of appeal without adding to them whenever it considers that those reasons are sufficient, because in supporting such Decision according to those reasons, it is confirmed that it did not find in the objections against the Decision what deserves a response thereto more than what those reasons contained. Based on the foregoing, since it is established that the Decision under appeal in the dispute regarding the item under appeal was consistent with the valid reasons on which it was based and sufficient to support its ruling, as the Committee issuing it conducted a thorough examination of the dispute and concluded with the result it reached in its wording. In addition, the Appellate Department did not notice anything regarding such Decision that required correction or comment in light of the arguments raised before this Department. Therefore, the Department concluded that it did not affect the outcome of the Decision. This is not affected by what ZATCA stated in its appeal that the land is not owned by Zakat Payer Company and therefore cannot be deducted from its zakat base. Having considered the dispute between ZATCA and the Company, the Department found that there is no dispute between the parties as to the fact that works and construction carried out by Zakat Payer are of the kind of work required to prepare the asset for process of exploiting it in the investment in order to generate return therefrom. Therefore, it is correct to consider it not excluded from being calculated as part of the assets or tools used to achieve profits and rents. Accordingly, lack of land's ownership is not a justification for not calculating expenses needed to prepare it and considering them as expenses to be deducted from Zakat Payer's base, because the lesson in zakat matters is to adapt consideration of those works and constructions in the extent to which they are considered as production requirements, as proving ownership is merely evidence that that asset is one of assets that may be deducted from the base, so there is no contradiction with that when calculating those works to prepare for exploitation of the asset that is not owned by Zakat Payer, considering them as expenses deducted from zakat base and as means and tools for producing profits and rents. Accordingly, the Department concluded that ZATCA's appeal was not based on a valid legal basis or a legal text supporting its view regarding outcome of the Decision under appeal. Therefore, the Department decided to dismiss ZATCA's appeal and uphold the primary Decision on the appeal against the item under consideration.

Decision

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

First: Accept in form the appeal filed by GAZT against Decision No. (21) of 1439 AH, delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

Dismiss the appeal of GAZT and uphold the primary Decision for the Grounds stated above.



Violations and Disputes in Riyadh

Principle No. 210

Proper zakat treatment requires that the debtor and creditor be set-off if one customer has two debit and credit accounts.

Facts:

On Wednesday, 14/01/1442 AH corresponding to 02/09/2020 AD, the First Appeals Chamber for Income Tax Interventions and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH based on Article 67.B of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH, as amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to consider appeal filed on 26/04/1440 AH corresponding to 02/01/2019 AD by / Group Company, on Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh No. (27) of 1439 AH, issued in Objection No. (1437/24/1532), filed by the Appellant against ZATCA, in which the primary Decision ruled as follows:

First: Accept the appeal filed by Zakat Payer/.... Company in form, regarding zakat assessment from 2011 to 2013 AD.

Second: On Merits:

Zakat Payer's disagreement to his request to deduct accounts receivable from balance of advance payments of

2011 and 2012, accept ZATCA's processing of calculation of advance payments for 2011, and recalculate the balance of advance payments account for 2012 as reached by the Committee, in accordance with Grounds of the Decision.

Since this Decision was not accepted by Zakat Payer (... Company), he submitted a statement of appeal to the Department, which included his request to overturn the Decision as set out in its statement of appeal.

On Wednesday, 02/07/1441 AH corresponding to 26/02/2020 AD, the Department held its session to consider the Case. Having called the litigants: ..., holding National ID No....., in his capacity as the Appellant Company's attorney appeared, while for ZATCA the following appeared: ..., ..., and Tarfa Al-Nashwan, under ZATCA's Authorization No. (...), dated 19/05/1441 AH. Having asked Zakat Payer Company's attorney about the date of receiving the Decision subject of appeal, he replied that they had not received from the Committee issuing the Decision anything indicating that it had been issued and notified thereto, and that they had obtained a copy of that Decision after they addressed ZATCA, as they were provided with the Decision of the Primary Objection Committee. In addition, this procedure taken by them to inquire about the Decision subject of appeal occurred after receiving letter of approval of amended declaration pursuant to the Primary Decision, which they received from ZATCA's branch in Mecca on 07/11/2018 AD, which included that they have the right to object to the same within a period of (60) days from the date of receiving the amendment letter. Having examined the content of that letter and its statement that the period of appeal against the Decision is from the date of receiving that letter, and since Zakat Payer's appeal on Decision of the Second Primary Committee for Zakat and Tax Objections in Jeddah No. 27 of 1439 AH was filed on 02/01/2019 AD,



the Department decided that Zakat Payer's appeal was filed within the legally prescribed period.

Grounds

Having asked Zakat Payer Company's attorney about reasons for objecting to the Decision subject to appeal other than reasons mentioned in his statement of appeal submitted on 02/01/2019 AD, he replied that there is nothing to add except his desire to clarify that the Committee had not expressed its opinion on Zakat Payer Company's objection to the method on which the full value of fixed assets was not deducted from the zakat base in the amount of SAR (79,679,855). Since ZATCA had not fully deducted that full value and only deducted the amount of SAR (46,829,713), although the value of those fixed assets is indicated in the Company's financial position statement at the end of 2011. In addition, they will provide the Department with evidence of their objection to ZATCA's method of calculating value of these fixed assets and including the same among these amounts in the zakat base. As for 2012, they also explain that the Committee did not recognize that there was a relationship between an account appearing in accounts receivable under the name (Unbilled Revenues), while the Department was provided with evidence that this account pertains to work performed for the same creditors with advance payments and that this value was recorded as revenues. In addition to the computerized account statements, a copy of the accounting proof documents was provided showing that these amounts were recorded as revenues and not directly recorded in the accounts receivable until official extracts were issued. Accordingly, we requested that accounts receivable balance (Unbilled Revenues) be deducted from the balance of advance payments. Therefore, the proper treatment from Zakat Payer Company's point of view is to deduct debit balances, totaling SAR (30,646,796), from the advance payments, totaling SAR (50,068,697). If this amount is not deducted, the debit balance, from Zakat Payer Company's point of view, must be deducted from revenues for this year. With regard to 2012 assessment, ZATCA did not follow the Sharia rule by adding partners' current account based on the opening balance or closing balance, whichever is less. Accordingly, it added partners' current account in the amount of SAR (65,000,000), while the opening balance, as stated in the financial statements of 2012, was SAR (32,149,858), which had an impact on the illegal increase in calculation of zakat. All the objections mentioned were included in the statement of objection to ZATCA's amended assessment.

Having asked ZATCA's representatives about statements made by the Company's representative and reasons for appealing the Decision in his statement of appeal, they responded that they confirm that Zakat Payer's objection did not address the fixed assets item, and that the item of partners' current account was not subject to Zakat Payer's objection based on facts of the primary Decision. With regard to the Advance Payments Item, it was addressed by ZATCA by taking the opening balance minus the debit and adding what has completed a full year.

Having asked ZATCA's representative about any additions or requests regarding the submitted appeal, he replied that there was no addition and that he was satisfied with what they had presented before the Department, and that they would provide the Department with statement of objection to the amended assessment, which would support their point of view in disregarding the Decision subject of appeal to discuss reasons raised for objecting to ZATCA's amended assessment within one week from the date of this hearing. Having asked ZATCA's representatives about any additions to the appeal, they replied that they have nothing to add, and they request upholding of the primary Decision.

The minutes were closed, and the Department decided to complete consideration of the case and decide thereon in the light of received information.

Since Zakat Payer, after being given a grace period by the Department, submitted a letter addressed thereto on 08/07/1441 AH, containing the absence of a document indicating



his objection to the other items that he claimed the primary Decision had disregarded its discussion. Accordingly, the Department decided to limit subject of the dispute to the item addressed by the Appellant in his objection to the primary Decision, as evidenced by that Decision, namely, which is the item related to accounts receivable and the extent to which it was deducted from balance of advance payments of 2011 and 2012, and therefore the dispute between the parties is limited to the Appellant's claim to deduct accounts receivable from balance of advance payments.

Since the summary of Zakat Payer's appeal was based on the fact that ZATCA's treatment of the objected item and support given thereto at the primary Decision, was not in conformity with the requirements of the Sharia and accounting rules requiring consolidation of balances for a single financial liability for which there were two balances, a debtor and a creditor for the same financial period, and a portion of advance payments was not completed a full year and should not be added to zakat base. ZATCA considers that it added advance payments balance that a year has passed thereon to zakat base of 2011 in the amount of SAR (59,249,879), and of 2012 in the amount of SAR (50,249,879), in which the conditions for zakat were met accordingly. It based on a number of fatwas and appeal Decisions that support the appearance of this item within the group of liabilities in financial statements at the end of the year, is considered a credit balance owed by Zakat Payer (Appellant), and is included within elements of zakat base as money benefited from others, and is used in the Company's current business.

The Department, having taken cognizance of statements of appeal, replies thereto and statements provided before the Department, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, having taken cognizance of the case file, documents contained therein, Grounds for the Decision subject of appeal, contents of statement of appeal and response thereto and statements made before the Department,

Having examined and considered subject of the dispute in which Zakat Payer appeals against the item represented in adding the item of deducting receivables from balance of advance payments of 2011 and 2012: Since the Department found that the committee issuing the Decision did not address the essence of those operations that were related to that item under consideration, and since the advance payments include the balance of (... Enterprise), and balance of (... Authority). Since proper zakat treatment requires that the debtor and creditor be set-off if one customer has two debit and credit accounts, and since, according to ZATCA's treatment of those balances, they were not linked to the debit balances of the same customers, resulting from work carried out for them, and since in such cases reaching the amount to be added to the base requires consideration of the effect of set-off between credit and debit accounts that belong to the same customers in their relationship with Zakat Payer. Since the detailed account statements of customers of Zakat Payer Company undertaking have shown that the debit balance of Enterprise, amounts to SAR (8,937,674), and Authority amounts to SAR (19,473,185). Accordingly, the Department concluded to uphold Zakat Payer's point of view in consolidation of the customer's financial receivables accounts and calculation of respective balance that was proven that one year had passed thereon, by upholding Zakat Payer's claim to deduct those receivables from the balance of advance payments of 2011 in the amount of SAR (59,249,879) and of 2012 in the amount of SAR (50,249,879).

Decision



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

First: Accept in form the appeal submitted by Zakat Payer/... Company, C.R. No. (...), TIN No. (...), against Decision No. (27) of 1439 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item related to deducting receivables from the balance of advance payments of 2011 and 2012, when assessing Zakat Payer in the two disputed years, and to overturn the primary Decision in this regard, in accordance of Grounds and reasons set forth in this Decision.
2. Dismiss the other appealed items because no objection by Zakat Payer was established before the Primary Objection Committee that issued the Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-156)
Delivered in Appeal No. (Z-12847-2020)

Principle No. 211

Different commercial register is a material error, and it cannot be considered a reason for wasting the financial statements.

Facts:

Dissatisfied with this Decision, Zakat Payer (...) submitted a statement of appeal summarized as follows:

Zakat Payer filed an appeal against the Primary Committee Decision regarding calculating zakat on an estimated basis and cancelling the amended zakat assessments of 2013 and 2014, due to a defect in the form, as the commercial register recorded in the budget submitted by the chartered accountant and in the Committee's Decision does not belong thereto.

Since the Department decided to open up court proceedings, ZATCA submitted a reply dated 06/07/1442 AH, corresponding to 17/02/2021 AD, in which it responded to Zakat Payer's appeal with respect to the item subject to appeal. Since ZATCA explains that it has re-conducted zakat assessment based on the appearance of legal accounts in the electronic deposit program for financial statements (Qawaem), and zakat base of 2013 became the net profit of the year and zakat differences amounted to SAR (55,380) appeared, pursuant to Article 4.2.T of the Executive Regulations for the Collection of Zakat, Article 13.8 of the same Regulations, and article 21.8 of the same Regulations. Moreover, ZATCA added that Zakat Payer's statements nullify his appeal on two aspects. The first aspect: His acknowledgment of validity of financial statements and that they were submitted to the banks, and the second aspect: Zakat Payer submitted his declarations according to the estimated method despite having financial statements prepared by a certified chartered accountant, and the fact that Zakat Payer concealed these audited financial statements from ZATCA. Rather, Zakat Payer submitted these statements to the official authorities, which proves that the Appellant is working through them. ZATCA's procedure is verification of zakat due in accordance with its correct legal aspect. Therefore, ZATCA requests that Zakat Payer's appeal be dismissed and that the primary Decision be upheld.

On Thursday, 24/09/1442 AH corresponding to 06/05/2021 AD, the Department decided to hold a 10-day electronic pleading hearing. However, the said period elapsed without either party to the appeal submitting any additional arguments.

The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on Sunday 17/11/1442 AH corresponding to 27/06/2021 AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final Decision.



Grounds

After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merits, having taken cognizance of subject of the dispute, since it is legally established that ZATCA has the right to raise a revised final assessment without being restricted to a specific period if data and information that were not known on the assessment date appear that would affect zakat or tax assessment. Since Zakat Payer argues that the commercial register No. (...) does not belong thereto, and that the correct commercial register according to what is stated in the Establishment's attached registration certificate issued by the Ministry of Commerce is (...). Having reviewed the documents, it became clear that Zakat Payer's claim that there was a difference in the commercial register number was correct, and that the correct number is (...). However, different commercial register is a material error, and it cannot be considered a reason for wasting the financial statements. Since the dispute lies in the Appellant's statement of objection submitted to the Primary Committee, which states that: "Revenues and profits contained in the financial statements are incorrect and exaggerated, as the budget information was provided to the auditor by employees of the Establishment without reference to the owner. The objective was to obtain facilities and they requested the budget to be approved by a chartered accountant at the request of the bank. We do not have any organized accounts for those periods and there are no documents". This is an explicit acknowledgment by the Appellant that the financial statements are related to his activity. Furthermore, the Department found that Zakat Payer deposited the financial statements on which ZATCA based in the electronic deposit program for financial statements (Qawaem). Since there are audited financial statements, which were not available at the time of issuing the estimated assessment, contained data that would affect the zakat assessment, thus supporting the validity of ZATCA's procedure to raise a revised assessment. This does not affect Zakat Payer's claim that this new information is incorrect and exaggerated, as it was contained in his financial statements audited by a chartered accountant showing all the essential elements of the financial position Accordingly, the Department concluded by a majority to dismiss Zakat Payer's appeal and uphold the primary Decision in this regard.

Decision

Based on the foregoing and considering the aforementioned reasons, the Department has decided by majority as follows:

First: Accept, in form, the Appeal submitted by Zakat Payer/, Commercial Register No. (...), TIN No. (...), against the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IRF-2020-6).

Second: On Merits:

- Dismiss Zakat Payer's appeal, and uphold the primary Decision concluded in this regard, in accordance with Grounds and reasons stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-60)
Delivered in Appeal No.
(ZI-1488-2018)

Principle No. 212

Zakat is due on zakatable funds, obtained through the elements of zakat base, of which the elements of property rights are one of its pillars, whether by adding positive elements or by subtracting negative elements.

Facts:

First: In Form:

Accept objection filed by Zakat Payer/ Company

Second: On Merits:

1. Dismiss Zakat Payer's objection to the item of difference in consumption added to the adjusted profit.
2. Dismiss Zakat Payer's objection to life insurance expense item.
3. Dismiss Zakat Payer's objection regarding the overstated social insurance premiums.
4. Dismiss Zakat Payer's objection to the item of initial offering expenses from the adjusted profit.
5. Dismiss Zakat Payer's objection regarding legal deposit item.
6. Settle the dispute on the investment item in Najm Company.

Dissatisfied with the Decision, the Plaintiff (...) filed a statement of appeal, in which she submitted that:

With regard to the appeal against the item (Value of Consumption Differences Added to Adjusted Profit), Zakat Payer objects to the primary Decision issued to reject his objection to this item. Zakat Payer states that differences in the consumption of fixed assets added to adjusted profit according to the assessment Decision amounted to SAR (3,713,934), while according to the submitted declaration it amounted to SAR (3,271,658), with an undeducted difference of SAR (442,274). This difference is due to the difference in value of the approved consumption calculated according to Statement No. 4, which amounted to SAR (1,301,849) as adjusted by ZATCA by calculating it for a calendar year, while according to declaration submitted, it amounted to SAR (1,744,122) calculated as one year and four months (a long year). Furthermore, Zakat Payer objects to this amendment made by ZATCA for violating the provisions of Article 17 of the Tax Law and of Article 9.1&4 of the Implementing Regulations of the same Law. Zakat Payer confirms that all these provisions refer to consider the tax year as a basis for accepting the deductible expense, including depreciation installments of fixed assets. Besides, Zakat Payer considers that according to Article 18 of the Implementing Regulations, the tax year is equivalent to the fiscal year if the Company uses the same as an approved fiscal year. Therefore, provisions of the said Articles stipulate that Gregorian tax year, as it is in the case of Zakat Payer, shall be considered as the basis for calculating the annual depreciation premium, and therefore the depreciation premium for the long year must be calculated on the basis of the entire period (16) months, and not a fiscal year of only (12) months. Zakat Payer concludes his



objection by requesting that depreciation differences be approved as stated in the declaration and amended accordingly.

With regard to the appeal against the item (Non-Approval of Deduction of Life Insurance Expenses from Adjusted Profit), Zakat Payer objects to the primary Decision issued to dismiss his objection to this item. Zakat Payer asserts his right to deduct the life insurance expense whose deduction is not approved at the value of SAR (32,867). In addition, Zakat Payer believes that these expenses represent life insurance premiums for the Company's employees of 2014, in accordance with the Company's internal regulations approved by the Insurance Authority, and conditions for deducting expenses contained in Article 12 of the Income Tax Law and Article 9 of the Implementing Regulations of the Income Tax Law apply, and that ZATCA has no legal justification for not deducting the same. Furthermore, Zakat Payer confirms that Sharia conditions apply to these expenses that require them to be deducted from the adjusted profit for zakat purposes, as they relate to the Company's activity and were paid for the year subject to objection and do not include expenses that are not permissible to deduct from a legal perspective.

Regarding the appeal against the item (Non-Adoption of Deducting Overstated Social Insurance Premiums from the Adjusted Profit), Zakat Payer objects to the primary Decision issued to dismiss his objection to this item. Zakat Payer asserts his right to deduct overstated social insurance premiums in the amount of SAR (56,009), as these expenses represent Zakat Payer's share of the social insurance premiums on his Employees' salaries of 2014, and they are differences calculated by the General Organization for Social Insurance as settlement differences claimed and paid by Zakat Payer, and he claims that he attached the payment documents and attached the insurance certificate proving the same. Accordingly, Zakat Payer believes that these expenses should be deducted because they are subject to the conditions for deducting expenses contained in Article 12 of the Income Tax Law and Article 9 of the Implementing Regulations of the Income Tax Law, and that ZATCA has no legal justification for not deducting the same. Furthermore, Zakat Payer confirms that Sharia conditions apply to these expenses that require them to be deducted from the adjusted profit for zakat purposes, as they relate to the Company's activity and were paid for the year subject to objection and do not include expenses that are not permissible to deduct from a legal perspective.

With regard to the appeal against the item (Non-Adoption of Deducting Initial Offering Expenses from Adjusted Profit), Zakat Payer objects to the primary Decision issued to reject his objection to this item. Zakat Payer asserts that he has the right to deduct the initial offering expenses in the amount of SAR (9,396,940), as they represent expenses incurred by Zakat Payer to offer subscribed shares in accordance with both the Companies Law and the Cooperative Insurance Companies Control Law. This expense was declared in the list of changes in shareholders' rights. Zakat Payer believes that even though he did not include this expense among his expenses, he believes that it must be deducted from the zakat perspective because all conditions apply thereto, and that ZATCA has no legal justification for not deducting the same. Zakat Payer confirms that Sharia conditions apply to these expenses that require them to be deducted from the adjusted profit for zakat purposes, as they relate to the Company's activity and were paid for the year subject to objection and do not include expenses that are not permissible to deduct from a legal perspective.

With regard to the appeal on the item (Non-Adoption of Deducting Legal Deposit from Zakat Base), Zakat Payer objects to the primary Decision which dismissed his objection to this item. Zakat Payer affirms his right to approve the legal deposit deduction from zakat base, which ZATCA did not approve its deduction in the amount of SAR (8,403,500), which represents the share subject to zakat at a rate of (48.02%) from the legal deposit deducted from zakat base according to Zakat Payer's declaration. In addition, Zakat Payer considers that Sharia conditions requiring zakat on the legal deposit are not met, since it is



required to impose zakat that the money be fully owned by Zakat Payer that gives him the right to dispose of, possess and benefit from the money on which zakat is due. These conditions are missing with regard to deposit subject to this item. Zakat Payer confirms that insurance companies do not have the right, under the Implementing Regulations of the Insurance Companies Law, to dispose of the legal deposit amount, in addition to the fact that returns of this deposit do not belong to Zakat Payer but to SAMA. Furthermore, Zakat Payer supports the same by the content of Sharia Fatwa No. (12756) issued on funds that cannot be disposed of, and emphasizes that Article 14 of the Cooperative Insurance Companies Control Law stipulates that insurance companies must deposit a legal deposit in a bank for SAMA. The Implementing Regulations of the same Law stipulates in Article 58 that the deposit proceeds belong to SAMA. Zakat Payer his objection by stating that, in terms of calculating the zakat base, the legal deposit is cash that has been forcibly deducted from the capital and is not used in any way and its return is never used, and therefore it should be deducted from zakat base of fixed assets.

Since the Department asked ZATCA on 23/11/1441 AH corresponding to 13/07/2020 AD to submit its response to Zakat Payer's appeal and the Decision under consideration, within the period granted thereto by the Department. A Reply was received from ZATCA on 28/11/1441 AH corresponding to 18/07/2020 AD, which included a response to Zakat Payer's memorandum regarding the appealed items. In its response, ZATCA reaffirmed its position as stated in memoranda submitted to the Primary Committee and supporting judgments. It argued that the points raised by Zakat Payer in its appeal were not new and had already been addressed and responded to by ZATCA during the proceedings before the Primary Committee. As such, ZATCA requested to validate Zakat Payer's appeal in form and dismiss it on merits.

Moreover, the Department requested Zakat Payer, on 19/03/1442 AH, corresponding to 04/11/2020 AD, to submit what he would like to add to his appeal on the Decision under consideration within the period granted to him by the Department, or to suffice with what he submitted in statement of appeal. On 02/04/1442 AH, corresponding to 17/11/2020 AD, the Zakat Payer submitted a number of documents attached to the case file.

In its hearing held on Thursday, 13/07/1442 AH, corresponding to 25/02/2021 AD, the Department decided to convene a 10-day electronic hearing, and the Department did not receive any addition to what was previously submitted by parties to the appeal.

In its hearing held on 05/08/1442 AH corresponding to 18/03/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing papers and documents included in Case file, the Department concluded that the Case has become ripe for adjudication in on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, with regard to the appeal on the item (Value of Depreciation Differences Added to Adjusted Profit), the Department found that the appeal lies in (Zakat Payer's) request to adopt the depreciation differences as stated in the declaration, and objects to ZATCA's calculation of such differences for a calendar year only (12 months) rather than for the entire period (16 months) (a long fiscal year). However, ZATCA believes that depreciation has been calculated for the whole period 29/08/2013 to 30/12/2014 and that what Zakat Payer raised is incorrect. Differences have resulted from an error made by Zakat Payer in preparing statement No. 4 and No. 4/1 by placing the value of third group elements in the row of second group and by calculating their depreciation at a lower value, as well as for



fifth group. Having referred to the audited financial statements approved by the Chartered Accountant, the Department found that they began from the period August 29, 2013 to December 31, 2014, as they represent a long fiscal year of sixteen months. Depreciation was calculated by ZATCA based on the amounts declared by Zakat Payer in Note No. 10 of the financial statements. In addition, ZATCA based its amendment on Zakat Payer adding the values of third group in the second group, as well as the case of the fifth group. Zakat Payer perused the primary Decision, and did not challenge the method of calculating depreciation by ZATCA and upholding of the primary Decision, which means that Zakat Payer's plea is groundless, given that ZATCA calculated depreciation for to which Zakat Payer objects. Since the Department did not observe any requirement for correction or further comment based the arguments raised, this Department concludes that the submissions made do not affect the outcome of the primary Decision regarding this item. Therefore, this Department dismisses Zakat Payer's appeal and upholds the Decision in respect of this item.

With regard to the appeal on the item (Non-Approval of Deduction of Life Insurance Expenses from Adjusted Profit), the Department found that the appeal lies in (Zakat Payer's) request to deduct life insurance expenses in the amount of SAR (32,867), which was not approved to be deducted from the adjusted profit of 2014, as deductible expense according to Article 12 of the Income Tax Law, while ZATCA considers that life insurance expenses are not necessary expenses to achieve income, which necessitates that they are not deducted from the base. Having taken cognizance of the aforementioned, since it is legally established that all necessary expenses for generating the taxable income should be deducted provided that they are supported by supporting documents and used for generating the taxable income; and since determining the expenses used to generate taxable income in cases nor provided for requires that the general practice for determining whether these expenses as related to generating income or not, and since the general practice is that companies compete in providing insurance benefits of all kinds, and incur this type of expenses to attract talents and consequently increase their revenues. Therefore, this Department concludes to accept Taxpayer's appeal and considering these expenses as deductible expenses from tax base. As for the zakat aspect related to this item, since it was established that Zakat Payer has spent the money in dispute, and the basic principle is that zakat is not due on money that came out of Zakat Payer's liability, which entails the right of Zakat Payer to deduct life insurance expenses for the years in dispute. This conclusion is not undermined by ZATCA's view that this expense is unnecessary, as it did not base its position on any legal or regulatory provision that can be relied upon in relation to zakat aspect of this item. Furthermore, the primary Decision's reliance on Article (5) of the Executive Regulations for the Collection of Zakat issued in 1438 AH does not affect this conclusion, as it was enacted after the years in dispute. Therefore, the provisions of the regulations apply only from the date of its enforcement and do not retroactively affect prior occurrences, in accordance with the principle of non-retroactivity of laws. In light of the above, the Department unanimously decided to accept Zakat Payer's appeal by considering the life insurance expense as deductible expenses for the years in dispute and to overturn the primary Decision delivered in this regard.

With regard to the appeal on the item (Non-Approval of Deducting Excess Social Insurance Expenses from Adjusted Profit), the Department found that appeal lies in (Zakat Payer's) request to deduct the social insurance expenses calculated for his employees to GOSI, as deductible expense in accordance with Article 12 of the Income Tax Law. However, ZATCA considers that the excess social insurance expense for the employees should not be deducted, as the amounts stated in the insurance certificates do not correspond to the amount added to accounts to be made in accordance with ZATCA circulars in this regard. Having considered the foregoing, The Department found that ZATCA reached its amendment by comparing the amounts indicated in the social



insurance certificate with the amounts added to the accounts, without taking into account documentation provided by Zakat Payer and his assertion that the insurance certificate only shows amounts paid to GOSI up to the date of the certificate and not the amount due in accordance with requirements of accounting standards for the fiscal year. In addition, Zakat Payer indicated in his point of view in the primary Decision that he had submitted the supporting documents for his point of view, which neither ZATCA nor the Committee took them into account in reaching its Decision. The general rule is to take Zakat Payer's declaration into account unless there is evidence to the contrary. Therefore, the Department decided to accept his appeal.

Regarding the appeal on the item (Non-Approval of Deducting Initial Offering Expenses from Adjusted Profit), the Department found that the appeal lies in (Zakat Payer's) request to deduct initial offering expenses, as it represented expenses incurred by Zakat Payer to offer the subscribed shares, as deductible expense under Article 12 of the Income Tax Law. However, ZATCA considers that this expense should not be deducted, since it was not added to the book profit of the year in dispute, and was not included in Zakat Payer's income statement. Since the amount in dispute is accounted as a reduction in equity and not as an expense of the Company, therefore, its tax treatment differs from the zakat treatment: In tax terms, the initial offering expenses are not considered an activity expense, and therefore Zakat Payer may not deduct the same in order to reach its tax profit. In zakat terms, since zakat is due on zakatable funds, obtained through the elements of zakat base, of which the elements of property rights are one of its pillars, whether by adding positive elements or by subtracting negative elements. Since these costs represent a decrease in equity, as confirmed by the list of changes in shareholders' rights, this negative element must be subtracted to reach the net zakat base, like the other negative elements in the base. Therefore, this Department decides that Zakat Payer is entitled to deduct this amount from the amounts deducted from zakat base.

With regard to the appeal on the item (Non-Approval of Deducting Legal Deposit from Zakat Base), the Department found that the appeal lies in (Zakat Payer's) request to deduct the legal deposit from zakat base, which ZATCA did not adopt its deduction due to the absence of ownership and possession, while ZATCA believes that legal deposit is collateralized money on which legitimate zakat is due. Having carefully considered Zakat Payer Company's Grounds for appeal regarding this item, as well as the primary Decision which outlined ZATCA's position and the conclusion reached to include that statutory deposit in Zakat Payer's zakat base, it is noted that the primary Decision was based on the Implementing Regulations for Zakat Collection issued in 1438 AH, which state that such statutory deposits should not be excluded from zakat payers' zakat base. However, since the dispute pertains to years prior to the enactment of those regulations, applying their provisions in this case is inappropriate, given that they were issued after the years under dispute. Furthermore, the established appellate jurisdiction prior to the aforementioned regulations classified the statutory deposit as a type of guarantee required by the regulatory authority overseeing the activity in exchange for customer rights. Such deposits are also considered compulsory and non-voluntary, leading to the conclusion that the company cannot dispose of the deposit funds upon liquidation, as the company's control over these funds is restricted by the regulatory authority, rendering it a reserved asset at the direction of that authority, which is a necessary condition for obtaining the license to operate. Additionally, the regulatory provisions governing cooperative insurance activities indicate that the proportion of capital amounts retained by the regulatory authority (SAMA) generates returns on those retained amounts. Therefore, it is necessary to conclude that the statutory deposit should not be added to Zakat Payer's zakat base. ZATCA's claim that the deposit should be considered as collateralized money, with zakat owed by the original owner, is unfounded since the statutory deposit is not established under a contract between a mortgagor and a mortgagee. Rather, it is mandated by regulatory requirements for



conducting Zakat Payer's business. Thus, viewing the statutory deposit as if it were collateralized money, as ZATCA states in its response to the appeal of Zakat Payer Company, is not appropriate. Consequently, the Department concluded to accept Zakat Payer's appeal, overturn the primary Decision delivered in this regard, and deduct the relevant statutory deposit amount from Zakat Payer's base of 2014.

Decision

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

First: Accept in form the Appeal filed by the Zakat Payer, C.R No. (...), TIN (...), against Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (11) of 1439 AH.

Second: On Merits:

1. Dismiss Zakat Payer's appeal with regard to Item (Value of Depreciation Differences Added to Adjusted Profit) and uphold the primary Decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer's appeal regarding the item (Non-Approval of Deducting Life Insurance Expenses from Adjusted Profit), and overturn the primary Decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
3. Accept Zakat Payer's appeal regarding the item (Non-Approval of Deducting Excess Social Insurance Expense from Adjusted Profit), and overturn the primary Decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
4. With regard to the item (Non-Approval of Deducting Initial Offering Expenses from Adjusted profit):
 - a. Dismiss Zakat Payer's appeal regarding his request to deduct the initial offering expenses from the tax base, and uphold the primary Decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
 - b. Accept Zakat Payer's appeal regarding deduction of initial offering expenses from zakat base, and overturn the primary Decision concluded in this regard, in accordance with Grounds and merits stated in this Decision.
5. Accept Zakat Payer's appeal to the item (Non-Approval of Deducting Legal Deposit from Zakat Base), and overturn the primary Decision concluded in this regard, in accordance with Grounds and merits stated in this Decision



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-212)
Delivered in Appeal No.
(ZI-13791-2020)

Principle No. 213

The entire import difference does not represent a profit for Zakat Payer, and what represents the profit that can be subjected to zakat is the estimated profit rate from these differences.

Facts:

Since this Decision was not accepted by Appellant (ZATCA), it submitted a statement of appeal which included the following:

With regard to the items (Addition of Capital and Statutory Reserve from 2008 to 2013) and (Addition of 10.5% of Import Differences from 2003 to 2007) by the Plaintiff/.....Establishment, ZATCA confirms the validity of its point of view contained in the memorandum submitted to the Department issuing the judgment under appeal and upholds the validity and soundness of its procedure. Furthermore, ZATCA responds to Grounds contained in the Decision regarding the first item that the Plaintiff and the Department in Grounds of its Decision recognized that the Plaintiff had amended the articles of association ratified on 27/10/1429 AH, corresponding to 27/10/2008 AD. The Department did not notice that this amendment was made after part of the years subject to the case, since the case relates to years from 2003 to 2013, which requires correcting the Decision for years prior to the amendment by reducing the capital. Therefore, there is no legal or regulatory justification for exempting it for all the years subject to the case, which requires correcting the Department's Decision in this regard. In addition, ZATCA affirms that the Department's Decision with regard to the second item is incorrect because the Department did not clarify, in accounting terms, what differences it had reviewed and on the basis of which it overturned the Defendant's Decision, which makes its Decision ambiguous and unclear, and is fatally flawed. ZATCA requests clarification of the Department's Decision and the document on which it based the cancellation. The Appellant requests to add the capital and reserve before amendment was made by reducing the capital. Therefore, Appellant requests to overturn the Department's Decision with regard to the two items subject to appeal for the reasons given above.

On Thursday, 19/10/1442 AH corresponding to 29/06/2021 AD, having taken cognizance of the statement of appeal and documents included in Case file, the Department decided to hold a 10-day e-hearings session. However, the period lapsed without receiving any further addition from the parties to appeal during this period.

On Sunday, 01/12/1442 AH corresponding to 11/07/2021 AD, having reviewed statements of appeal and considered the case papers and documents contained in the case file, and since the specified period has passed without any additions to what was submitted by the two parties to the appeal, the Department found that the case was ripe for adjudication and issuance of a Decision on its merits.



Grounds

Having taken cognizance of Case documents and statement of appeal submitted by ZATCA, the Department found that the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being submitted by a party having capacity and within the prescribed time-limit.

With regard to ZATCA's appeal on the items (Adding Capital and Statutory Reserve from 2008 to 2013) and (Adding 10.5% of the Import Differences from 2003 to 2007), it turned out that ZATCA's appeal lies in requesting the ruling to cancel the appealed Decision related to the zakat assessment from 2003 to 2013. ZATCA confirms the validity of its view contained in the memorandum submitted to the Department that issued the ruling under appeal and upholds the validity and soundness of its procedure. With regard to the first item: The item of Capital and Statutory Reserve, having considered subject of the dispute, and since ZATCA requests that the Decision be corrected for years before the amendment to reduce the capital be made, and with reference to the appealed Decision, it is found that the Primary Department accepted ZATCA's procedure from 2003 to 2007, the years preceding the capital reduction. Therefore, the Department concludes with the validity of Decision under appeal to cancel ZATCA's procedure for the years 2008 to 2013. Since the Department did not notice anything that required correction or comment in the light of what was presented before it, it concluded that what was presented did not affect the outcome of the Primary Department's Decision delivered regarding this item. Accordingly, the Department decided to dismiss ZATCA's appeal, and to uphold the Primary Decision on this item.

With regard to the second item: The Item of Foreign Purchases, having considered the appeal submitted by ZATCA on this item, and since Zakat Payer's objection lies in his request that import differences be subject to a profit rate of (10.5%) instead of the full amount of differences to be subject to Zakat. Having taken cognizance of a sample of ZATCA's assessments for the years in dispute, it turned out that it had added the full import differences resulting from the increase of customs data over Zakat Payer's declaration of the adjusted profit, contrary to what was established in its point of view in the primary Decision. Since the entire import difference do not represent a profit for Zakat Payer, and that represents profit which can be subjected to zakat in accordance with the procedures applied to other Zakat Payers does not exceed (10.5%). Since this Department found validity of the conclusion reached by the Department issuing the appealed Decision. Therefore, the Department concluded to dismiss ZATCA's appeal, and uphold the primary Decision regarding this item.

Decision

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

First: Accept ZATCA's appeal against Decision No. (IRF-11-2020) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in form.

Second: On Merits:

Dismiss ZATCA's appeal with regard to the items "Adding Capital and Statutory Reserve for the years 2008-2013" and "Adding 10.5% of the Import Differences for the years 2003-2007", and uphold the Department's Decision based on the Grounds and reasons contained therein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-193)
Delivered in Appeal No. (Z-
14966-2020)

Principle No. 214

Calculation of zakat base is originally based on declaration submitted by Zakat Payer, and requires him to submit supporting evidence. In the absence of legal books and records, ZATCA has the right to resort to the estimated method for the purposes of calculating zakat by collecting possible information to reach the earliest possible estimate of reality of Zakat Payer's activity.

Facts:

Dismiss the objection filed by the Plaintiff....., C.R No. (...) against the Defendant's/ ZATCA's Decision regarding zakat assessment of 1436 AH.

Dissatisfied with this Decision, Zakat Payer (...) submitted a statement of appeal summarized as follows:

Zakat Payer objects to the Primary Committee Decision subject to appeal that concluded to dismiss his objection regarding the estimated zakat assessment of 1436 AH, he demands that his zakat base be calculated at an amount of SAR (55,675.22), which was paid, instead of zakat amount estimated by ZATCA, which amounted to SAR (250,663,75). This is based on the fact that ZATCA's assessment is not commensurate with the size of Zakat Payer's gains and losses. In addition, ZATCA did not inspect the branches, but rather requested some records and letters about some activities. Zakat Payer explains that there are many records and licenses that have been canceled, and number of workers is (134) workers, and a number thereof has not completed a year since their sponsorship was transferred to us, and not as stated in ZATCA's letter that they reached (156) workers. Therefore, Zakat Payer requests to overturn the Department's Decision subject to appeal based on the above Grounds.

On Sunday, 24/11/1442 AH corresponding to 04/07/2021 AD, the Department decided to hold a 10-day electronic hearing. The Department received a reply from ZATCA that included "ZATCA confirms its point of view contained in the memorandum submitted before the Primary Committee on the items subject to appeal. In addition, matters raised by Zakat Payer does not go beyond what he had previously stated before the Primary Committee, to which ZATCA responded in a timely manner. Furthermore, ZATCA requests that no applications not submitted before the Primary Committee, based on Article 186 of the Law of Procedure before Sharia Courts. ZATCA maintains the validity and soundness of its procedure, and requests the esteemed Department to dismiss Zakat Payer's appeal and uphold the primary Decision based on the abovementioned reasons. Zakat Payer did not provide any addition to what he had previously submitted.

On Tuesday, 09/01/1443 AH corresponding to 17/08/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication its



merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merits, having considered subject of the dispute, and since Zakat Payer's objection lies in his demand for accounting using a method other than the estimated method that does not reflect reality of his activity. However, ZATCA argued that it maintains validity and soundness of its procedure and asked the Department to uphold the Primary Department Decision. Since ZATCA has calculated an estimated base without conducting a field examination that enables it to calculate a zakat base in a fair manner that reflects the reality of Zakat Payer's activities in light of circumstances and facts related to current situation, and since calculation of zakat base is originally based on declaration submitted by Zakat Payer and require him to submit supporting evidence. In the absence of legal books and records, ZATCA is entitled to resort to estimated calculation for the purposes of calculating zakat, by collecting possible information to reach the earliest estimate of the fact of Zakat Payer's activity, through field inspection and examination conducted by ZATCA, and through any information obtained by ZATCA from other parties such as size of his imports, contracts, workers, loans and subsidies granted to him. Since cancellation of his commercial registers within short periods from the start of activity, in addition to his failure to hire any workers on a number of assessed activities, indicates that no profits were made for the activity for a certain period. Since the key basis is what Zakat Payer acknowledged in his declaration, and since ZATCA did not provide any Grounds that could be relied upon to deviate from this key basis, this Department concludes that Zakat Payer is entitled to calculate zakat base according to what was stated in his declaration, and to be satisfied with what he paid in the amount of SAR (55,675,22). Therefore, the Department decided to accept Zakat Payer's appeal and overturn the Primary Department's Decision.

Decision

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

First: Accept in form the Appeal filed by the Zakat Payer, CR. No. (...), TIN (...), against the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IRF-14-2020), delivered in case number (Z-153-2018), related to zakat assessment of 1436 AH.

Second: On Merits:

Accept Zakat Payer's appeal and overturn the Decision rendered by the First Department for Determination of Income Tax violate and Disputes in Riyadh, in accordance with reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-193)
Delivered in Appeal No. (Z-14966-2020)

Principle No. 215

Accounting classification does not necessarily mean that the asset itself is subject to zakat, but rather basis of zakat is related to whether the asset is for sale in its current state.

Facts:

Dismiss the objection filed by the Plaintiff....., C.R No. (.....) against the Defendant's/ ZATCA's Decision regarding zakat assessment of 1436 AH.

Dissatisfied with this Decision, Zakat Payer (...) submitted a statement of appeal summarized as follows:

Zakat Payer objects to the Primary Committee Decision subject to appeal that concluded to dismiss his objection regarding the estimated zakat assessment of 1436 AH, he demands that his zakat base be calculated at an amount of SAR (55,675.22), which was paid, instead of zakat amount estimated by ZATCA, which amounted to SAR (250,663,75). This is based on the fact that ZATCA's assessment is not commensurate with the size of Zakat Payer's gains and losses. In addition, ZATCA did not inspect the branches, but rather requested some records and letters about some activities. Zakat Payer explains that there are many records and licenses that have been canceled, and number of workers is (134) workers, and a number thereof has not completed a year since their sponsorship was transferred to us, and not as stated in ZATCA's letter that they reached (156) workers. Therefore, Zakat Payer requests to overturn the Department's Decision subject to appeal based on the above Grounds.

On Sunday, 24/11/1442 AH corresponding to 04/07/2021 AD, the Department decided to hold a 10-day electronic hearing. The Department received a reply from ZATCA that included "ZATCA confirms its point of view contained in the memorandum submitted before the Primary Committee on the items subject to appeal. In addition, matters raised by Zakat Payer does not go beyond what he had previously stated before the Primary Committee, to which ZATCA responded in a timely manner. Furthermore, ZATCA requests that no applications not submitted before the Primary Committee, based on Article 186 of the Law of Procedure before Sharia Courts. ZATCA maintains the validity and soundness of its procedure, and requests the esteemed Department to dismiss Zakat Payer's appeal and uphold the primary Decision based on the abovementioned reasons. Zakat Payer did not provide any addition to what he had previously submitted.

On Tuesday, 09/01/1443 AH corresponding to 17/08/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.



Grounds

After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merits, having considered subject of the dispute, and since Zakat Payer's objection lies in his demand for accounting using a method other than the estimated method that does not reflect reality of his activity. However, ZATCA argued that it maintains validity and soundness of its procedure and asked the Department to uphold the Primary Department Decision. Since ZATCA has calculated an estimated base without conducting a field examination that enables it to calculate a zakat base in a fair manner that reflects the reality of Zakat Payer's activities in light of circumstances and facts related to current situation, and since calculation of zakat base is originally based on declaration submitted by Zakat Payer and require him to submit supporting evidence. In the absence of legal books and records, ZATCA is entitled to resort to estimated calculation for the purposes of calculating zakat, by collecting possible information to reach the earliest estimate of the fact of Zakat Payer's activity, through field inspection and examination conducted by ZATCA, and through any information obtained by ZATCA from other parties such as size of his imports, contracts, workers, loans and subsidies granted to him. Since cancellation of his commercial registers within short periods from the start of activity, in addition to his failure to hire any workers on a number of assessed activities, indicates that no profits were made for the activity for a certain period. Since the key basis is what Zakat Payer acknowledged in his declaration, and since ZATCA did not provide any Grounds that could be relied upon to deviate from this key basis, this Department concludes that Zakat Payer is entitled to calculate zakat base according to what was stated in his declaration, and to be satisfied with what he paid in the amount of SAR (55,675,22). Therefore, the Department decided to accept Zakat Payer's appeal and overturn the Primary Department's Decision.

Decision

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

First: Accept in form the appeal filed by Zakat Payer/, C.R. No. (...), TIN (...), against the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IRF-14-2020), issued in Case number (Z-153-2018), related to zakat assessment of 1436 AH.

Second: On Merits:

Accept Zakat Payer's appeal and overturn the Decision rendered by the First Department for Determination of Income Tax violate and Disputes in Riyadh, in accordance with reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-132)

Delivered in Appeal No. (Z-1568-2018)

Principle No. 216

The basis for adding dividends by joint stock companies to Zakat Payer's zakat base is related to first verifying that they are subject to zakat in the joint stock companies that disbursed them, if these companies are among Zakat Payers subject to zakat at ZATCA when conducting zakat assessment thereon.

Facts:

First: Accept the objection in form filed by Company to ZATCA zakat assessment for years from 2011 to 2013.

Second: On Merits:

1. Uphold ZATCA's Decision of not deducting investments in joint-stock companies for the years 2011 to 2013 AD.
2. Uphold ZATCA's Decision not to deduct land contributions for the period from 2011 to 2013 AD.
3. Uphold ZATCA's Decision not to deduct dividend distributions of joint-stock companies for the period from 2011 to 2013 AD.
4. Uphold ZATCA's Decision not to deduct projects under development from zakat base for 2013 AD.

Dissatisfied with this Decision, (... Company) submitted to the Department a statement of appeal summarized as follows:

1. (Non-Deduction of Investments in Joint-Stock Companies from 2011 to 2013 AD)
Item: The Company's position is that its letter submitted to the Primary Objections Committee in Dammam regarding the recognition of unrealized losses in the income statement was based on the application of Paragraph (120) of Accounting Standard No. (9) (Accounting Standard for Investment in Securities), issued by SCOPA, which states: "It is necessary to recognize the temporary decline in the cost of securities held to maturity and available for sale for each security individually as soon as it occurs and to record the losses in the income statement for the fiscal period...". The Committee stated in its reasoning as follows: "This condition was not realized in this case because the investment portfolio shows an increase in the value of shares during the objection period". Zakat Payer Company indicates that the increase in share value was not due to a rise in share prices but rather the result of the increased number of shares the Company purchased during the years in question. It is evident that the value of the shares decreased in the first year the Company owned those shares in 2011 AD, resulting in (unrealized losses) amounting to SAR (1,191,534). Similarly, the value of the shares declined in 2012 AD, leading to (unrealized losses) of SAR (1,490,758). The value of the shares then increased in 2013; therefore, the unrealized losses were recognized and recorded in the income statement. Even if there was an error in applying the accounting standard or a misunderstanding on the part of Zakat Payer,

this does not change the nature of long-term investments. Other evidence suggests that the Company intended to hold and increase these investments rather than for trading purposes. Among these indicators is that the number of shares did not decrease during the years in question or afterward; rather, it remained stable or increased. Additionally, the Company presented the shares in its records and financial statements as long-term investments. As for ZATCA's statement that the field examination report included the response that the Company's intention regarding investments in shares was to benefit from price increases and sell the same upon realizing profits, this was not reflected in the field examination report. According to ZATCA's letter No. (3324/16/1437) dated 09/05/1437 AH (Page 2), it was stated: "...in accordance with the field examination report, the Company was asked regarding its intention regarding the shares. Zakat Payer's representative stated that such shares were intended for investments and retention to seek dividend distributions, and any sale, if made, would be for the purpose of portfolio rebalancing based on an analysis of each share and its projected revenues".

2. Item (Non-deduction of Land Contributions for the period from 2011 to 2013 AD): The Company appeals this item by stating that one of the objectives agreed upon by the partners at the establishment of the company was long-term investment through purchasing land and contributions to develop these lands in order to generate returns from the properties after development, not the sale of the land after development. This is evident from the Company's accounts in the years following the objection period, where it did not sell any land but instead developed it and leased the completed portions to third parties to generate rental income. Therefore, the Company's contributions to raw land development projects are not considered trading assets, as stated by the Committee in its Decision. Consequently, these contributions are not subject to zakat in their original form but rather their subsequent returns as reflected in the Company's income statements and operational results.
3. Item (Non-deduction of Dividends of Joint-Stock Companies for the period from 2011 to 2013 AD): The Company, in its appeal, reiterates that the response to the first point in its argument, which established that the investments were non-current and long-term, is applicable to this item as well.
4. Item (Non-deduction of Projects Under Development for 2013 AD): The Company appeals this item by stating that the Committee mentioned that the purpose of projects under development was either to resell in their purchased condition or to develop, finish, and then lease the same. This aligns with the nature of the Company's activity according to the amended articles of association. Why does the Committee choose a specific classification that reclassifies those items from long-term investments to short-term current investments intended for sale? The Committee stated in its Decision that Zakat Payer failed to provide supporting evidence for its viewpoint or demonstrate the intent for (personal use) investment, despite the Committee's statements implying such intent, such as: The classification of projects under development as non-current assets in the financial statements, and the inclusion of the company's purposes in the amended articles of association related to leasing and benefiting from the proceeds of properties after development, suggests that these projects are investments held for personal use rather than for resale.

The Department requested ZATCA to respond to the Appellant's memorandum regarding the contested items. As such, ZATCA's Reply was received on 26/04/1442 AH. The Department, upon reviewing ZATCA's overall responses to the appeal concerning the items in question, determined that they reaffirmed its statements and stance regarding the contested items when the dispute was considered by the Primary Committee.

Grounds





Having taken cognizance of Case documents and statement of appeal submitted by Appellant Company, the Department found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On merits: Having taken cognizance of the case file, its contents, as well as the statement of appeal and response, and after considering all of the Appellant's overall arguments regarding the previously mentioned items, the Department reached the following conclusions:

1. Item (Non-deduction of Investments in Joint-Stock Companies for the period from 2011 to 2013 AD): After considering the reasons for Zakat Payer's appeal and ZATCA's response regarding that item, it became evident that the dispute between both parties lies in Zakat Payer's assertion that these investments were intended to be retained by the company as acquisition assets, and that the company's ownership thereof was not for trading purposes. Therefore, they were reflected in its records and financial statements as long-term investments to obtain dividends. In contrast, ZATCA believes that owning shares through investment portfolios constitutes engaging in trading activities, which classifies them as trading assets, regardless of how they are classified in Zakat Payer's financial statements. The critical factor when calculating the zakat base is the substance of the transaction rather than its form. It was determined, upon reviewing Zakat Payer's appeal regarding this item, that it is limited to investing in acquiring shares in Saudi companies. The Department did not find evidence of any trading activity involving those shares, indicating an intent for trading and speculation that would categorize those investments as trading assets rather than acquisition assets. Furthermore, documents showed an increase in the number of shares acquired, which supports the belief that Zakat Payer had the intention of investment when acquiring those shares. Therefore, the Department concluded to accept Zakat Payer's appeal, allowing the consideration of investments in shares of Saudi joint-stock companies as deductible elements from Zakat Payer's zakat base and overturn the primary Decision delivered regarding that investment.
2. Item (Non-deduction of Land Contributions for the period from 2011 to 2013 AD): The crux of the dispute between both parties regarding this clause lies in Zakat Payer's assertion that its contributions to the land reflect the purposes agreed upon by the partners at the establishment of the company, including long-term investment through the purchase of land for development and contributions to land development, aiming to generate returns from the property after development, rather than for the purpose of selling and trading the land. The Company did not sell the land in the years following the objection period; instead, it was involved in the development process. Therefore, these contributions should not be subject to zakat in their original form; however, the derived returns, as reflected in the income statements and operational results of the Company, is subject to zakat. Therefore, contributions for developing raw land should not be included in the Company's zakat base. On the other hand, ZATCA maintains that the land should be considered inventory, even if it remains in the Company's records for more than a year, as they are current assets intended for sale. The review of the cash flow statement for 2012 AD revealed proceeds from the sale of land contributions amounting to SAR (3,000,000). Therefore, these investments should be regarded as current assets prepared for sale and trading, which subjects them to zakat. ZATCA further argues that the nature of land contributions is to purchase for the purpose of development and resale, indicating that the intention to sell was present from the outset of the investment, which is corroborated by the actual sale that occurred in 2012 AD. Since the general rule for calculating these contributions is to assess the occurrence of sales that indicate a confirmed intent to sell, which can be



inferred from clear manifestations that allow for the classification of these contributions as trading assets subject to zakat, it has been established that the sales activity was limited to only one transaction. Such a situation does not sufficiently confirm the existence of a genuine intent to offer the lands included in the contributions for sale, especially since there were no other indicators suggesting a continued intent to sell on the part of Zakat Payer following that transaction. Given these circumstances, the Department concluded to accept Zakat Payer's appeal, and to allow the deduction of investments in land contributions for the disputed years from the zakat base, thereby overturning the primary Decision regarding this item.

3. Item (Non-deduction of Dividends of Joint-Stock Companies for the period from 2011 to 2013 AD): The dispute between both parties lies in Zakat Payer's assertion that the investments in those companies were long-term, and that the dividends from those joint-stock companies should be treated as previously clarified in the primary Decision regarding the objection to the item of the deduction of investments in joint-stock company shares, thereby exempting from zakat to avoid double payment of zakat upon treatment for zakat purposes, as it would lead to taxing the profits from these shares both at the level of the joint-stock company itself and Zakat Payer, given that these profits pertain to shares of joint-stock companies registered on the stock market. In contrast, ZATCA views these dividends as related to investments in trading assets, consistent with its position during the discussion of this item when the dispute was considered by the Primary Committee. The Company failed to provide evidence to prove that these dividends resulted from profits realized in the same year from the investee companies, rather than from retained dividends of these companies. Thus, ZATCA confirms the validity of not deducting these dividends, as they are considered part of the company's operational results. It became clear, upon reviewing both parties' positions regarding this item and the basis for the primary Decision in this regard, that the committee that delivered the Decision considered the investment in shares as trading investment, meaning that the revenues generated from such investment are classified as trading income. Consequently, it supported ZATCA's position in not deducting these profits from Zakat Payer's zakat base. The inclusion of these dividends from joint-stock companies in Zakat Payer's zakat base is contingent upon the prior verification of their zakat status by the distributing joint-stock companies. Given that these companies were zakat payers subject to zakat by ZATCA during zakat assessments and Zakat Payer's appeal, regarding the first item, was limited to Saudi joint-stock companies only, this Department decided to consider these investments as deductible elements from Zakat Payer's zakat base, as previously indicated in the first item of this Decision. The dispute between both parties did not center on the issue of whether the holding period for these profits had elapsed while they held by Zakat Payer during the years in question, but rather stems from the addition of those profits to Zakat Payer's zakat base and the failure to deduct the same merely because they are considered revenue and yield derived from what ZATCA and the Committee view as investments in trading assets when processing Zakat Payer's investments in these joint-stock companies. However, given the circumstances, the requirement to subject those profits to Zakat, as upheld by the primary Decision in support of ZATCA's position that they are profits from joint-stock companies, does not automatically result in their zakat liability based solely on that classification. This is particularly true as ZATCA did not prove that these profits remained with Zakat Payer for a complete full year under its ownership and liability. Therefore, the Department concluded to accept Zakat Payer's appeal, allow the deduction of profits from joint-stock companies for the years 2011 to 2013 AD from Zakat Payer's zakat base, and overturn the primary Decision in this regard.



4. Item (Non-deduction of Projects Under Development for 2013 AD): The Company appeals this item, emphasizing that the purpose of these projects was to prepare the land after acquisition and development for leasing or sale and arguing that the intention was not to resell the land in its purchased state. However, ZATCA maintained that Zakat Payer failed to provide sufficient evidence to prove that these projects, consisting of five buildings in Al Ahsa Province valued at SAR (6,350,000). Therefore, ZATCA considers these buildings as inventory, even if they remained in Zakat Payer's books for more than a year. The Department, upon reviewing the positions of both ZATCA and Zakat Payer concerning the appealed item, and considering the primary Decision that supported ZATCA's view of not deducting projects under development from the zakat base for 2013 AD, finds that there is no evidence proving that such projects were intended for sale during the construction phase. Given the common practice and custom for such projects to be prepared for sale upon completion, and in the absence of any credible evidence indicating the Company's intention to sell these projects in their current state or any actual sales transactions, Zakat Payer's position is strengthened for excluding these projects under development from its zakat base for 2013 AD. Therefore, the Department concluded to accept Zakat Payer's appeal to deduct the amount related to such projects for 2013 AD and overturn the primary Decision in this regard.

Decision

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

First: Accept the appeal in form filed by Zakat Payer/ ..., C.R. No (...), TIN (.....), against Decision No. (12) of 1438 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding non-deduction of investments in joint-stock companies for the period from 2011 to 2013 AD, consider investments in Saudi joint-stock companies as deductible elements from Zakat Payer's zakat base, and overturn the primary Decision in this regard, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer's appeal regarding non-deduction of land contributions for the years 2011 to 2013 AD, consider Zakat Payer's investments in land contributions for the disputed years from its zakat base, and overturn the primary Decision in this regard, in accordance with Grounds and merits mentioned herein.
3. Accept Zakat Payer's appeal regarding non-deduction of dividends in joint-stock companies for the years 2011 to 2013 AD, limiting this deduction to Saudi joint-stock companies only, and overturn the primary Decision in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Zakat Payer's appeal regarding non-deduction of projects under development for 2013 AD, deduct the relevant amount for 2013, and overturn the primary Decision in this regard, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-59)
Delivered in Appeal No. (Z-1906-2018)

Principle No. 217

Determination of the time limit for ZATCA's right to raise a revised assessment is considered a restriction on ZATCA's right to have recourse to Zakat Payer only, and does not in any way affect the absolute legal obligation of Zakat Payer to pay the full zakat, which is not extinguished by the passage of time in cases where ZATCA does not have the right to raise a revised assessment. Therefore, ZATCA shall notify Zakat Payer of the additional Zakat dues.

Facts:

On Wednesday, 14/01/1442 AH corresponding to 02/09/2020 AD, the First Appeals Chamber for Income Tax Interventions and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH based on Article 67.B of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh, to consider appeal filed on 26/04/1440 AH corresponding to 02/01/2019 AD by / Group Company, on Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh No. (27) of 1439 AH, issued in Objection No. (1437/24/1532), filed by the Appellant against ZATCA, in which the primary Decision ruled as follows:

First: Accept the appeal filed by Zakat Payer/.... Company in form, regarding zakat assessment from 2011 to 2013 AD.

Second: On Merits:

Zakat Payer's disagreement to his request to deduct accounts receivable from balance of advance payments of

of 2011 and 2012, accept ZATCA's processing of calculation of advance payments of 2011, and recalculate the balance of advance payments account of 2012 as reached by the Committee, in accordance with Grounds of the Decision.

Since this Decision was not accepted by Zakat Payer (... Company), he submitted a statement of appeal to the Department, which included his request to overturn the Decision as set out in its statement of appeal.

On Wednesday, 02/07/1441 AH corresponding to 26/02/2020 AD, the Department held its session to consider the Case. Having called the litigants: ..., holding National ID No., in his capacity as the Appellant Company's attorney appeared, while for ZATCA the following appeared: ..., ..., and Tarfa Al-Nashwan, under ZATCA's Authorization No. (...), dated 19/05/1441 AH. Having asked Zakat Payer Company's attorney about the date of receiving the Decision subject of appeal, he replied that they had not received from the Committee issuing the Decision anything indicating that it had been issued and notified thereto, and that they had obtained a copy of that Decision after they addressed ZATCA, as they were provided with the Decision of the Primary Objection Committee. In addition, this procedure taken by them to inquire about the Decision subject of appeal occurred



after receiving letter of approval of amended declaration pursuant to the Primary Decision, which they received from ZATCA's branch in Mecca on 07/11/2018 AD, which included that they have the right to object to the same within a period of (60) days from the date of receiving the amendment letter. Having examined the content of that letter and its statement that the period of appeal against the Decision is from the date of receiving that letter, and since Zakat Payer's appeal on Decision of the Second Primary Committee for Zakat and Tax Objections in Jeddah No. 27 of 1439 AH was filed on 02/01/2019 AD, the Department decided that Zakat Payer's appeal was filed within the legally prescribed period.

Having asked Zakat Payer Company's attorney about reasons for objecting to the Decision subject to appeal other than reasons mentioned in his statement of appeal submitted on 02/01/2019 AD, he replied that there is nothing to add except his desire to clarify that the Committee had not expressed its opinion on Zakat Payer Company's objection to the method on which the full value of fixed assets was not deducted from the zakat base in the amount of SAR (79,679,855). Since ZATCA had not fully deducted that full value and only deducted the amount of SAR (46,829,713), although the value of those fixed assets is indicated in the Company's financial position statement at the end of 2011. In addition, they will provide the Department with evidence of their objection to ZATCA's method of calculating value of these fixed assets and including the same among these amounts in the zakat base. As for 2012, they also explain that the Committee did not recognize that there was a relationship between an account appearing in accounts receivable under the name (Unbilled Revenues), while the Department was provided with evidence that this account pertains to work performed for the same creditors with advance payments and that this value was recorded as revenues. In addition to the computerized account statements, a copy of the accounting proof documents was provided showing that these amounts were recorded as revenues and not directly recorded in the accounts receivable until official extracts were issued. Accordingly, we requested that accounts receivable balance (Unbilled Revenues) be deducted from the balance of advance payments. Therefore, the proper treatment from Zakat Payer Company's point of view is to deduct debit balances, totaling SAR (30,646,796), from the advance payments, totaling SAR (50,068,697). If this amount is not deducted, the debit balance, from Zakat Payer Company's point of view, must be deducted from revenues for this year. With regard to 2012 assessment, ZATCA did not follow the Sharia rule by adding partners' current account based on the opening balance or closing balance, whichever is less. Accordingly, it added partners' current account in the amount of SAR (65,000,000), while the opening balance, as stated in the financial statements of 2012, was SAR (32,149,858), which had an impact on the illegal increase in calculation of zakat. All the objections mentioned were included in the statement of objection to ZATCA's amended assessment.

Having asked ZATCA's representatives about statements made by the Company's representative and reasons for appealing the Decision in his statement of appeal, they responded that they confirm that Zakat Payer's objection did not address the fixed assets item, and that the item of partners' current account was not subject to Zakat Payer's objection based on facts of the primary Decision. With regard to the Advance Payments Item, it was addressed by ZATCA by taking the opening balance minus the debit and adding what has completed a full year.

Having asked ZATCA's representative about any additions or requests regarding the submitted appeal, he replied that there was no addition and that he was satisfied with what they had presented before the Department, and that they would provide the Department with statement of objection to the amended assessment, which would support their point of view in disregarding the Decision subject of appeal to discuss reasons raised for objecting to ZATCA's amended assessment within one week from the date of this hearing.



Having asked ZATCA's representatives about any additions to the appeal, they replied that they have nothing to add, and they request upholding of the primary Decision.

The minutes were closed, and the Department decided to complete consideration of the case and decide thereon in the light of received information.

Since Zakat Payer, after being given a grace period by the Department, submitted a letter addressed thereto on 08/07/1441 AH, containing the absence of a document indicating his objection to the other items that he claimed the primary Decision had disregarded its discussion. Accordingly, the Department decided to limit subject of the dispute to the item addressed by the Appellant in his objection to the primary Decision, as evidenced by that Decision, namely, which is the item related to accounts receivable and the extent to which it was deducted from balance of advance payments of 2011 and 2012, and therefore the dispute between the parties is limited to the Appellant's claim to deduct accounts receivable from balance of advance payments.

Since the summary of Zakat Payer's appeal was based on the fact that ZATCA's treatment of the objected item and support given thereto at the primary Decision, was not in conformity with the requirements of the Sharia and accounting rules requiring consolidation of balances for a single financial liability for which there were two balances, a debtor and a creditor for the same financial period, and a portion of advance payments was not completed a full year and should not be added to zakat base. ZATCA considers that it added advance payments balance that a year has passed thereon to zakat base of 2011 in the amount of SAR (59,249,879), and of 2012 in the amount of SAR (50,249,879), in which the conditions for zakat were met accordingly. It based on a number of fatwas and appeal Decisions that support the appearance of this item within the group of liabilities in financial statements at the end of the year, is considered a credit balance owed by Zakat Payer (Appellant), and is included within elements of zakat base as money benefited from others, and is used in the Company's current business.

The Department, having taken cognizance of statements of appeal, replies thereto and statements provided before the Department, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, having taken cognizance of the case file, documents contained therein, Grounds for the Decision subject of appeal, contents of statement of appeal and response thereto and statements made before the Department, having examined and considered subject of the dispute in which Zakat Payer appeals against the item represented in adding the item of deducting receivables from balance of advance payments of 2011 and 2012: Since the Department found that the committee issuing the Decision did not address the essence of those operations that were related to that item under consideration, and since the advance payments include the balance of (.... Enterprise), and balance of (.... Authority). Since proper zakat treatment requires that the debtor and creditor be set-off if one customer has two debit and credit accounts, and since according to ZATCA's treatment of those balances, they were not linked to the debit balances

of the customers themselves, resulting from work performed for them. Since reaching the amount that is added to the base in such cases requires looking at what set-off between the creditor and debit accounts that belong to the same customers in their relationship with Zakat Payer. Since the detailed account statements of Zakat Payer Company's customers have shown that the debit balance of Enterprise amounts to SAR (8,937,674), and



Authority amounts to SAR (19,473,185). Accordingly, the Department concluded to uphold Zakat Payer's point of view in consolidation of the customer's financial receivables accounts and calculation of respective balance that was proven that one year had passed thereon, by upholding Zakat Payer's claim to deduct those receivables from the balance of advance payments of 2011 in the amount of SAR (59,249,879) and of 2012 in the amount of SAR (50,249,879).

Decision

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

First: Accept in form the appeal submitted by Zakat Payer/... Company, C.R. No. (...), TIN No. (...), against Decision No. (27) of 1439 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item related to deducting receivables from the balance of advance payments of 2011 and 2012, when assessing Zakat Payer in the two disputed years, and to overturn the primary Decision in this regard, in accordance of Grounds and reasons set forth in this Decision.
2. Dismiss the other appealed items because no objection by Zakat Payer was established before the Primary Objection Committee that issued the Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-45)
Delivered in Appeal No. (Z-1751-2018)

Principle No. 218

Sukuk investments as well as Islamic deposits abroad are not deducted from zakat base.

Facts:

On Sunday, 06/09/1442 AH, corresponding to 18/04/2021, the First Appellate Department for Income Tax Violations and Disputes, formed under Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the Appeal submitted on 24/03/1436 AH by/ ...Company against the Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, No. (3) of 1436 AH, issued regarding objection No. (22/35) concerning Zakat and tax assessment from 2007 to 2011, filed by the Appellant against the General Authority of Zakat and Tax (GAZT). The primary Decision in this case ruled as follows:

First: In form:

Accept Taxpayer/ Company objection in form, given that it was filled within the legally prescribed period and by a person with legal capacity.

Second: On merits:

- Settle the dispute concerning Taxpayer's objection with regard to the item (Payments for Technical Service Fees of 2011), in accordance with Grounds mentioned in the Decision.
- Dismiss Taxpayer's objection with regard to the item (Exempted Income Not Excluded for Tax Purposes of 2011 AD), in accordance with Grounds mentioned in the Decision.
- Dismiss Taxpayer's objection with regard to the item (Non-Deduction of Investments for the period 2008 -2011 AD), in accordance with Grounds mentioned in the Decision.
- Dismiss Taxpayer's objection with regard to the item (Excluding Realized Losses), in accordance with Grounds mentioned in the Decision.

Dissatisfied with this Decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

Regarding the Appeal on the item (Long-Term Investments for the years 2008 to 2011), Zakat Payer objects to Primary Committee's Decision rejecting his objection on the long-term investments for the years 2008 to 2011, amounting to SAR (750,199,587). Zakat Payer affirms his right to deduct these investments from Zakat base, which consist of long-term investments in securities, various investment funds, long-term investments in Islamic deposits, and investments held until maturity. Zakat Payer stated that this investment was made from capital and reserves, and that management's intention was to hold these



investments for the long term and not for commercial purposes. Furthermore, the income generated from these investments was included in Company's income statement. Zakat Payer emphasizes that these investments shall be deducted according to Ministerial Resolution No. (2/8443/2/1) dated 08/08/1392 AH, which outlines conditions that Zakat Payer claims apply to his case. These conditions include that the investments shall be funded by capital and reserves, are required to be long-term with the intention to hold them for extended periods, shall not be acquired for trading or resale purposes, and that the income generated thereof has been subject to Zakat. Zakat Payer asserts that all these conditions apply to the investments in question. Additionally, Zakat Payer based his objection on Fatwa No. (22665) dated 15/04/1424 AH, which distinguishes between those who trade stocks for buying and selling and shareholders who hold stocks to earn dividends. In the former case, Zakat is required, while in the latter, it is not. Zakat Payer believes he falls under the latter category. Zakat Payer concluded his objection by requesting the Department to accept his Appeal on this item and overturn the primary Decision in this regard.

With regard to the item (Excluding Realized Losses of 2008 AD in the Amount of SAR 8,790.712), Taxpayer filed its appeal to challenge the Primary Committee Decision rejecting its objection to excluding actual incurred losses covered by the appealed item. Taxpayer confirmed its right to exclude the value of such losses, as they represent losses incurred by Company in 2008 AD as a result of selling shares of Saudi companies, which were traded through the Saudi Exchange (Tadawul), and that these securities belong to public joint-stock companies in KSA. Taxpayer also mentioned that losses/profits were calculated based on the difference between the cost of securities and their selling price, considering that the cost price is the average cost of securities purchased on different dates and that the selling price is the actual selling price at which these securities were traded on the Saudi Exchange (Tadawul).

Regarding the Appeal on the item (Exempt Income Not Excluded for Tax Purposes of 2011 - SAR (559. 897)), Taxpayer objects to Primary Committee's Decision to reject his objection to exclude the exempt income for tax purposes of 2011, amounting to SAR (559,897). He affirms his right to deduct this amount from tax base, arguing that the Company made net gains from the sale of shares in publicly traded companies, with these securities being bought and sold through Tadawul. According to Article (7) of the Implementing Regulations of Income Tax Law, profits from the disposal of securities shall exempt from tax if the sale is conducted in accordance with KSA Capital Market Law and shares sold were purchased after the tax law came into effect. Taxpayer concludes his objection to this item by requesting the Department to overturn the primary Decision in this regard and exclude the exempt income for tax purposes of 2011.

Since the Department decided to open up court proceedings, on 25/02/1442 AH, corresponding to 15/11/2020 AD, the Department requested Taxpayer to submit any additional submissions to its appeal on the Decision under consideration, within the period set by the Department or to be satisfied with its earlier appeal memorandum. The specified deadline has passed without any further submissions from Taxpayer. Furthermore, the Department received a reply from ZATCA dated 10/07/1442 AH corresponding to 21/02/2021 AD, containing its response to the Appellant's memorandum regarding the items subject of appeal, in which it responded with regard to the item (Long-Term Investments of 2008 to 2011), that ZATCA, after reviewing Taxpayer's financial statements, found that these investments were investments in securities, investment funds, instruments and deposits. It was found that there was a sale movement on shares, indicating that the purpose was trading by buying and selling, not acquisition, which does not allow it to be deducted from the zakat base, in application of Ministerial Letter No. (4/8676) dated 24/12/1410 AH and Ministerial Decision No. (1005) dated 28/04/1428 AH, because they do not represent direct investment in companies for the purpose of



acquisition, and the acquisition period is not the only criterion for considering the asset as an acquisition asset. With regard to Taxpayer's appeal against the item (Exclusion of Realized Losses of 2008), ZATCA responded that it did not agree to exclude the loss claimed by Taxpayer, as the documentation provided by Taxpayer was incorrect and insufficient to exclude such losses. Regarding Taxpayer's appeal on the item of (Exempt Income Not Excluded for Tax Purposes of 2011), ZATCA responded that its procedure was valid and in compliance with the relevant regulations, as Taxpayer did not provide supporting documents for the claims made.

The Department, during its session held on 13/07/1442 AH corresponding to 25/02/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merit, with regard to the item (Long-Term Investments for the period 2008-2011 AD), having perused the Case file and documents included therein together with the statement of appeal submitted by Zakat Payer, it turned out that Zakat Payer filed its appeal to request for deduction of long-term investments in the amount of SAR (750,199.587) from zakat base. Zakat Payer mentioned that such investments are investments in shares in Saudi companies, investments in shares of Investment Company, investments in Fund, investments in Fund in Kuwait, long-term investment in Islamic deposits in Bank and Bank in Qatar, and investment in sukuk of Company. Taxpayer also mentioned that such investments are held for the purpose of acquisition, not trading, and therefore are not subject to zakat. On the contrary, ZATCA believed that such investments included investments in a company located outside KSA, investments in funds of Market, investments in in Kuwait, Islamic Murabaha deposits in banks outside KSA, and Sukuk in Company, which were rejected in accordance with Ministerial Resolution No. (1005). Investments in shares and stocks of various Saudi companies are subject to a sale movement, which indicates that their purpose is not to hold them, and that they are not acquisition assets. Having taken cognizance of disputed investment components, and since Zakat Payer submitted the Company's financial statements ..., and since the basis is to take into account Zakat Payer's financial statements, unless they are contradicted with considerable evidence, the Department concludes to accept Zakat Payer's appeal requesting to deduct the same from his zakat base in order to calculate the zakat thereon based on those financial statements. investment in Market Fund ... And ... Fund in Kuwait, since these funds are not subject to zakat in the Kingdom, Zakat Payer did not provide evidence that they are subject to zakat in the country of investment, or provide the financial statements of these funds so that Zakat can be calculated thereon, the Department decided that Zakat Payer is not entitled to deduct them from zakat base. As for investments in sukuk of ... Company as well as the Islamic deposits abroad, since such investments are classified as debt instruments and fall under the rules of zakat on debts, and based on the relevant fatwas confirming that these investments are subject to zakat, it is determined that Zakat Payer is not entitled to deduct them from zakat base. As for Zakat Payer's investments in Saudi companies, since the Primary Committee based its Decision on the existence of buying and trading activity in these investments, the Department, by majority Decision, has determined that Zakat Payer is not entitled to deduct these investments from Zakat base.

Regarding Zakat Payer's Appeal on the item (Exclusion of Losses Incurred in 2008, Amounting to SAR (8,790,712)), it is clear that the appeal revolves around his request to deduct the mentioned losses from zakat base, as they resulted from the sale of shares in 2008 AD, and to overturn the primary Decision regarding this matter. However, GAZT contends that Zakat Payer did not provide sufficient documentation to allow exclusion of these losses. Having perused subject of dispute, and since Zakat Payer submits his declarations based on the audited financial statements that reflect these losses, and given that rejecting such losses can only be determined by tracking each purchase of a security and its subsequent sale, which GAZT has not done. Moreover, it is established that Zakat Payer's accounting system shall be relied upon when determining deduction of such losses, which makes it difficult to provide a specific document as required, given the circumstances. Therefore, the Department concludes to accept Zakat Payer's Appeal and overturn the primary Decision reached in this regard. This is not affected by what the primary Decision indicated regarding not relying on documents submitted by Zakat Payer, as rejecting Zakat Payer's actions on this item would require a field inspection examining the details of purchase and sale of each security.

Regarding Zakat Payer's Appeal on the item of (Exempt Income not Excluded for Tax Purposes of 2011 - SAR (559,897 SAR)), it is clear that the appeal revolves around his request to exclude the profits generated from sale of securities in 2011, amounting to SAR (559,897), as they are not subject to income tax. Zakat Payer bases this claim on Article (7) of the Implementing Regulations of Income Tax Law, which states that "capital gains realized from disposal of traded securities shall be exempt from tax according to the following conditions: 1. If the sale is conducted in accordance with the Capital Market Law in the Kingdom. 2. Investments disposed of did not exist before the effective date of the Law as stipulated in Article (74) of these Regulations". On the other hand, GAZT believed that Zakat Payer failed to provide any documents supporting its point of view with relation to excluding this income. Having reviewed subject of the dispute, and since Taxpayer submits his declarations based on audited financial statements that reflect these gains, and given that GAZT's refusal to deduct these gains from Zakat Payer's tax base according to the law was based solely on Taxpayer's failure to provide supporting documentation for these gains, and since determining such gains can only be achieved by tracking each purchase of a security and its subsequent sale, which GAZT has not done. It is established that Taxpayer's accounting system shall be relied upon when determining deduction of such profits from tax base, thus providing a specific document in this case is impractical, given the circumstances. Thus, the Department concludes to accept Taxpayer's appeal and overturn the primary Decision regarding this matter. This is not affected by what the primary Decision indicated regarding not relying on documents submitted by Zakat Payer, as rejecting Zakat Payer's actions on this item would require a field inspection examining the details of purchase and sale of each security.

Decision

First: Accept the appeal filed by Zakat Payer/ ... Company, CR. No. (...), TIN (...), against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No.(3) of 1436 AH, in form.

Second: On Merits:

1. With regard to Item (Long-Term Investments for the Period 2008-2011 AD):
2. Unanimously accept Zakat Payer's appeal with regard to Item (Deducting Investments in ... Company) based on the financial statements, and overturn the primary Decision in this regard, in accordance with the reasons and Grounds stated herein.
3. Dismiss Zakat Payer's appeal with regard to investment in (... Fund in Kuwait) and uphold the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.



4. Unanimously dismiss Zakat Payer's appeal regarding investment in (... Sukuk of Saudi Electricity Company and the Islamic deposits abroad), and uphold the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.
5. Unanimously dismiss Zakat Payer's appeal regarding (Investments in Saudi Companies), and uphold the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.
6. Accept, unanimously, Zakat Payer's appeal regarding the item of (Excluding Losses Incurred in 2008, Amounting to SAR (8,790,712)), and overturn the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.
7. Accept, unanimously, Zakat Payer's appeal regarding the item of (Tax-Exempt Income Not Excluded for Tax Purposes of 2011), and overturn the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-45)
Delivered in Appeal No. (I-1751-2018)

Principle No. 219

Refusal to deduct losses incurred from sale of shares requires that each purchase and subsequent sale of securities be tracked to ascertain whether those losses have been incurred.

Facts:

On Sunday, 06/09/1442 AH, corresponding to 18/04/2021, the First Appellate Department for Income Tax Violations and Disputes, formed under Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the Appeal submitted on 24/03/1436 AH by/ ...Company against the Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, No. (3) of 1436 AH, issued regarding objection No. (22/35) concerning Zakat and tax assessment from 2007 to 2011, filed by the Appellant against the General Authority of Zakat and Tax (GAZT). The primary Decision in this case ruled as follows:

First: In form:

Accept the objection submitted by Zakat Payer/ ... Company in form, as it was submitted within the legal period and by a person with capacity.

Second: On merits:

- Settle the dispute concerning Taxpayer's objection with regard to the item (Payments for Technical Service Fees of 2011), in accordance with Grounds mentioned in the Decision.
- Dismiss Taxpayer's objection with regard to the item (Exempted Income Not Excluded for Tax Purposes of 2011 AD), in accordance with Grounds mentioned in the Decision.
- Dismiss Taxpayer's objection with regard to the item (Non-Deduction of Investments for the period 2008 -2011 AD), in accordance with Grounds mentioned in the Decision.
- Dismiss Taxpayer's objection with regard to the item (Excluding Realized Losses), in accordance with Grounds mentioned in the Decision.

Dissatisfied with this Decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

Regarding the Appeal on the item (Long-Term Investments for the years 2008 to 2011), Zakat Payer objects to Primary Committee's Decision rejecting his objection on the long-term investments for the years 2008 to 2011, amounting to SAR (750,199,587). Zakat Payer affirms his right to deduct these investments from Zakat base, which consist of long-term investments in securities, various investment funds, long-term investments in Islamic



deposits, and investments held until maturity. Zakat Payer stated that this investment was made from capital and reserves, and that management's intention was to hold these investments for the long term and not for commercial purposes. Furthermore, income generated from these investments was included in the Company's income statement. Zakat Payer emphasizes that these investments shall be deducted according to Ministerial Resolution No. (2/8443/2/1) dated 08/08/1392 AH, which outlines conditions that Zakat Payer claims apply to his case. These conditions include that the investments are funded by capital and reserves, are required to be long-term with the intention to hold them for extended periods, shall not be acquired for trading or resale purposes, and that the income generated thereof has been subject to zakat. Zakat Payer asserts that all these conditions apply to the investments subject of this item. Additionally, Zakat Payer based his objection on Fatwa No. (22665) dated 15/04/1424 AH, which distinguishes between those who trade stocks for buying and selling and shareholders who hold stocks to earn dividends. In the former case, Zakat is required, while in the latter, it is not. Zakat Payer believes he falls under the latter category. Zakat Payer concluded his objection by requesting the Department to accept his Appeal on this item and overturn the primary Decision in this regard.

With regard to the item (Excluding Realized Losses of 2008 AD in the Amount of SAR 8,790.712), Taxpayer filed its appeal to challenge the Primary Committee Decision rejecting its objection to excluding actual incurred losses covered by the appealed item. Taxpayer confirmed its right to exclude the value of such losses, as they represent losses incurred by Company in 2008 AD as a result of selling shares of Saudi companies, which were traded through the Saudi Exchange (Tadawul), and that these securities belong to public joint-stock companies in KSA. Taxpayer also mentioned that losses/profits were calculated based on the difference between the cost of securities and their selling price, considering that the cost price is the average cost of securities purchased on different dates and that the selling price is the actual selling price at which these securities were traded on the Saudi Exchange (Tadawul).

Regarding the Appeal on the item of (Exempt Income not Excluded for Tax Purposes of 2011 amounting to SAR (559,897)), Taxpayer objects to Primary Committee's Decision rejecting his objection to exclude exempt income for tax purposes of 2011 amounting to SAR (559,897). Taxpayer asserts his right to deduct this amount from tax base, arguing that the Company made net gains from the sale of shares in publicly traded companies, with these securities being bought and sold through Tadawul. According to Article (7) of the Implementing Regulations of Income Tax Law, profits from the disposal of securities shall exempt from tax if the sale is conducted in accordance with KSA Capital Market Law and shares sold were purchased after the Tax Law came into effect. Taxpayer concludes his objection to this item by requesting the Department to overturn the primary Decision in this regard and exclude the exempt income for tax purposes of 2011.

Since the Department decided to open up court proceedings, on 25/02/1442 AH, corresponding to 15/11/2020 AD, the Department requested Taxpayer to submit any additional submissions to its appeal on the Decision under consideration, within the period set by the Department or to be satisfied with its earlier appeal memorandum. The specified deadline has passed without any further submissions from Taxpayer. Furthermore, the Department received a reply from ZATCA dated 10/07/1442 AH corresponding to 21/02/2021 AD, containing its response to the Appellant's memorandum regarding the items subject of appeal, in which it responded with regard to the item (Long-Term Investments of 2008 to 2011), that ZATCA, after reviewing Taxpayer's financial statements, found that these investments were investments in securities, investment funds, instruments and deposits. It was found that there was a sale movement on shares, indicating that the purpose was trading by buying and selling, not acquisition, which does not allow it to be deducted from the zakat base, in application of Ministerial Letter No.



(4/8676) dated 24/12/1410 AH and Ministerial Decision No. (1005) dated 28/04/1428 AH, because they do not represent direct investment in companies for the purpose of acquisition, and the acquisition period is not the only criterion for considering the asset as an acquisition asset. With regard to Taxpayer's appeal against the item (Exclusion of Realized Losses of 2008), ZATCA responded that it did not agree to exclude the loss claimed by Taxpayer, as the documentation provided by Taxpayer was incorrect and insufficient to exclude such losses. Regarding Taxpayer's appeal on the item of (Exempt Income Not Excluded for Tax Purposes of 2011), ZATCA responded that its procedure was valid and in compliance with the relevant regulations, as Taxpayer did not provide supporting documents for the claims made.

The Department, during its session held on 13/07/1442 AH corresponding to 25/02/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

On merit, with regard to the item (Long-Term Investments for the period 2008-2011 AD), having perused the Case file and documents included therein together with the statement of appeal submitted by Zakat Payer, it turned out that Zakat Payer filed its appeal to request for deduction of long-term investments in the amount of SAR (750,199.587) from zakat base. Zakat Payer mentioned that such investments are investments in shares in Saudi companies, investments in shares of Investment Company, investments in Market Fund, investments in Fund in Kuwait, long-term investment in Islamic deposits in Bank and Bank in Qatar, and investment in sukuk of Company. Taxpayer also mentioned that such investments are held for the purpose of acquisition, not trading, and therefore are not subject to zakat. On the contrary, ZATCA believed that such investments included investments in a company located outside KSA, investments in funds of Market, investments in in Kuwait, Islamic Murabaha deposits in banks outside KSA, and Sukuk in Company, which were rejected in accordance with Ministerial Resolution No. (1005). Investments in shares and stocks of various Saudi companies are subject to a sale movement, which indicates that their purpose is not to hold them, and that they are not acquisition assets. Having taken cognizance of disputed investment components, and since Zakat Payer submitted the Company's financial statements ..., and since the basis is to take into account Zakat Payer's financial statements, unless they are contradicted with considerable evidence, the Department concludes to accept Zakat Payer's appeal requesting to deduct the same from his zakat base in order to calculate the zakat thereon based on those financial statements. investment in Market Fund ... And ... Fund in Kuwait, since these funds are not subject to zakat in the Kingdom, Zakat Payer did not provide evidence that they are subject to zakat in the country of investment, or provide the financial statements of these funds so that Zakat can be calculated thereon, the Department decided that Zakat Payer is not entitled to deduct them from zakat base. As for investments in sukuk of ... Company as well as the Islamic deposits abroad, since such investments are classified as debt instruments and fall under the rules of zakat on debts, and based on the relevant fatwas confirming that these investments are subject to zakat, it is determined that Zakat Payer is not entitled to deduct them from zakat base. As for Zakat Payer's investments in Saudi companies, since the Primary Committee based its Decision on the existence of buying and trading activity in

these investments, the Department, by majority Decision, has determined that Zakat Payer is not entitled to deduct these investments from Zakat base.

With regard to Zakat Payer's appeal on the item (Excluding Incurred Losses of 2008 AD, in the Amount of SAR (8,790.712)), it was evidenced that Zakat Payer filed its appeal to request to deduct value of aforementioned losses from zakat base, as such losses are incurred as a result of sale of shares in 2008, and to overturn the primary Decision taken in this regard. While GAZT believed that Zakat Payer failed to provide sufficient documents required to exclude such losses. Having perused subject of dispute, and since Zakat Payer submits his declarations based on the audited financial statements that reflect these losses, and given that rejecting such losses can only be determined by tracking each purchase of a security and its subsequent sale, which GAZT has not done. Moreover, it is established that Zakat Payer's accounting system shall be relied upon when determining deduction of such losses, which makes it difficult to provide a specific document as required, given the circumstances. Therefore, the Department concludes to accept Zakat Payer's Appeal and overturn the primary Decision reached in this regard. This is not affected by what the primary Decision indicated regarding not relying on documents submitted by Zakat Payer, as rejecting Zakat Payer's actions on this item would require a field inspection examining the details of purchase and sale of each security.

Regarding Zakat Payer's Appeal on the item of (Exempt Income not Excluded for Tax Purposes of 2011 - Amounting to SAR (559,897 SAR)), it is clear that the Appeal revolves around his request to exclude the profits generated from the sale of securities in 2011, amounting to SAR (559,897), as they are not subject to income tax. Zakat Payer bases this claim on Article (7) of the Implementing Regulations of Income Tax Law, which states that "capital gains realized from disposal of traded securities shall be exempt from tax according to the following conditions: 1. If the sale is conducted in accordance with the Capital Market Law in the Kingdom. 2. Investments disposed of did not exist before the effective date of the Law as stipulated in Article (74) of these Regulations". On the other hand, GAZT believed that Zakat Payer failed to provide any documents supporting its point of view with relation to excluding this income. Having reviewed subject of the dispute, and since Taxpayer submits his declarations based on audited financial statements that reflect these gains, and given that GAZT's refusal to deduct these gains from Zakat Payer's tax base according to the law was based solely on Taxpayer's failure to provide supporting documentation for these gains, and since determining such gains can only be achieved by tracking each purchase of a security and its subsequent sale, which GAZT has not done. It is established that Taxpayer's accounting system shall be relied upon when determining deduction of such profits from tax base, thus providing a specific document in this case is impractical, given the circumstances. Thus, the Department concludes to accept Taxpayer's appeal and overturn the primary Decision regarding this matter. This is not affected by what the primary Decision indicated regarding not relying on documents submitted by Zakat Payer, as rejecting Zakat Payer's actions on this item would require a field inspection examining the details of purchase and sale of each security.

Decision

First: Accept the appeal filed by Zakat Payer/ ... Company, CR. No. (...), TIN (...), against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No.(3) of 1436 AH, in form.

Second: On Merits:

1. With regard to Item (Long-Term Investments for the Period 2008-2011 AD):
 - Unanimously accept Zakat Payer's appeal with regard to Item (Deducting Investments in ... Company) based on the financial statements, and overturn the primary Decision in this regard, in accordance with the reasons and Grounds stated herein.



- Dismiss Zakat Payer's appeal with regard to investment in (.... Fund in Kuwait) and uphold the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.
 - Unanimously dismiss Zakat Payer's Appeal regarding the investments in (... Company's sukuk and the Islamic deposits abroad), and uphold the primary Decision in accordance with the reasons and Grounds stated herein.
 - Unanimously dismiss Zakat Payer's appeal regarding (Investments in Saudi Companies), and uphold the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.
2. Accept, unanimously, Zakat Payer's appeal regarding the item of (Excluding Losses Incurred in 2008, Amounting to SAR (8,790,712)), and overturn the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.
 3. Accept, unanimously, Zakat Payer's appeal regarding the item of (Tax-Exempt Income Not Excluded for Tax Purposes of 2011), and overturn the primary Decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IZD-2021-
260)

Delivered in Appeal No. (Z-
10010-2019)

Principle No. 220

Zakat is not due on assets that are not intended for sale. However, if they are intended for sale, zakat becomes mandatory thereon upon completion of one year, together with their profits, similar to other trading assets.

Facts:

The facts of this case are summarized as follows: ... (holding National ID No.), in his capacity as Director of the Plaintiff ..., (C.R. No. ...), under the Articles of Association, submitted an objection to Zakat assessment of 2013 issued by the General Authority of Zakat and Tax. The objection is limited to the following items: Item (1): Undeclared Revenues Amounting to SAR (5,405,243): It claims that it maintains formal accounts, which are prepared, supervised and audited by a certified chartered accountant, and that all amounts have been declared. Item (2): Net fixed assets valued at SAR (619,9773): It claims that it submitted a letter supported by documents to the Defendant, explaining the reasons preventing registration of assets in its name. Item (3): Amounts not deducted from zakat base related to the investment item, amounting to SAR (5,95,260): It claims that investment is not for Murabaha purposes but rather low-risk investments held with a local bank as part of the collateral provided to bank against banking facilities granted to the Plaintiff. Any profits generated from these investments, if any, shall be recorded in the income statement. Item (4): Unrecorded Payments: It claims that it paid an amount of SAR (00,200,000 dated 15/05/2014, receipt No. (...)).

Having presented statement of claim to the Defendant, it responded that, regarding the item: Creditors who have completed a full year: it accepted the objection filed by the Plaintiff. With regard to the Item: Net Fixed Assets: It did not deduct net fixed assets from zakat base because they are not registered in Plaintiff's name, relying on Article 4.2 of the Executive Regulations for The Collection of Zakat. With regard to the Item: Investments of 2013: It stated that the financial statement notes indicate that this investment is in a portfolio for Murabaha purposes, and thus it is considered part of trading assets added to zakat base. This action was based on Article 4.2 of the Executive Regulations for The Collection of Zakat. With regard to the Item: Paid Payments: It upholds the validity of its action. With regard to the Item: Undeclared Revenues: It dismissed the Plaintiff's objection due to its failure to provide supporting documents for its claim, and based its action on Paragraph (3) of the Executive Regulations for the Collection of Zakat.

On Sunday, 14/04/1442 AH, the Department held its session remotely to consider the Case. The session was attended by Mr....., (holder of National ID No. ...), appeared in his capacity as Representative of Defendant/ General Authority of Zakat and Tax (GAZT), by virtue of Authorization No. (...) issued by Deputy Governor for Legal Affairs. dated 17/10/1441 AH. For the Plaintiff, no one appeared nor did the Plaintiff send an appearance excuse letter despite being duly notified of the date of session through the e-



portal of General Secretariat of Tax Committees, thereby abandoning its right to appear and plea. The Department, having reviewed Article 20.2 of Tax Dispute and Violation Committee Procedures, decided unanimously to dismiss the case.

On Saturday, 21/08/1442 AH, the Department held its session remotely to consider the Case. The session was attended by Mr., (holding National ID No.), in his capacity as the Company's director under its articles of association. For the Defendant Mr..... appeared, (holding National ID No.), in his capacity as representative of the Defendant/General Authority of Zakat and Tax (GAZT). Having asked the attorney/Plaintiff about his client's case, he replied that it does not go beyond what was stated in statement of claim previously filed with the General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, he replied that he adheres to the Defendant's response previously filed with the General Secretariat of Tax Committees and does not accept any new submitted documents. Having asked the parties if they had any other statements to add, they replied "No.". Accordingly, the Department decided to close the pleadings and deliberation.

Grounds



Having pursued Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH as amended. Having perused the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and its Implementing Regulations issued by virtue of

Finance Minister Decision No. (1535) dated 11/06/1425 AH, as amended, and having reviewed tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff instituted this case aiming to cancel GAZT's Decision regarding zakat assessment of 2013 AD, and since this dispute is considered one of zakat disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since hearing of such cases is conditional upon an objection being filed within 60 days from the date of notification according to Article 22.1 of the Executive Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, stipulates that: "Zakat Payer may object to GAZT's assessment within sixty days from the date of receiving the assessment letter. The objection shall be made on a written and reasoned petition submitted to the entity that notified him of the assessment. If the last day of that sixty-day period falls on an official holiday, the objection shall be accepted if submitted on the first working day immediately following the holiday". Since the case papers indicate that the Plaintiff was notified of the assessment Decision on 13/02/2019, and filed its objection on 07/04/2019, therefore, this case has met its formal requirements and hence it is acceptable in form.

On merits, the Department, having examined the case papers and documents as well as requests, defenses and pleas presented by its parties, found that the Plaintiff disputes zakat assessment issued by the Defendant of 2013, which is as follows:

Item (1): Creditors who have completed a full year:

Article (70) of the Law of Civil Procedure, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "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". In addition, Paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedure issued by Minister of Justice Resolution No. (39933) dated 19/05/1435 states: "If an agreement is reached prior to entering the case, content of case and the answer shall be entered prior to entering such agreement, provided that the original case falls within jurisdiction of the Department, even if content of the

agreement falls within the jurisdiction of another court or department and the object of the case or portion thereof is agreed upon”. Accordingly, the Defendant accepted the Plaintiff’s request as stated in the Reply No. 1 submitted by the Defendant to the General Secretariat of Tax Committees, which included that: “Zakat Payer’s objection was accepted for submitting a detailed statement of creditors showing the opening balance, additions and payments, and accordingly, the balance to be added to zakat base over which a year has passed is SAR (2,681,272) of 2013 AD. Thus, this Department rules that the dispute over this item is settled.

Item (2): Net Fixed Assets:

The Plaintiff objects to the Defendant’s Decision to deduct the value of lands from net assets, while the Defendant argued that the net fixed assets were not deducted from zakat base after excluding lands not owned by the Plaintiff because they were not registered in its name. Fatwa No. (22644) dated 09/03/1424 AH stated that: “Some companies purchase real estate or vehicles for the purpose of use, not for trading. By the end of the fiscal year, they may be unable to transfer the ownership of these properties or assets to the Company’s name, despite their use for company purposes. Should these assets be deducted from the company’s zakat base, whether the ownership was transferred to the company’s name or not, knowing that the purchase was completed through formal contracts and the company is using these purchased assets. Answer: What the company purchases including real estate, vehicles and the like for the purpose of using them and not for the purpose of trading in them is not subject to zakat, regardless of whether the ownership of those assets has been transferred or not as this has no effect on proving ownership”. Furthermore, Article 4.1 of the Executive Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH provides that: “The following items shall be deducted from zakat base: 1. Net fixed assets, which include the following: Net value of fixed assets (acquisition assets) and any payments for the purchase of fixed assets, and the value of spare parts not intended for sale, provided that such assets be owned by Zakat Payer unless there is an obstacle preventing the transfer of ownership and that they be used in the activity”. Moreover, Paragraph (18) of Circular No. (35/1) dated 02/03/1413 AH provided for the method of deducting the value of land within fixed assets from zakat base, which is: “GAZT shall decide to continue implementing the instructions related to the deduction of the value of lands registered in the names of partners from zakat base, with the exception of banks to which special instructions has been issued, while observing the following cases: A. If the lands registered in the name of a partner are provided by him as an in-kind share within the Company’s capital and are utilized in the Company’s activities, they shall be deducted from zakat base. B. If the current credit account of the partner who owns the land registered in his name covers the full value of land, it shall be fully deducted from the base; however, if it is not fully covered, only the balance of the current credit account shall be deducted”. Furthermore, Article 20.3 of the Executive Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: “Zakat Payer bears the burden of proving the validity of items stated in the declaration and any additional data, and if he is unable to do so, GAZT may reject the item that Zakat Payer cannot prove its validity or make an estimated assessment as per its discretion in light of the relevant circumstances and facts as well as the data available thereto”. In light of the foregoing, and since the Plaintiff did not submit documents proving that the land it requests to be deducted is used in the activity or that its ownership is being transferred from the founding partner (the deceased) or other partners to the Plaintiff, and the Plaintiff did not mention the reasons that prevented the transfer of ownership, therefore, this Department concludes to dismiss the Plaintiff’s objection.

Item (3): Investments:



The Plaintiff objects to the Defendant's Decision to deduct investments from zakat base, while the Defendant argued that, having reviewed notes of the financial statements, they have been found to be portfolio investments for the purpose of Murabaha and therefore are considered trading assets that are added to zakat base. Fatwa No. (19382) dated 20/01/1418 AH stated that: "Assets not intended for sale are not subject to zakat, otherwise, they shall be subject to zakat together with their profits once a lunar year has passed thereon". Moreover, Article 4.4.c of the Executive Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulated that: "In all cases, if the investments, local or foreign, are in bonds, sukuk, currencies, deposits or futures transactions, they shall not be deducted from the base, whether they are short-term or long-term,". Furthermore, Clause (Third) of the Ministerial Resolution No. (1005) dated 28/04/1428 AH also stated that: "No investment, whether local or foreign, in futures transactions or in debt instruments or in bonds shall be deducted from Zakat Payer's zakat base, regardless of their source, and regardless of the duration of that investment". Paragraph (139) of the Accounting Standard for Investment in Securities approved by the Board of Directors of the Saudi Organization for Certified Public Accountants pursuant to Resolution No. (5/2/5) dated 11/09/1419 AH also states that: "There are two basic types of securities in which investment is made, which are: A. Equity Securities: They are securities that represent the right to hold shares in an establishment (such as common or preferred shares) or represent the right to obtain such share or dispose of it at a predetermined price. B. Third Party Loans Securities: The financial instruments issued when loans are contracted between borrowers and lenders (investors), and the key forms of them are government bonds, bonds issued by companies, and other debt instruments to which the previous definition of securities applies. However, this definition does not include collectible amounts, for which no securities that can be sold to investors are issued, such as debtor accounts, installment payment facilities and real estate loans". Based on the foregoing, and by referring to the Plaintiff's financial statements, it is established that investments are investment in securities (low-risk investments restricted by cost for the purpose of Murabaha held with a local bank as part of the guarantees provided to the bank in exchange for banking facilities). Since these investments with banks represent a debt owed by the Plaintiff to the bank, and are owned by the Plaintiff and are not subject to zakat. Accordingly, the Department hereby decides to dismiss the Plaintiff's objection.

Item (4): Paid Payments:

The Plaintiff objects to the Defendant's Decision to not deduct payments made, while the Defendant argued that the payments made appeared in the Plaintiff's account statement and were taken into account when calculating zakat, and since Article 20.3 of the Executive Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) of 01/06/1438 AH provides that: "Zakat Payer bears the burden of proving validity of items stated in the declaration and any additional data, and if he is unable to do so, GAZT may reject the item that Zakat Payer cannot prove its validity or make an estimated assessment as per its discretion in light of the relevant circumstances and facts as well as the data available thereto". Accordingly, since the Plaintiff did not provide evidence that it has not benefit from the payments made, those amounts may not be deducted from the zakat base. Hence, the Department decides to dismiss the Plaintiff's objection regarding this item.

Item (5): Undeclared Revenues:

The Plaintiff objects to the Defendant's Decision to add undisclosed revenues of 2013 AD in the amount of SAR 5,405,242 to the net profit, while the Defendant argued that these undisclosed revenues were added to the net profit due to the Plaintiff's failure to provide documents supporting its claims, and since Article 9 of the Law of Commercial Books promulgated by Royal Decree No. (M/61) dated 17/12/1409 AH stipulates that: "The merchant and his heirs shall keep the Books provided for in this Law and correspondence



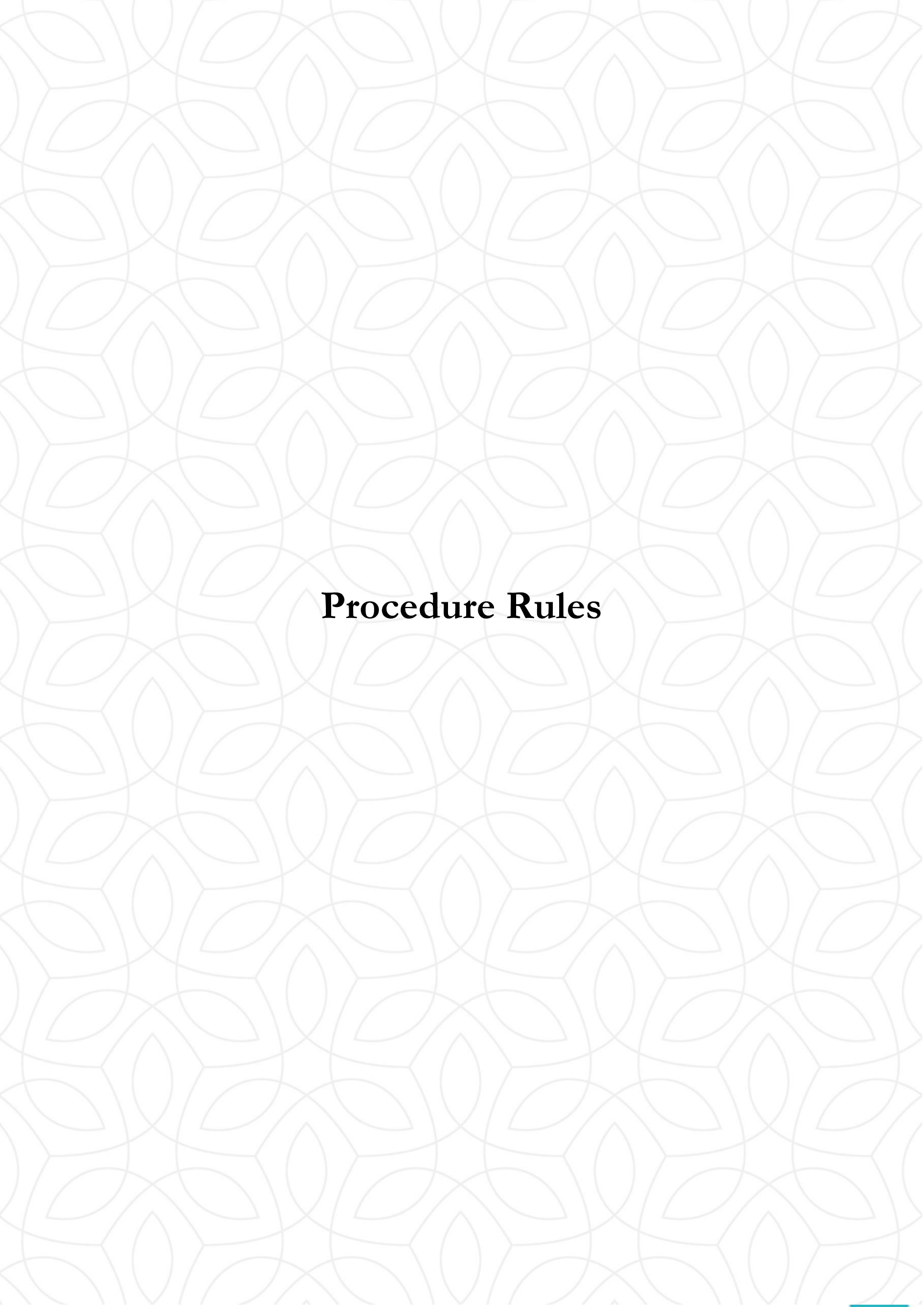
and documents referred to in Article 6 for a period of at least ten years”. Moreover, Article 20.3 of the Executive Regulations for the Collection of Zakat issued by Minister of Finance Resolution No. (2082) of 01/06/1438 AH stipulates that: “Zakat Payer bears the burden of proving validity of items stated in the declaration and any additional data, and if he is unable to do so, GAZT may reject the item that Zakat Payer cannot prove its validity or make an estimated assessment as per its discretion in light of the relevant circumstances and facts as well as the data available thereto”. Accordingly, since the Plaintiff did not submit the documents that it was supposed to be kept based on Article 9 of the Law of Commercial Books, which is specified for ten years, the Department hereby dismisses the Plaintiff’s objection regarding this item.

Decision

For the aforementioned Grounds, the Department unanimously decided as follows:

- Settle dispute regarding the item (Creditors Who Have Completed a Full Year of 2013) and dismiss all other claims”.

This Decision was delivered in presence of the parties. The Department set 30-day period for receiving a copy of the Decision. Either party to the Case may appeal against the Decision within thirty days from the day following the date set for receiving the Decision, whereafter, the Decision will be final and enforceable.

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Procedure Rules



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-332)
Issued in Appeal No. (Z-283630 -2020)

Principle No. 221

The general rule in zakat collection is based on Zakat Payer's declaration and documents he submitted unless otherwise indicated.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Thursday, 14/02/1443 AH corresponding to 21/09/2021 AD, the First Appeals Chamber for Income Tax Interventions and Disputes formed by Royal Decree No. (65474) dated 23/12/1439 AH, met at its headquarters in Riyadh to consider the appeal filed on 18/03/1437 AH corresponding to 03/11/2020 AD by, (holding National ID No.), in his capacity as the attorney of Zakat Payer (pursuant to PoA No. ...) and Appeal filed on 18/03/1442 AH corresponding to 03/11/2020 AD by ZATCA against the Decision of the First Department for the Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2020-112), issued in Case No. (Z-179-2018), regarding zakat assessment from 2008 to 2012 AD, filed by the Appellant against ZATCA. The primary Decision stated the following:

First: In form:

Accept the Case filed by the Plaintiff (..... Company), under C.R. No.: (...) in form.

Second: On merits:

1. Accept the objection filed by the Plaintiff (..... Company), cancel Defendant's Decision regarding the item of vacation provision for the years 2008 to 2012 AD, and dismiss Plaintiff's objection concerning travel expenses and ticket due from 2008 to 2012 AD.
2. Accept the objection filed by the Plaintiff (..... Company), and cancel Defendant's Decision regarding other credit balances and accrued liabilities for the years 2010 to 2012 AD.
3. Amend Defendant's Decision regarding the inclusion of the item of credit balances in zakat base for the years 2010 to 2012 AD.
4. Dismiss the objection filed by Plaintiff (... company), regarding addition of the item of import variances for the years 2008 to 2012 AD.
5. Dismiss the objection filed by Plaintiff (... company), regarding addition of the item of end-of-service gratuity provision for the years 2010 to 2012 AD and addition of major maintenance costs provision item to the Plaintiff's zakat base for 2012 AD.
6. Accept the objection filed by the Plaintiff (..... Company), Cancel the Defendant's Decision regarding addition of the loans item to the Plaintiff's zakat base for 2008 AD.

7. Dismiss the objection filed by Plaintiff (... company), regarding non-deduction of the investments item for the years 2008 to 2012 AD.

Dissatisfied with the Decision, each party filed an appeal, the summary of which are as follows:

Zakat Payer, regarding its appeal against the primary Decision, claims that concerning the item (Amounts Due for Airfare Tickets and Travel Expenses), this item is considered an accrued expense, and the Company is obligated to pay these costs to its employees. Zakat Payer further stated that if these amounts were to be considered as provisions, their balances would not have completed a full year. Zakat Payer, regarding (Import Variances) item, claims that such variances represent the value of goods imported through (...) Company, and were not registered in the name of the Company. With regard to the item (Investments), Zakat Payer claims that the investments were made in Bahraini companies (.... Company and Holding Company), and were subjected to zakat in KSA; therefore, zakat should not be levied on the same funds again. Regarding (End-of-Service Gratuity and Future Maintenance Provisions) item, Zakat Payer claims that if this item is paid within the year, it should be considered a deductible expense when adjusting profit for both tax and zakat purposes, not just for tax purposes. Zakat and Tax Appeal Committee issued Decision No. (117/1433), stating that the provision that was excluded from profit in previous years should be allowed as a deduction from the profit of year in which the provision was actually utilized. Regarding the item (Issuing Assessment After Expiry of the Statutory Period), Zakat Payer claims that ZATCA assessed the Company after five years had elapsed from the end of the deadline for submitting zakat declaration for 2008 and 2009 AD and requests application of the statute of limitations on zakat assessment. Consequently, Zakat Payer seeks to overturn the primary Decision regarding the appealed items for the aforementioned Grounds.

Decision was not accepted by ZATCA, so it appealed against the contested Decision by virtue of a statement of appeal including the following claims:

ZATCA, regarding its appeal concerning the item (Addition of Credit Balances) item, requests overturning the contested primary Decision, clarifying that the documents submitted by Zakat Payer are self-generated and cannot be relied upon in light of the existence of audited financial statements from a certified chartered accountant. Additionally, the submitted spreadsheet (Excel) contains data that differs from what is reflected in the financial statements, which confirms that these analyses do not reflect the actual condition of the Company. The Department should have requested an extract from the Company's accounting system rather than an Excel statement, as Zakat Payer previously stated in its objection that no balance had completed a full year for all years based on the documents previously submitted to ZATCA, while balances with completed full year status appeared in the documents submitted to the Department, as indicated in the Decision. Furthermore, ZATCA, regarding (Loans) item, explains that the Department's Decision is incorrect, as it did not add the balance of loans to zakat base for 2008 AD. Instead, it added the credit balance for the letters of guarantee shown in the financial statements, amounting to SAR (5,600,000), which completed a full year and was included in the zakat base. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests overturning the primary Decision with respect to the items under ZATCA's appeal for the aforementioned reasons.

On Tuesday, 26/11/1442 AH, corresponding to 06/07/2021 AD, the Department decided to hold a 10-day e-hearing session. Therefore, ZATCA submitted a Reply in response to Zakat Payer's appeal, insisting on accuracy and correctness of its procedures. In addition, what was raised by Zakat Payer do not go beyond what he



had previously submitted and ZATCA responded to in a timely manner. ZATCA, regarding (Issuing Assessment After Expiry of the Statutory Period) item, requests that this item not be accepted in form due to the lack of an objection before the Primary Department initially and regarding (Ticket and Travel Expenses Provisions) item, ZATCA clarifies that its actions were based on 6.6 of the Executive Regulations for the Collection of Zakat. Moreover, ZATCA, regarding (Import Variances) item, states that it relied on Article 5.A.1 and Article 6.2 of the Executive Regulations for the Collection of Zakat and further clarifies, regarding (End-of-Service Gratuity and Future Maintenance Provisions), that it based its actions on Article 4.9 of the Executive Regulations for the Collection of Zakat. As for the item (Investments), ZATCA states that it relied on Paragraph (2) of Ministerial Decision No. (1005) dated 28/04/1428 AH. Furthermore, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Zakat Payer's appeal and upholding the primary Decision with respect to the contested items under Zakat Payer's appeal for the aforementioned reasons.

On Wednesday, 14/03/1443 AH corresponding to 20/10/2022 AD, the Department, after reviewing the appeal memoranda and responses, and after examining the documents and papers contained in the case file, decided that the case was ready for adjudication and issuance of Decision on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final Decision.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer Company and ZATCA, the Department found that the conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations and resolutions. Therefore, both appeals are accepted in form for being filed by parties having capacity and within the prescribed statutory period.

On merits, regarding Zakat Payer's appeal on the item (Issuing Assessment After Expiry of the Statutory Period), and since Zakat Payer's objection lies in that ZATCA made zakat assessment five years after the expiration of the deadline for submission of declaration for 2008 and 2009. However, ZATCA argued that it adheres to validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed in form for not having been submitted before the Primary Department initially. It has been established before this Department that ZATCA's assessment occurred after the period, which is five years, stipulated by the instructions for zakat collection. These instructions set a five-year limit from the final deadline for Zakat Payer to submit its zakat declaration on annual basis. The purpose of these instructions is to ensure the stability of transactions and to prevent Zakat payers from experiencing uncertainty without a defined period within which they can be assured that their financial position will not be disrupted, which has been proven against ZATCA. Since this matter does not result in Zakat Payer being absolved of their legal obligation if, in fact, they are liable for such obligation, but rather its effect is a procedural matter related to ZATCA's right to raise a revised assessment after the expiration of the prescribed period, during which it was allowed to amend the assessment and notify Zakat Payer within the five-year period, without extending that right beyond the duration established by instructions for zakat collection. Therefore, the Department concludes to uphold Zakat Payer's declaration for the disputed years of 2008 and 2009 AD, determining that ZATCA's action to conduct the amended assessment after the prescribed period for issuing the final assessment against the Zakat Payer is not valid.

With regard to Zakat Payer's appeal regarding the item (Amounts Due for Airfare Tickets and Travel Expenses for the Years 2008 to 2012 AD), since Zakat Payer's appeal lies in its objection, claiming that these expenses should be deductible as they are mandatory costs that Zakat Payer is required to pay to its employees. Additionally, balances of these



expenses have not completed a full year. On the other hand, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Zakat Payer's appeal and upholding the primary Decision. Since the Department ruled that ZATCA's right to conduct zakat assessment on Zakat Payer for 2008 and 2009 AD has been forfeited, this consequently entails acceptance of Zakat Payer's appeal regarding this item for 2008 and 2009 AD. This Department, regarding 2010 to 2012 AD, determined that ZATCA's action, as evidenced in facts of the primary Decision, was based on the Executive Regulations for the Collection of Zakat issued several years after Zakat Payer's declarations. Additionally, it was revealed from the primary Decision reasoning that it relied on provisions of the Implementing Regulations of the Income Tax Law. However, given that the objection pertains to the zakat assessment, this reasoning is inapplicable to the present case. Consequently, the Decision is flawed due to this deficiency, necessitating its reversal. Given that the established principle for all ordinary and necessary expenses incurred to generate zakat-liable income are deductible, provided they are supported by documentary evidence and are related to generating such income. Since Zakat Payer's incurrence of airfare and travel expenses for the two years reduces the accounting profit in accordance with generally accepted accounting principles, whether paid or accrued, and since such expenses do not fall under the category of non-deductible expenses, the Department concluded to accept Zakat Payer's appeal and overturn the primary Decision delivered in this regard.

Zakat Payer's appeal, regarding (Import Variances) item, lies in its objection, claiming that such variances represent the value of goods imported through another company and were not registered in Zakat Payer's name. On the other hand, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Zakat Payer's appeal and upholding the primary Decision. Since the Department ruled that ZATCA's right to conduct zakat assessment on Zakat Payer for 2008 and 2009 AD has been forfeited, this consequently entails acceptance of Zakat Payer's appeal regarding this item for 2008 and 2009 AD. Regarding the years 2010 to 2012 AD, upon reviewing the primary Decision regarding import variances and its subsequent findings. Since Zakat Payer submitted supporting documents, including a statement specifying the value of import variances and a letter from (...) Company indicating the value of these supplies, the Department concluded to accept the appeal and overturn the primary Decision delivered in this regard.

With regard to Zakat Payer's appeal regarding the item (End of Service Gratuity and Future Maintenance Provision), since Zakat Payer's appeal lies in its objection, claiming that this item is considered a deductible expense if paid during the year when adjusting profit for tax and zakat purposes, not just tax. On the other hand, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Zakat Payer's appeal and upholding the primary Decision. It is evident from facts of the primary Decision and its Grounds that ZATCA's action was not reasoned, and it is clear that the Primary Department has requested ZATCA to respond in writing to Zakat Payer's objection regarding this item. Since the general rule in zakat is to take into account Zakat Payer's declaration unless evidence is provided to the contrary, and since Zakat Payer's objection is based on payment of the disputed amounts, and since ZATCA did not prove anything contrary to what was stated in Zakat Payer's declaration. Therefore, the Department concluded to accept Zakat Payer's appeal and overturn the primary Decision.

Zakat Payer's appeal, regarding (Investments) item, lies in its objection, claiming that the investments were made in other companies and have already been subject to zakat by ZATCA, resulting in double payment of zakat on the same funds. On the other hand, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Zakat Payer's appeal and upholding the primary Decision. Since the Department ruled that ZATCA's right to conduct zakat assessment on Zakat Payer for 2008 and 2009 AD has been forfeited, this consequently entails acceptance of Zakat Payer's appeal regarding this item for 2008 and 2009 AD. As for 2010 to 2012 AD, Zakat Payer submitted audited



financial statements that were officially translated into Arabic and calculated zakat based on these statements. Consequently, this Department concluded to accept Zakat Payer's appeal and overturn the primary Decision delivered in this regard.

ZATCA's appeal, regarding (Addition of Credit Balances) item, lies in its objection, claiming that the Primary Department relied on documents fabricated by Zakat Payer that contradict the audited financial statements. Therefore, ZATCA requested overturning of the primary Decision. The primary Decision reveals that it reviewed the supporting documentary evidence indicating that balances in dispute had not completed a full year. Since ZATCA's argument is based on evaluation of the documents submitted to the Department and its rejection of those documents. This matter falls under the discretion of the judicial department, which accepted the documents in question. Given that the established principle for zakat matters is to rely on Zakat Payer's declaration unless there is evidence to the contrary. Since ZATCA failed to provide evidence demonstrating that the balances in dispute had completed a full year and this Department confirmed the validity of conclusion reached by the Department that delivered the Decision, this Department concluded to dismiss ZATCA's appeal and uphold the primary Decision in this regard.

ZATCA's appeal, regarding (Loans) item, lies in its objection, claiming that the Department's Decision was erroneous, as ZATCA did not add the loan balances to zakat base for 2008 AD. Instead, ZATCA asserts that it added the credit balance for the letters of guarantee reflected in the financial statements, which had indeed completed a full year. Since the Department ruled that ZATCA's right to assess zakat for the years 2008 and 2009 lapsed, this leads to dismiss ZATCA's appeal on the loans item for 2008 AD and uphold the primary Decision delivered in this regard.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Commercial Register (...), and the Appeal filed by ZATCA against the First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-112), issued in Case No. (Z-179-2018), in connection with zakat assessment for the period (2008-2012 AD).

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item (Issuing Assessment After Expiry of the Statutory Period) and determine disentitlement of ZATCA to conduct the amended assessment after expiry of the statutory period for issuing the final assessment on Zakat Payer, in accordance with Grounds and reasons mentioned herein.
2. Accept Zakat Payer's appeal regarding the item (Amounts Due for Airfare Tickets and Travel Expenses for the Years 2008 to 2012 AD) and overturn the primary Decision, in accordance with Grounds and reasons mentioned herein.
3. Accept Zakat Payer's appeal regarding the item (Import Variances) and overturn the primary Decision, in accordance with Grounds and reasons mentioned herein.
4. Accept Zakat Payer's appeal regarding the item (End-of-Service Gratuity and Future Maintenance Provisions) and overturn the primary Decision, in accordance with Grounds and reasons mentioned herein.
5. Accept Zakat Payer's appeal regarding the item (Investments) and overturn the primary Decision, in accordance with Grounds and reasons mentioned herein.
6. Dismiss ZATCA's appeal regarding the item (Credit Balances and Accrued Liabilities) and uphold the primary Decision, in accordance with Grounds and reasons mentioned herein.
7. Dismiss ZATCA's appeal regarding (Loans) item and uphold the primary Decision, in accordance with Grounds and reasons mentioned herein.



Similar Decisions:

First Appellate Department for Income Tax
Violations and Disputes

Appellate Decision (IR-2021-391)

Appellate Decision (IR-2022-8)

Appellate Decision (IR-2022-7)

Appellate Decision (IR-2021-373)

Appellate Decision (IR-2021-126)



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-40)
Delivered in Appeal No. (Z-1508-2018)

Principle No. 222

The Department may consider Grounds for the Decision subject of appeal delivered regarding the item under consideration without adding thereto, whenever it determined that such Grounds are sufficient, if the Decision subject to appeal is in accordance with the valid Grounds on which it was based and is sufficient to support its ruling.

Facts:

On Sunday, 06/09/1442 AH, corresponding to 18/04/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the Appeal submitted on 01/12/1438 AH by/ ... Company against Decision of the Second Committee for Zakat and Tax Objections in Jeddah, Decision No. (30) of 1438 AH, issued regarding the objection submitted by Zakat Payer under No. (3351/22/1435) concerning zakat assessment for the period from 25/06/2006 to 31/12/2012, filed by the Appellant against General Authority of Zakat and Tax (GAZT). The primary Decision included the following rulings:

First: In Form:

Accept the objection filed by Zakat Payer/ Company against Zakat assessment for 25/06/2006 to 31/12/2012, IN FORM based on the reasons stated in the Decision.

Second: On Merits

1. Uphold GAZT's Decision to add short-term loans to Zakat Payer's zakat base, in accordance with Grounds of the Decision.
2. Uphold GAZT's Decision to include short-term loans from partners to Zakat Payer's zakat base, in accordance with Grounds of the Decision.
3. Annul Zakat Payer's request to deduct fixed asset additions from the 2011 net profits, in accordance with Grounds of the Decision.
4. Uphold GAZT's Decision to calculate Zakat for the first fiscal period as a long fiscal period, specific period of 555 days, in accordance with Grounds of the Decision.
5. Uphold GAZT's handling of provisions used during the disputed years, in accordance with Grounds of the Decision.
6. Uphold GAZT's handling of provisions used during the disputed years, in accordance with Grounds of the Decision.
7. Uphold GAZT's Decision to include amounts due from subsidiary parties to Zakat Payer's zakat base, in accordance with Grounds of the Decision.
8. Uphold GAZT's action in adjusting net profits of the disputed years by the excess board member compensation over SAR (540,000), in accordance with Grounds of the Decision.
9. Uphold GAZT's Decision to adjust 2012 net profit with logistics costs incurred by a subsidiary company, in accordance with Grounds of the Decision.



10. Uphold GAZT's addition of commissions and incentives of Limited Company to the net profits of disputed years, in accordance with Grounds of the Decision.
11. Uphold GAZT's action in subjecting profits of foreign purchases difference to zakat for years subject to dispute, in accordance with Grounds of the Decision.
12. Uphold GAZT's action in amending net profits of years subject to dispute by the sales cost difference, in accordance with Grounds of the Decision.
13. a) Settle the dispute between parties regarding the Rental Differences Item, in accordance with Grounds of the Decision.
b) Uphold GAZT's non considering of school fees as deductible expenses from Zakat Payer's zakat base, in accordance with Grounds of the Decision.
c) Settle the dispute between parties regarding the Transportation Expenses Item, in accordance with Grounds of the Decision.
d) Uphold GAZT's procedure in properly addressing the Inventory Provision of 2011, in accordance with Grounds of the Decision.
14. Settle the dispute between parties regarding item of Supply Contract Profits of (...) University, in accordance with Grounds of the Decision.
15. Settle the dispute between parties concerning the item of Profits from Sale of Assets, Depreciation Differences and Value of Fixed Assets, in accordance with Grounds of the Decision.
16. a) Uphold GAZT in addressing used part of the written-off debt provision, in accordance with Grounds of the Decision.
b) Uphold GAZT's non considering of taxes, fines, and penalty expenses as deductible expenses from Zakat Payer's zakat base, in accordance with Grounds of the Decision.
c) Settle the dispute between parties regarding the item of Paid Withholding Taxes, in accordance with Grounds of the Decision.

Since this Decision was not accepted by the Plaintiff (.... Company), it filed a statement of appeal to the Department, providing the following summary:

Regarding the appeal on the item (Short-Term Loans), Zakat Payer objects to the Primary Committee Decision to add the (opening/closing) balances of short-term bank loans (on the basis of whichever is less) for the years from 2009 to 2012 to zakat base, as these funds did not remain in operation for a period of 12 months, and because they were also used to finance the Company's working capital needs and were not used to finance the purchase of fixed assets. The Company confirms that it has entered into short-term financing agreements to meet its working capital needs, and short-term loan periods have ranged from 30 to 150 days.

With regard to the appeal on the item (Short-Term Loans Provided by Shareholders), Zakat Payer objects to the Primary Committee Decision, which upheld GAZT's procedure regarding adding loans provided by shareholders of 2007 and 2008 to zakat base, and not taking into account the movement and payments made during the year, and that these funds have not been kept in operation for a full twelve-month period.

With regard to the appeal on the item (Profit Used to Finance Long-Term Assets), Zakat Payer objects to the Primary Committee Decision, which upheld GAZT's action that subjected net profit for the year used to finance long-term assets to zakat. Zakat Payer asserts that Fatwa No. (23408) dated 18/11/1426 AH, states that the net profit used to purchase fixed assets is not subject to zakat.

Regarding the appeal on the item (Calculation of Zakat on a Proportional Basis for the First Long Financial Period), Zakat Payer objects to the Primary Committee Decision, which upheld GAZT's action according to which it imposed zakat on a proportional basis and at the same time calculated zakat for the first long financial period from July 15, 2006 to December 31, 2007. Zakat Payer also stated that ... Commercial Company was established on July 15, 2006, and the Company purchased the business of... Food Company as of January 01, 2007, i.e. it acquired the assets and liabilities at book value, and until



January 01, 2007, the Company had no assets or liabilities before the aforementioned net assets were transferred to the Company at book value, which underlines the necessity of not applying the proportional calculation to the net assets, as the net assets prior to their transfer were already subject to zakat in (... Food Company, where zakat was calculated twice on the same funds owned by the same partners.

With regard to the Appeal concerning the item (Provisions Transferred from a Related Party), Zakat Payer objects to Primary Committee's Decision supporting GAZT's action that added the provision for employees' end-of-service benefits amounting to SAR (19,181,427) and the provision for doubtful debts amounting to SAR (24,222,008), which were transferred by a related party (... Foods Company). Furthermore, Zakat Payer confirms that these provisions were transferred during 2007 from Company, as a result of reorganization of the business, and the Food company did not claim in its zakat declaration for the year to deduct provisions that have been transferred to.... Commercial Company. Accordingly,... Food Company paid zakat on provisions that were transferred during the year. Zakat Payer believes that, in light of the foregoing, subjecting these provisions to zakat in Zakat Payer's assessment would result in the same amount being subject to zakat twice.

Regarding the appeal on the item (Use of Provisions), Zakat Payer objects to the Decision of the Primary Committee, which supports GAZT's action regarding the amendment to the used part of... shortage in provisions during the period 2007 AD and the years from 2008 AD to 2012 AD, against the opening balance of provisions instead of adjusting them against the adjusted profit.

With regard to the appeal on the item (Amounts Owed to Related Parties), Zakat Payer objects to the Primary Committee Decision, which upheld GAZT's action, whereby it added the amount owed to related parties to zakat base for the years 2007 to 2012. Zakat Payer confirms that these amounts due arose from normal commercial transactions with related parties during the said years.

With regard to the appeal on the item (Fees of Board Members), Zakat Payer objects to the Primary Committee Decision, which upheld GAZT's action, which did not allow deduction of Board members' fees paid during the years 2007 to 2012, in excess of the amount SAR (45,000). Zakat Payer bases its disagreement with GAZT's action on the fact that no zakat is due on funds that have not remained in operation for a full year. Zakat Payer refers to Fatwa No. (2264) dated 09/03/1424 AH, which states that the amounts paid even to owners of the establishment as fees for services they provide must be treated as wages paid to employees, and accordingly no zakat is due on them. Zakat Payer states that the Company paid this amount to one of its shareholders in return for managing the Company's affairs on the basis that the shareholder is a full-time employee.

Regarding the Appeal concerning the item (Logistical Costs Incurred by a Related Saudi Establishment), Zakat Payer objects to Primary Committee's Decision, which supported GAZT's action disallowing deduction of logistical costs as deductible expenses. Zakat Payer argues that these expenses were paid to ... Operation and Services Company Ltd., and that the latter Company reported the objected amount as part of its revenues. Therefore, not allowing for logistical expenses as deductible expenses would result in doubling the zakat.

Regarding the Appeal concerning the item (Sales Promotion and Discount Related to Company), Zakat Payer objects to the Primary Committee Decision upholding GAZT's treatment in adding sales promotion to zakat base, as GAZT added discount amounts paid by (...) Company to the adjusted profit, claiming that ... Company did not declare these amounts as revenues. Zakat Payer states that the Company acted only as a "pass-through establishment" through which sales promotion and discount amounts paid by Arab Trading Company, and recovered from Company without generating any profit margin.



As a result, ... Trading Company does not recognize any costs or revenues associated with the aforementioned transaction.

With regard to the appeal on the item (Foreign Purchase Differences), Zakat Payer objects to the Primary Committee Decision supporting GAZT's treatment, in calculating an estimated profit on import differences during 2007, 2011 and 2012. Furthermore, Zakat Payer confirms regarding this objection that the difference between foreign purchases declared by the Company and foreign purchases reflected in the Customs Authority's records represents primarily a timing difference and a price difference... rates and imports of consumer goods, fixed assets and promotional items that were not declared as foreign purchases. Zakat Payer concluded his objection to this item by stating that, given the huge volume of transactions and differences, he requests the Department to accept the differences within the reasonable limit.

With regard to the appeal on the item (Cost of Sales Differences), Zakat Payer objects to the Primary Committee Decision upholding GAZT's procedure in not allowing deduction of sales cost differences between what was stated in the financial statements and zakat declaration during 2007 to 2011 AD, on the Grounds that the Company had declared the same net profit in the financial statements and in final zakat declaration. In its appeal, Zakat Payer maintains that differences in the declaration are primarily attributable to classification of damaged good expenses as part of sales cost in the final declaration, which was disclosed as part of other direct costs in the financial statements.

Regarding the appeal on the item (Not Allowing Deduction of School Fees), Zakat Payer objects to the Primary Committee Decision upholding GAZT's procedure in not allowing deduction of school fees paid to employees. Zakat Payer considers that these fees are part of benefits offered to employees of the Company, and that these amounts were spent during the year and have not yet passed a year.

With regard to the appeal on the item (Goods Provision), Zakat Payer objects to the Primary Committee Decision upholding GAZT's procedure in adding goods provision during 2011 to zakat base. Zakat Payer states that he agrees with GAZT that provisions are one of the elements of zakat base, and accordingly it subjected the provision that the Company recognized in its books to zakat base. However, on the other hand, Zakat Payer indicates that no goods provision has been recognized, and that financial statements and Statement No. (8) are attached to the appeal.

With regard to the appeal on the item (Provision for Bad Debts), Zakat Payer objects to the Primary Committee Decision upholding GAZT's procedure in adding the provision for bad debts to profit subject to zakat of 2011. Regarding this objection, Statement No. (8) of the final declaration is submitted as an appendix (6) to the movement of provisions. Zakat Payer indicates that the transaction presented in GAZT's observations is not related to ... Trading Company.

As for the Appeal on the item (Taxes, Fines and Penalties), Zakat Payer objects to Primary Department's Decision upholding GAZT's procedure in disallowing deduction of taxes, fines and penalties as deductible expenses, arguing that the amounts disallowed by GAZT in the assessment represent bank expenses for various banking transactions and primarily consist of expenses for remittance/banking transfer procedures. These amounts are paid to local banks and shall therefore be considered as deductible expenses.

Since the Department decided to open up court proceedings, GAZT was addressed on 25/02/1442 AH corresponding to 12/10/2020 AD to provide the Department with response to the appeal filed in the Case. A Reply dated 23/03/1442 AH corresponding to 08/11/2020 AD submitted by GAZT, which included a response to what was included in the Appellant's reply. GAZT confirmed that what the Appellant Company raised in its appeal did not go beyond what it had previously stated before the Primary Committee and which GAZT responded to at the time. GAZT affirmed its point of view contained in the memorandum submitted to the Primary Committee on the items subject to appeal, and



that the appeal submitted in the case did not provide anything that would affect validity of the result reached by the primary Decision. It concluded its response by requesting the Department to verify, as a precaution, validity of the Plaintiff's submission of the appeal within the legal period, and also requests that the Plaintiff's appeal be rejected and the Primary Committee's Decision be upheld regarding its conclusion.

The Department requested Zakat Payer on 19/03/1442 AH corresponding to 04/11/2020 AD, to submit what he would like to add to appeal on the Decision under consideration, within the time limit granted to him by the Department, or to suffice with what he submitted in the appeal memorandum. On 02/04/1442 AH, corresponding to 17/11/2020 AD, Zakat Payer submitted a number of documents relating to the case, the letter of objection submitted to the Primary Committee, as well as a copy of the letters addressed to GAZT and a copy of financial statements, which were attached to the case file.

The Department, during its session held on 06/07/1442 AH corresponding to 18/02/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, regarding Zakat Payer's Appeal concerning the item (Short-Term Loans), having taken cognizance of the submitted Appeal, the Department found that Appeal lies in Zakat Payer's request not to add short-term loans to zakat base, arguing that they did not complete a full year and that they were not used to finance fixed assets, but rather to finance Company's working capital. GAZT, however, maintains that the balance of loans at the beginning or end of the period, whichever is lower, was added to zakat base due to Zakat Payer's failure to provide sufficient documents to determine the revolving balance on which a full year had elapsed. Having taken cognizance of the foregoing, the Department found that the disagreement between Zakat Payer and GAZT on this item is a documentary dispute. The Primary Department, which issued the Decision, had requested a detailed statement of loan movements to determine the revolving balance, which was not presented before the Primary Department. Since loans are added to zakat base if a full zakat year has passed thereon or if they are used to finance assets held for acquisition, and as Zakat Payer did not provide documents proving the movement of these loans, it follows that the lower of the beginning or end period balances shall be considered. The Department did not find any reason to amend or comment in light of the presented information, which leads this Department to conclude that the Appeal did not affect Primary Decision's conclusion regarding this item. Accordingly, the Department decided to reject Zakat Payer's Appeal and uphold the Primary Decision on this matter.

Regarding Zakat Payer's Appeal concerning the item (Short-Term Loans Provided by Partners), it was found that the basis of Appeal lies in Zakat Payer's request not to add the short-term loans provided by partners to zakat base, arguing that the zakat year had not elapsed on them. In contrast, GAZT believes that balances of the loans provided by the partners were correctly added to zakat base since they were used to finance fixed assets. Having reviewed content of Zakat Payer's Appeal regarding this item and GAZT's response thereto, and having examined the Primary Decision, the Department found that Zakat Payer's Appeal merely reiterated the same objections previously raised before the Primary Committee. The Decision issued by the committee indicated that Zakat Payer had



submitted several documents, some of which were accepted, while others were rejected. After considering Zakat Payer's Appeal on this item, the Department observed that the Appellant did not present any new evidence beyond what had already been submitted and adjudicated by the Committee which had based its Decision on the documents that confirmed its position. The disagreement remains a documentary issue involving a detailed statement of loan movements to determine the revolving balance, which Zakat Payer neither provided before the Primary Department nor in the current Appeal, which is the core of the dispute. Since the Department did not find any Grounds for amending or commenting on the Decision based on the submitted information, it concluded that the Appeal did not impact the outcome of the primary Decision regarding this item. Accordingly, the Department decided to reject Zakat Payer's Appeal and uphold the primary Decision on this matter.

Regarding Zakat Payer's Appeal on the item (Profit Used to Finance Long-Term Assets), it was found that the Appeal lies in Zakat Payer's request to reduce the annual profit by the amount of fixed assets added. However, GAZT considers it incorrect to reduce the annual profit by the value of fixed assets added during the zakat year, amounting to SAR (70,361,162), given that Zakat Payer had a cash and bank balance exceeding three times the amount of the fixed assets additions during the year, amounting to SAR (234,166,086). There is no theoretical or practical reason preventing Zakat Payer from using these available balances to purchase fixed assets during the year. GAZT clarified that it did not implement the (net base or adjusted profit, whichever is higher) rule and fully deducted the value of fixed assets as reflected in the financial statements. Zakat Payer's objection to Primary Department's Decision was centered on GAZT's subjection of net annual profit used to finance long-term assets to zakat. However, Zakat Payer's objection lacks a legitimate or accounting basis, as zakat base is determined by deducting the total negative elements from the total positive elements that make up the base, without offsetting a specific negative element against a specific positive one. GAZT also reiterated that it fully deducted the fixed assets amount according to the financial statements. As the Department found no Grounds for amendments or comments based on the information presented, it concluded that the Appeal did not impact the outcome of the primary Decision regarding this item. Therefore, the Department decided to reject Zakat Payer's Appeal and uphold the primary Decision on this matter.

Regarding the Zakat payer's appeal on the item (Calculation of Zakat on a Proportional Basis for the First Long Fiscal Period), it was found that the appeal lies in Zakat payer's request not to calculate Zakat on the long fiscal period as a full year has not passed thereon, while transforming trade division into an independent company. However, GAZT believes that a full year has passed thereon and zakat must be imposed for the long fiscal period. Having perused Note (1) in the financial statements prepared at the end of 2007, the Department found that the transfer of the commercial division in Company took place on 01/01/2007, which determines that Zakat payer is entitled to calculate Zakat for 2007 only, without the additional period of 2006, which was within Company base. Therefore, the Department concluded that Zakat payer's appeal shall be accepted, and the primary Decision on this item shall be overturned.

Regarding Zakat payer's appeal on the item (Provisions Transferred from a Related Party), it was found that the appeal lies in Zakat payer's request not to add employees' end-of-service gratuity provision and bad debts provision that were transferred from a related party to zakat base, while GAZT believes that these provisions must be added, as they financed deducted assets. In light of the foregoing, the Department found that GAZT had clarified in its viewpoint that was confirmed in the primary Decision, that these Provisions were added to the Company's zakat base, which means that they were calculated within that Company's base, and therefore their recalculation within Zakat Payer's base is unacceptable. However, this does not negate GAZT's claim that the impact of these



Provisions on Company's base was negative, and therefore the addition is formal, as it is the method of calculation that matters, not the result of that calculation. If those provisions had not been included in Company's base, zakat base would have been lower than it was by the same excluded amount. Therefore, the Department concluded to accept Zakat payer's appeal, and overturn the primary Decision on this item.

Regarding Zakat Payer's Appeal on the item (Use of Provisions), it was found that the Appeal is based on Zakat Payer's request to deduct the utilized amount of provisions from adjusted profit rather than from opening balance. However, GAZT maintains that there is no real impact on zakat base, as the net profit in all years was higher than the adjusted net profit. Additionally, reducing book profit by the utilized provisions is governed by tax instructions based on preventing double taxation and shall not extend to Zakat Payers, as zakat is governed by a legitimate basis, which is passage of a full year on the surplus funds. Since these provisions were not accepted in the year of their formation as deductible expenses to determine the net zakat or tax profit, it would be fair, when accounting for these provisions, to deduct the same in the year they are utilized from the accounting net profit to determine the net zakat or tax profit. Consequently, the Department concludes to accept Zakat Payer's Appeal to deduct the utilized amount of provisions from the net profit and overturn the primary Decision regarding this item.

Regarding Zakat Payer's Appeal on the item (Amounts Due to Related Parties), it was found that the appeal is based on Zakat Payer's request not to subject the amounts due to related parties to zakat, as they arose from commercial transactions and did not remain in operation for a period of twelve months. However, GAZT believes that these amounts should be added to base because Zakat Payer did not provide sufficient documentation for the movement of this item. Having taken cognizance of the financial statements for disputed years and analysis provided by Zakat Payer for the item (Amounts Due to Related Parties), the Department found that the opening balances were paid during the year and new amounts arose within the same year. Additionally, they represent a minimal percentage of Zakat Payer's total liabilities. Based on the financial statements, the Department did not observe that the lowest balance of disputed item had completed a full zakat year or that it was used to finance fixed assets. Therefore, the Department concludes to accept Zakat Payer's Appeal and overturn the primary Decision regarding this item.

Regarding Zakat Payer's Appeal on the item (Board Members' Fees), it was found that the Appeal is based on Zakat Payer's request to consider the full compensation of board members as deductible expenses, while GAZT believes that only the amount registered in the social insurance shall be considered. Upon Department's review of the foregoing, since the dispute is based on the principle of exceeding salaries and wages registered in social insurance, rather than supporting these amounts with documentary evidence. Thus, there is no dispute over the fact that compensations were paid to Board member, since accepting salaries within the limits registered in social insurance is not supported by any regulation. The fact that the General Organization for Social Insurance set an upper limit for salaries does not mean that this limit is considered reasonable. By referring to the financial statements and comparing board member's compensation to the net income and total salaries, board member's fees were found reasonable. Consequently, the Department concludes to accept Zakat Payer's Appeal for deducting the full compensation of board member without being limited to the amount registered in social insurance and overturn the primary Decision regarding this matter.

Regarding Zakat Payer's Appeal on the item (Logistics Costs Added by a Related Saudi Entity), it was found that the Appeal is based on Zakat Payer's request to accept deduction of an amount of SAR (110,850,826) as expenses added to the income statement of 2012 in exchange for logistics services. However, GAZT does not accept deduction of these expenses due to lack of complete supporting documents. Having perused content of appeal and responses thereto, as well as conclusion reached in the primary Decision in this regard,



since ordinary and necessary expenses related to the activity, whether paid or payable, may be deducted if they are actual expenses. Since Zakat Payer provided a letter from subsidiary of (... Company) stating that this cost is included in its revenues, and also submitted a copy of the contract with the affiliated company. Moreover, Note No. (1) of Zakat Payer's financial statements of 2012 AD stipulates that: "During the year, the Company entered into an agreement with one of its affiliates, namely, Musanada Transport Services Limited. Pursuant to this agreement, Musanada Transport Services will provide the Company with transportation and storage services for fees agreed upon in advance by utilizing the assets owned by the Company. The Company will charge a fixed monthly rent to Musanada Transport Services for using these assets, while the Company remains the beneficial owner of those assets...", Furthermore, Note (15) of the financial statements states that: "Supply costs represent supply fees invoiced by an affiliated entity, amounting to SAR (123,62) million, and are settled against the monthly rental fee charged by the Company, amounting to SAR (12,77) million, for using Company's assets...". Since GAZT did not submit any evidence contradicting what Zakat Payer provided and confirmed, the Department concludes to accept Zakat Payer's Appeal to deduct logistics expenses and overturn the primary Decision in this regard.

Regarding Zakat payer's appeal on the item (Sales Promotion and Discount related to Company), it was found that the appeal lies in Zakat Payer's request not to add the amounts of sales promotion and discount related to (.....) Company to zakat base, considering that these are amounts paid by the Company to the final commercial customers on behalf of ... Company, and then reimbursed the same without any profit margin. However, GAZT believes that these amounts should be subject to zakat as they are undisclosed revenues. Zakat Payer submitted a sample of documents related to sales promotions and discounts that were passed on to customers and paid by Shibh Al Jazira Company to Catering Company. Zakat Payer's transactions show that the revenue generated from sales promotions and discounts related to ... Company were met by a similar cost for promoting to Zakat payer's commercial clients. Therefore, the Department concludes to accept, by majority, Zakat payer's appeal regarding deduction of logistics expenses, and overturn the primary Decision delivered in this regard.

Regarding Zakat Payer's Appeal on the item (Foreign Purchase Differences), it was found that the Appeal is based on Zakat Payer's request not to calculate estimated profits on the foreign purchase differences and not to subject them to zakat. However, GAZT believes that an estimated profit should be calculated on these differences due to Zakat Payer's failure to provide evidence explaining the reasons for discrepancies between foreign purchases stated in the declaration and those in the customs statement. Having perused the foregoing, since import data recorded by customs for Zakat Payer's foreign purchases formed the basis for GAZT to hold Zakat Payer accountable in light of the data it contained regarding this item. These data represent information from a neutral party and serve as a presumption that can be relied upon to substantiate their contents. Appellant was given the opportunity to submit documents proving the actual differences. However, Zakat Payer did not provide any document that would warrant disregarding customs data and instead based his objection on general statements previously made before the Primary Department, claiming that the amounts of these differences were incorrect without presenting any credible evidence to support his claim. As a result, the Department concludes that, in principle, these purchases shall be considered part of Zakat Payer's inventory subject to zakat. Since the Department did not find any Grounds for amendments or comments based on the information presented, it concluded that the foregoing did not affect outcome of the primary Decision regarding this item. Accordingly, the Department decided to dismiss Zakat Payer's Appeal and uphold the primary Decision in this regard.

Regarding Zakat Payer's Appeal on the item (Cost of Sales Differences), it was found that the Appeal is based on Zakat Payer's request to exclude cost of sales differences, which appeared in the discrepancy between the financial statements and the zakat declaration for the disputed years, arguing that these are expenses related to damaged goods. However, GAZT believes that they must be added to zakat base due to the lack of a convincing explanation for their deduction. The Department may rely on Grounds of the contested Decision concerning the item under consideration without adding further arguments if it deems that the reasons provided sufficiently address the matter, as the contested Decision is based on sound reasoning that justifies its conclusion. The issuing committee thoroughly examined the core of dispute and reached the conclusion stated in its ruling, supporting GAZT's adjustment of net profits for disputed years by the cost of sales differences. Since the Department did not find any Grounds for amendments or comments based on the information presented, it concluded that the Appeal did not affect the outcome of the primary Decision regarding this item. Accordingly, the Department decided to dismiss Zakat Payer's Appeal and uphold the primary Decision in this regard.

With regard to Zakat Payer's appeal regarding (Not Allowing Deduction of School Fees) included in the item (Other Expenses), it became clear that the appeal lies in Zakat Payer's request to accept school fees as deductible expenses, while GAZT considers that it is not accepted due to insufficient documents. Having considered the foregoing, since the ordinary and necessary expenses of activity, whether paid or accrued, are deductible if they are actual expenses. Since the Appellant submitted a statement of analysis of school fees and a sample of cheques and receipts for school fees for the disputed years, which proves that they paid these expenses. Therefore, the Department concludes to accept Zakat payer's appeal regarding deduction of school fees and overturn the primary Decision in this regard.

Regarding Zakat payer's appeal on the item (Goods Provision), it was found that the appeal lies in Zakat payer's request not to add the retained balance of inventory provision to zakat base as the provision does not exist in the Company's accounts. However, GAZT believes that provision was added in accordance with Circular No. (84431) dated 1392 AH, which stipulates that all provisions shall be added as they are considered as capital. Having considered the foregoing, and since the basis of dispute between GAZT and Zakat payer does not legally relate to validity of adding these provisions, but rather to Zakat payer's objection that the provision did not exist in its books. After the Department's verification of existence of provision or not in the accounts, it was found that there was no inventory provision in 2011 financial statements. Having verified Statement No. (8) on which GAZT relied in the primary Decision to prove the existence of provision, and based on the Department's review of the cited statement, it is clear that there is no inventory provision, and the burden of proving the same falls on GAZT. Since GAZT did not prove otherwise, and since Zakat Payer submitted Statement No. (8) and relevant financial statements, no such provision was found to exist in its accounts. Therefore, the Department concludes that Zakat Payer's appeal on this item is accepted and the primary Decision on this item is overturned.

Regarding Zakat Payer's appeal on the item (Bad Debit Provision), it was found that the appeal lies in Zakat Payer's request not to add bad debts provision to profits subject to zakat for 2011, as the provision activity is not related to the Appellant, while GAZT believes that the provision was added in accordance with its Circular No. (2057/6) dated 14/04/1426 AH. Having reviewed 2011 financial statements, the Department found that there was no breakdown of bad debt provision. Zakat Payer attached Statement No. (8) for 2011 showing bad debt provision with the opening balance, movement during the year and closing balance, from which it was found that its component is amounted to SAR (4,076,785). Since it is established that component of provision is added to zakat profit, and that Zakat Payer is responsible for providing documents proving their point of view,



however, Zakat Payer did not provide any proper documents that support his claim. In light of what was presented before it, the Department did not notice anything that required correction or comment, which leads the Department to conclude that what was presented has no effect on the primary Decision delivered regarding this item. Accordingly, the Department decided to dismiss Zakat Payer's appeal and uphold the primary Decision on this item.

Regarding Zakat Payer's appeal on the item (Taxes, Fines and Penalties), it was found that the appeal lies in Zakat Payer's request to deduct taxes, fines and penalties as they represent bank charges for various banking transactions, while GAZT believes that this item represents taxes, fines and penalties and not bank charges. It is established that ordinary and necessary expenses of the activity, whether paid or accrued, may be deducted if they are actual expenses. Having examined the financial statements, the Department found that there was an item of financial charges. In addition, Appellant submitted statements detailing the amounts under appeal, journal entries, and statements contained in the final declaration including amounts of the item under appeal. Since GAZT did not provide evidence that contradicts what Zakat Payer submitted and what he acknowledged. Accordingly, the Department concludes to accept Zakat Payer's appeal regarding deduction of bank charges, and to overturn the primary Decision on this item.

Decision

Based on the foregoing, and taking into account the aforementioned reasons, the Department decided the following:

First: Accept the Appeal in form filed by Zakat Payer/ ... Company, TIN (...) against the Decision of the Second Primary Committee for Zakat and Tax Objections in Jeddah No. (30) of 1438 AH.

Second: On Merits:

1. Dismiss Zakat Payer's Appeal regarding the item (Short-Term Loans) and uphold the primary Decision in this regard, in accordance with the reasons and Grounds stated in this Decision.
2. Dismiss Zakat Payer's Appeal regarding the item (Short-Term Loans Provided by Partners) and uphold the primary Decision in this regard, in accordance with the reasons and Grounds stated in this Decision.
3. Dismiss Zakat Payer's Appeal regarding the item (Profit Used to Finance Long-Term Assets) and uphold the primary Decision in this regard, in accordance with the reasons and Grounds stated in this Decision.
4. Accept Zakat Payer's Appeal regarding the item (Zakat Calculation on a Proportional Basis for the Initial Long Financial Period) and overturn the primary Decision's ruling in this regard, in accordance with the reasons and Grounds stated in this Decision.
5. Accept Zakat Payer's Appeal regarding the item (Provisions Transferred from a Related Party) and overturn primary Decision's conclusion in this regard, in accordance with the reasons and Grounds stated in this Decision.
6. Accept Zakat Payer's Appeal regarding the item (Use of Provisions), in his request to deduct the utilized amount of provisions from net profit, and overturn primary Decision's outcome in this regard, in accordance with the reasons and Grounds stated in this Decision.
7. Accept Zakat Payer's Appeal regarding the item (Amounts Due to Related Parties) and overturn primary Decision's conclusion in this regard, in accordance with the reasons and Grounds stated in this Decision.
8. Accept Zakat Payer's Appeal regarding the item (Board Members' Fees), in his request to deduct full amount of board members' fees without limiting it to the amount registered in social insurance, and overturn primary Decision's ruling in this regard, in accordance with the reasons and Grounds stated in this Decision.



9. Accept Zakat Payer's Appeal regarding the item (Logistics Costs Added by a Related Saudi Entity) and overturn primary Decision's outcome in this regard, in accordance with the reasons and Grounds stated in this Decision.
10. Accept Zakat Payer's appeal regarding the item (Sales Promotion and Discount related to Company), and overturn the primary Decision thereon, in accordance with the reasons and Grounds stated in this Decision.
11. Dismiss Zakat Payer's appeal regarding the item (Foreign Purchase Differences), and uphold primary Decision's conclusion in this regard, in accordance with reasons and Grounds stated in this Decision.
12. Dismiss Zakat Payer's appeal regarding the item (Cost of Sales Difference), and uphold primary Decision's conclusion in this regard, in accordance with reasons and Grounds stated in this Decision.
13. Accept Zakat Payer's appeal regarding the item (Disallowing School Fees Deduction), and overturn primary Decision's conclusion in this regard, in accordance with reasons and Grounds stated in this Decision.
14. Accept Zakat Payer's appeal regarding the item (Goods Provision), and overturn primary Decision's conclusion in this regard, in accordance with reasons and Grounds stated in this Decision.
15. Dismiss Zakat Payer's appeal regarding the item (Bad Debit Provision), and uphold primary Decision's conclusion in this regard, in accordance with reasons and Grounds stated in this Decision.
16. Accept Zakat Payer's appeal regarding the item (Taxes, Fines and Penalties), and overturn primary Decision's conclusion in this regard, in accordance with reasons and Grounds stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

**Decision No. (IR-2021-85)
Delivered in Appeal No. (Z-1513-2018)**

Principle No. 223

Remuneration paid by Zakat Payer to its employees and exceeding the limit accepted by GAZT as a deductible expense is not, in essence, a documentary dispute related to submitting documents proving the true amounts disbursed as remuneration, as limitation on such amounts as a deductible expense is not based on considerable evidence due to the invalidity of deducting what exceeds that limit as a deductible expense when calculating the zakat base, as long as there is no dispute over the truth of such expense.

Facts:

On Wednesday, 20/02/1442 AH corresponding to 07/10/2020 AD, the First Appeals Chamber for Income Tax Interventions and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH based on Article 67.B of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh, to consider appeal filed on 19/10/1438 AH corresponding to 13/07/2017 AD by / Company, on Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh No. (23) of 1438 AH, issued in Case No. (1435/22/4791), filed by the Appellant against GAZT, in which the primary Decision ruled as follows:

First: Accept the appeal in form filed by Zakat Payer/ Company, regarding Zakat assessment for the period from 2009 to 2011 AD.

Second: On Merits:

1. Uphold ZATCA procedure regarding the calculation of annual bonuses exceeding 5% of net profit according to Decision Grounds.
2. Uphold ZATCA procedure outlined in adding variance of social insurances and employee housing allowances to zakat base according to Decision Grounds and in the amounts specified therein.
3. Uphold ZATCA procedure outlined in adding costs of private housing rents and medical insurance to zakat base according to Decision Grounds.
4. Uphold ZATCA procedure outlined in adding ticket, travel and accommodation expenses to Taxpayer's zakat base according to Decision Grounds.
5. Uphold ZATCA procedure outlined in adding expenses of gifts, gratuities, donations and administrative fees to Taxpayer's zakat base according to Decision Grounds.
6. Uphold Zakat Payer's claim to accept the cost of health insurance for employees and their families as a deductible expense from its zakat base according to Decision Grounds.
7. Uphold ZATCA procedure outlined in adding zakat paid for 2009 and 2010 to Zakat Payer's zakat base according to Decision Grounds.
8. Resolution of the dispute between the parties regarding (Profit from sale of Fixed Assets) item according to Decision Grounds.



9. Uphold ZATCA procedure outlined in adding adjusted current balance to Zakat Payer's zakat base according to Decision Grounds.
10. Resolution of the dispute between the parties regarding (Investments) item according to Decision Grounds.

Since this Decision was not accepted by (... Company), Zakat Payer filed a statement of appeal that can be summarized as follows:

Annual Bonuses Exceeding 5% of Net Profit for the Years 2009, 2010, and 2011. Zakat Payer objects to GAZT's refusal to deduct these bonus amounts for the mentioned years and its adjustment of the net profit without excluding the amounts paid for these bonuses, despite the fact that they were disbursed according to an internal regulation of the office and approved by the Ministry of Labor. The variation in amounts from one year to another is based on the fact that these bonuses depend on the performance evaluation and results of the employees undertaking office tasks related to auditing. Therefore, there is a difference in the amount of these bonuses from year to year depending on the effort and performance evaluation. Accordingly, GAZT's action in not excluding these bonus amounts and adjusting the net profit without considering them as expenses incurred by the office does not align with the correct procedure, which requires treating them as deductible expenses.

The item (Social Insurance Differences and Employees' Salaries and Housing for the period from 2009 to 2011), Zakat Payer is objecting to failure to calculate full difference in social insurance differences, and employees' salaries and housing for the period from 2009 to 2011 as stated in Zakat Payer's declaration, not on the amount on which GAZT made its Assessment. Since the difference that was not included in those amounts came in view of the existence of wages for temporary employees during the probationary period, in order to subsequently appoint them to permanent positions after proving their competence to work for the office, in compliance with approved regulations for the probationary period. Therefore, there is nothing to prevent exclusion of difference between salaries subject to contributions, consisting of basic salary and added housing allowance, as basic wages, and what is to be added to these salaries and wages, representing payments due to temporary employees.

The item (Partners' Private Housing Allowance and Medical Insurance Costs for the period from 2009 to 2011). Zakat Payer believes that housing rents represent actual expenses incurred by the office, given that they are actual expenses paid for the partners working in the office together with their medical insurance. Therefore, there is no reason to exclude these expenses incurred by the office in pursuit of its business and activities. Argument that the leased properties were for transactions between non-independent parties does not change the fact that they are expenses.

The item (Unapproved Expenses of Travel Tickets and Accommodation of 2009 - 2011). Zakat Payer emphasizes that these were payments for tickets issued to travel agencies in KSA, in addition to accommodation expenses for assignments and missions, which are part of the necessary work performed by the office. These tasks were carried out by partners and employees when reviewing customer accounts in different regions of KSA. These expenses are directly related to the office's activities and should therefore be deducted as they are necessary expenses to generate revenue for the office and should be deducted from the annual net profit. Additionally, payments for tickets for families of partners and employees are also considered deductible expenses as they are obligations incurred by the office when contracting with employees. Therefore, these payments for tickets, travel and accommodation expenses are related to generating revenue, rendering GAZT's Decision not to deduct them from zakat base not valid, especially since we have provided GAZT with a detailed statement of these travel and accommodation expenses, including names of each beneficiary and related payments.

(Gift, Gratuity, Donation and Administrative Expenses) item: Zakat Payer's objection involves ZATCA procedure outlined disallowing deduction of gratuity and donation expenses amounting to SAR 204,767 and SAR 153,693 for 2009 and 2010 respectively, in addition to gift and gratuity expenses amounting to SAR 204,167 and administrative expenses amounting to SAR 485,995 for 2011, given that such expenses comprise work-related expenses for employee lunches and group breakfasts during Ramadan, coffee and tea for employees during working hours and incentive gifts. Regarding donations, such donations were paid to aid various charities and entities. In addition, Zakat Payer maintains that Zakat Payer provided ZATCA with a detailed statement previously submitted to ZATCA that breaks down donations and gratuities paid. Accordingly, there is no valid reason for disallowing deduction of such expenses from zakat base for years in question.

(Zakat Provision for 2009 and 2010) item: Zakat Payer's appeal involves objection to ZATCA procedure outlined in adding an amount of SAR 101,586 and SAR 39,804 as zakat variances for 2009 and 2010, respectively. These adjustments resulted from ZATCA adjustment of zakatable net profit. However, Zakat Payer asserts that the financial statements and expenses charged during audit discussions for 2009 and 2010 were provided. In addition, the Office did not charge such amounts to the expenses for the two years in question. Accordingly, the net income included in zakat base does not include zakat provision, since zakat is calculated by adding net income before deducting its provision. Therefore, zakat variances reached by ZATCA, whereby it adjusted the net profit, were not based on actual financial records of the Office in light of the fact that ZATCA has not provided evidence to exclude amounts of such provisions, considering Office's approach to add such provisions to zakat base in line with its established handling of such provisions.

(Shareholders' Current Account Adjusted by Shareholders' Rent for 2011) item: Zakat Payer's appeal involves objection to the primary Decision that upheld ZATCA position outlined in adding balance of shareholders' current account for 2011 to zakat base, despite the fact such amounts did not complete a full year, since the rule for calculating zakat on shareholders' current account involves adding lower balance at either the beginning or end of the period to zakat base. Since such balances were recorded in 2011, as shown in shareholders' accounts that were submitted to ZATCA. Therefore, their addition to zakat base is invalid due to the fact that such balances did not complete a full year. Even assuming that ZATCA adjusted account balance, the lower beginning balance should have been excluded. However, ZATCA added the year-end balance instead, which is the higher balance at the beginning of the period amounting to SAR 985,586.

In addition to its requests, the Appellant has emphasized that the Department should order GAZT to implement the primary Decision regarding Zakat Payer's objection to approval of amounts related to medical insurance for families of partners and employees for the period from 2009 to 2011. Furthermore, Zakat Payer has requested the Department to urge GAZT to amend assessment by adding salaries of Riyadh branch and deducting the same from zakat base, as stated in the Decision issued by the Primary Objections Committee.

Since pleas, objections and requests raised by Zakat Payer regarding the appeal under consideration are summarized as previously stated, the Department requested GAZT to respond to objections included in the Appellant's statement of appeal regarding raised items. Having examined GAZT's Reply dated 01/11/1441 AH regarding the appeal under consideration and items addressed in Appellant's statement of appeal, it became clear to the Department that GAZT reaffirms its point of view presented regarding these objected items during consideration of Zakat Payer's objection before the Primary Committee. GAZT maintains correctness and validity of its procedures regarding the items subject to appeal, and that the Committee's Decision was in accordance with the provisions of law. Therefore, GAZT adheres to conclusion of that Decision, taking into consideration that



Zakat Payer's argument does not go beyond what was previously stated before the Primary Objections Committee, which GAZT had responded thereto at that time. As such, GAZT requests the Department to uphold the primary Decision and dismiss Zakat Payer's appeal regarding appealed items.

Having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On Merits: After the Department found that the subject matter of appeal becomes ripe for adjudication after the Department determined that the statement of appeal, reply thereto and documents included in Case file are sufficient to form its conviction in order to adjudicate the subject matter of dispute over the contested items; therefore, the Department decided in this regard as follows:

1. (Annual Bonuses Exceeding 5% of Net Profit for 2009, 2010, and 2011) item: Having taken cognizance of Zakat Payer's appeal in this regard and ZATCA reply thereto, which was based on its reliance on the arguments raised during the hearing and pleading session before the Objection Committee, the Department found that such bonuses paid by Zakat Payer to its employees, which exceeds the amount accepted by ZATCA as the maximum deductible expense, do not substantially constitute a dispute over the principle of considering them as an expense. Therefore, this dispute shall not be considered a document-based dispute related to providing documents that prove the actual amounts paid as bonuses. Since ZATCA determination of a limit for deductible expenses as (5%) is not based on valid Grounds for disallowing deduction of the amounts exceeding this limit when calculating zakat base, as long as the dispute is not over the actual expense, as previously stated. Accordingly, exceeding this percentage to nearly (24%), as assessed by the Primary Department, does not justify excluding this expense from zakat base within such percent, especially when considering nature of the bonuses associated with the effort and work of the employee involved in auditing and reviewing accounts as part of office activities. Therefore, the Department concluded that this objection shall be accepted as a deductible expense based on the figures included in Zakat Payer's declaration.
2. (Variance of Social Insurance, Employee Salaries and Housing for Years from 2009 to 2011) item: Having taken cognizance of Zakat Payer's appeal and ZATCA answer to Zakat Payer's claims based on its satisfaction with the arguments raised during the hearing and pleading session before Objection Committee, the Department found that Zakat Payer does not object to the entire item; rather, the objection was based on disallowing deduction of amounts of temporary employees who were under probation not included in social insurance contributions, considering that they are employees. In addition, the Office did not find that such employees are suitable for employment and making contracts with them except after expiry of probation period. Since the lack of social insurance contributions for such temporary employees is not sufficient to disqualify such expenses from being considered actual costs incurred by the Office for such temporary employees during the probation period, especially that the subscription with GOSI serves as an indicator, additional evidence or indication confirming these expenses as wages for temporary employees during probation that would support their validity. Since Appellant provided sufficient evidence to convince



the Department that such expenses are incurred. Therefore, the Department has decided to recognize such expenses associated with wages for temporary employees as deductible expenses for years in question.

3. Item of Costs of Private Housing Allowance and Medical Insurance for Partners of 2009 to 2011, Following Department's review of Zakat Payer's Appeal and GAZT's response to what he stated based on its sufficiency with arguments presented during the hearing and pleading before the Objection Committee, it was determined that Zakat Payer views partners' rental expenses as necessary and incurred to enable the partners to perform their duties, similar to other operational expenses. However, GAZT argues that rental value paid by the office is considered a profit distribution rather than an expense burden on the annual profit, particularly since it is allocated for housing of some partners. Furthermore, Zakat Payer's recording of the same rental values in its rental value and calculating it as a debit on partners' current account results in exclusion of these amounts from zakat base with regard to the partner Mr. ... Moreover, GAZT argues that these properties rented from partners are owned by them, then the transaction is not independent and lacks impartiality in determining a fair rental value. Moreover, such rent constitutes additional income for partners, which shall be recognized in their zakat declaration; therefore, it cannot be considered as a deductible expense. Having considered the dispute between parties as outlined above, the established principle in corporate matters is that what the company pays to its partners is considered a distribution of profit, and that what can be deducted as expenses in return for advance payments is limited to the amounts that are acceptable within their limits to be deducted as expenses when paid to the partner who assumes management. This is considered a fee related to his capacity as a manager, not as a partner, as such compensation could be paid to an external manager if the Company outsourced its management, or when the Company pays a partner for supplying services, materials or performing physical work for the Company's project. These expenses, when paid to a partner for conducting Company's operations, are not treated as profit distribution, as they are expenses incurred for Company's needs in conducting its activities. Any expenses outside of these situations can only be considered a profit distribution to the partner, regardless of title used. Thus, office's (professional Company) provision of a housing allowance to its partner shall not be classified as a deductible expense, as it is a benefit or grant given to the partner. This housing allowance is unrelated to Company's (professional) activities, which involve auditing and review of financial statements for its clients. Therefore, it cannot be considered a deductible expense from zakat base of the Company (licensed accounting firm), since it does not constitute a necessary expense for generating Company's revenue, given the nature of professional work performed by the licensed partners. Company's activities require each partner to review client accounts and files to enable the office to provide its opinion on the financial statements. Accordingly, it is established by nature of partners' professional work that what brings them together when they perform work is based on the personal effort expended by the partner and then represented under office name. The deductible expense is defined as one that is directly related to professional work that forms the core of Company's activity in performing audits and reviews of clients' financial statements. Since the housing allowance granted to partners cannot be described as a deductible expense when provided to a partner because it is not related to generating Company's revenue, as is the case, for example, when the partner moves to examine files and accounts of a client outside the area where the Company's headquarters are located, since such expenses and the like are related to achieving revenue for the Company, and not the rental allowance granted to the partner, which in reality represents a benefit given by the Company to partner. In addition, amount paid in this manner cannot be considered as part of compensation



given to the partner who contributes to the work of managing the Company and running its affairs in order for the partners in the office to perform their work related to the accounting profession, which justify existence of the Company. The basis for disbursing and distributing this allowance to shareholders is not contingent upon shareholder's direct involvement in managing the Office that performs professional activities on behalf of all shareholders. These professional activities generate fees from office's clients, which constitute office main revenue. Consequently, profits are determined after deducting the expenses directly associated with generating this revenue and then distributing the profit among partners as per their mutual agreement. Therefore, the housing allowance provided to partners is not an expense necessary for generating office income but rather a benefit or privilege granted to the partner. Accordingly, it shall be treated as a profit distribution and cannot be excluded from zakat base on the Grounds of being a deductible expense, as previously explained. Conclusion reached by the Department in dealing with rental allowances granted by the Company to partners, and not considering the same as a deductible expense, does not constitute statement expressed by Zakat Payer that there is a Fatwa stating that what the partner takes including housing allowance, salary or transportation allowance should be deducted from the base, like salaries of workers and allowances paid thereto, taking into account what their peers receive. Since essence of this Fatwa content is that similar calculation of those allowances as wages and salaries similar to what is given to workers and employees is related to realization of efforts made by that partner to conduct the Company's work and management. Thus, applying Fatwa content to every amount given to partners by the Company, without being related to partner's role in managing the Company and excluding him from his professional work as a partner, would be an analogy with the difference on what is given to the partner as if it were a wage similar to what employees and workers receive in the facility. Since what the partner receives in return for his professional work is considered a profit, given that there is no employment relationship between the partner and the office. Entitlement to such allowances and wages is also contingent upon existence of an employment relationship between an employee and an employer, a relationship that does not exist between the Company and its shareholders when they perform their professional duties under Company's umbrella, for which they receive fees in return for their professional work, and the resulting profit is then divided among shareholders according to their agreement. The validity of this conclusion is not undermined by discussing by the Committee that rendered the Decision of ZATCA procedure outlined in disallowing deduction of rental amounts on the ground that such amounts were either not objectively justified in their value or were paid to related parties. It is sufficient that, in their true nature, they are considered dividends from the Company to shareholders, as previously outlined. Since it is established as per rulings of the court of appeal that a Decision may be upheld in its conclusion with amendment to its reasoning. Since it is concluded that handling such allowances as dividends to the shareholders, rather than as wages comparable to those received by Office's employees, is appropriate since the shareholder is not considered an employee when carrying out his professional duties at the Office. Therefore, the Department decides, by majority, that the validity of Decision's conclusion that the rental allowances granted by the Company to the shareholders should not be considered a deductible expense from Zakat Payer's zakat base.

The Department, with regard to the other element related to the item in question, which is (Amounts of Medical Insurance paid by Zakat Payer to Partners), and Zakat Payer's request to calculate the amounts paid as deductible expenses from its Zakat Base, also found that those expenses provided as medical insurance by Zakat Payer to partners cannot be decided that they were processed under the manner requested by



Zakat Payer, other than the medical insurance provided for its personnel, as there is no relation to the realization of revenue for Zakat Payer by the existence of medical insurance for its partners, since the rationale behind providing benefits to personnel (to attract and retain talent) is distinct from the rationale behind providing benefits to partners, as Zakat Payer's relationship with partners is not related to terms governing the employment relationship between Zakat Payer and its personnel; hence that employment relationship does not apply to the relationship between Zakat Payer and partners and when carrying out their professional work. Accordingly, it is not appropriate to deduct the medical insurance amounts paid by Zakat Payer for the partners as a deductible expense, but rather a benefit provided by Zakat Payer to the partners that should be considered a distributed profit and not an expense similar for medical insurance provided to personnel, since the partner is not an employee when carrying out their professional work in the Office "Zakat Payer"; Therefore, the Department by majority satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

4. Item (Unapproved Expenses of Travel Tickets and Accommodation of 2009 – 2011):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question, found that; since Zakat Payer has submitted a detailed statement of the beneficiaries of these tickets and payments made for travel and accommodation expenses; and since GAZT argument, upon considering Zakat Payer's appeal by the Primary Committee, was based on the absence of detailed statement for those expenses; and since the Department has verified the existence of the beneficiaries and the parties to whom those expenses were paid as stated in that detailed statement, which renders considering these amount an expense required by Zakat Payer's upon communicating with its clients, ensuring the validity of their financial statements, and reviewing the same at their various headquarters within the Kingdom, which is not affected by GAZT claim that the partners were among the said beneficiaries, as the professional activity of Zakat Payer is based on the individual contributions of each partner to carry out audits and reviews of financial statements of Zakat Payer's clients; thus, partners' benefiting from the payments and expenses of travel tickets and accommodation is evident necessitated by the nature of Zakat Payer's activity, and the connection of that expense to generating revenues arising from the partners' professional practice results in considering the same as deductible.

(Gift, Gratuities, Donation and Administrative Expenses) item: Having taken cognizance of Zakat Payer's appeal subject matter regarding specifics of this item, particularly gift, gratuity and donation expenses, the Department found that Zakat Payer's submission did not present any credible evidence to support such expenses as deductible from zakat base, as Zakat Payer simply classified such expenses with the intention of deducting them from zakat base. Accordingly, the Department decided to dismiss Zakat Payer's claim to deduct such expenses from zakat base. However, the Department concluded that such amounts shall be handled as a divided and funds utilized by Zakat Payer in the manner claimed. Thereupon, such expenses shall be considered as a divided that decrease the balance of retained gains at the end of the year, which, in turn, becomes the opening balance for the following year for the purpose of calculating zakat in each of years in question.

As for administrative expenses, the dispute between Zakat Payer and ZATCA is document-based, given that the Committee upheld ZATCA position outlined in disallowing deduction of such expenses because Zakat Payer did not provide any supporting documents. since the Department requested Zakat Payer to provide a clear breakdown of such expenses for each year, along with supporting documents, to verify their relevance to Zakat Payer's business activities and the specific year in which they



were incurred. However, Zakat Payer only submitted a statement breaking down such expenses and some documents that, in its view, support its claim. Since the Department did not find sufficient evidence to confirm that such expenses meet the criteria of deductible expenses, especially since some of them were stated as having been incurred by one of the shareholders. Since such a statement does not conclusively establish that these are traceable expenses directly related to Company's activities, as they did not follow the standard approval process within the Company itself, but rather were handled solely by one of the shareholders. Therefore, the Department concluded that these amounts shall be handled as a dividend and funds utilized by Zakat Payer in the manner claimed. Thereupon, such expenses shall be considered a dividend that decreases the retained gains at the end of the year, which then forms the opening balance for the following year for the purpose of calculating zakat in each of years in question.

(Zakat Provision for 2009 and 2010) item: Since Zakat Payer's appeal regarding this item, as previously outlined in the summary of arguments included in this Decision, was based on the fact that ZATCA concluded that Zakat Payer had accounted for zakat as an expense for years in question without verifying the same from various financial statements provided by Zakat Payer for the years subject matter of objection. Merely stating that zakat is not a deductible expense is not sufficient to refute Zakat Payer's claim based on its declaration. Accordingly, ZATCA did not provide any evidence to substantiate its conclusion that Zakat Payer erred in deducting amounts paid as zakat as an expense for years in question. As such, the initial stance remains valid, which is to accept Zakat Payer's submission in this regard due to the lack of evidence disproving it and insufficiency of ZATCA conclusions to overturn that stance. Therefore, the Department accepts Zakat Payer's appeal regarding the contested item, and decides not to allow adjusting profit as proposed by ZATCA and decided in the primary Decision by adding back to zakat base.

(Shareholders' Current Account Adjusted by Shareholders' Rent for 2011) item: Since Zakat Payer's appeal regarding this item as previously outlined within its arguments regarding this item summarized within this Decision. Since the standard principle in zakat calculation for shareholders' current accounts is to add the beginning balance or closing balance, whichever is lower, to zakat base. Since ZATCA did not add the lower balance of this account without providing a reason for deviating from this established practice in zakat assessment. In addition, such amount based on which the assessment was made has not been confirmed that a full year has completed. Therefore, the Department accepts Zakat Payer's appeal regarding this item, overturns the primary Decision's conclusion in this regard rules to adopt the lower balance at the beginning of the period as reflected in the financial statements provided by Zakat Payer for calculating zakat base.

As for the statement of appeal submitted by Zakat Payer regarding the request to prompt ZATCA to implement the primary Decision that upheld Zakat Payer's position in certain items or specific aspects, the Department has decided to dismiss this request, considering that it does not constitute a matter of dispute, but rather it pertains to ZATCA implementation of the primary Decision, which falls beyond Department's jurisdiction given the lack of contention in this regard as previously explained.



Decision

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

First: Accept in form the appeal submitted by Zakat Payer/... Company, C.R. No. (...), TIN No. (...), against Decision No. (23) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Annual Bonuses Exceeding 5% of Net Profit for 2009, 2010 and 2011) item, allowing such item as a deductible expense based on Zakat Payer's declaration, and overturn the primary Decision in this regard according to reasons and Grounds stated herein
2. Dismiss Zakat Payer's appeal regarding (Variance of Social Insurance, Employee Salaries and Housing for Years from 2009 to 2011) item, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
3. Dismiss Zakat Payer's appeal by majority regarding (Costs of Shareholders' Private Housing and Health Insurance for Years from 2009 to 2011) item, and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
4. Accept Zakat Payer's appeal regarding (Unapproved Ticket, Travel and Accommodation Expenses for Years from 2009 to 2011) item, and uphold the primary Decision in this regard according to reasons and Grounds stated herein.
5. Dismiss Zakat Payer's regarding (Gift, Gratuity, Donation and Administrative Expenses) item, and determine that such expenses shall be considered as a dividend that decreases the balance of retained gains at the end of the year, which, in turn, becomes the opening balance for the following year for the purpose of calculating zakat in each of years in question according to reasons and Grounds stated herein.
6. Accept Zakat Payer's appeal regarding (Zakat Provision for 2009 and 2010) item and overturn the primary Decision in this regard according to reasons and Grounds stated herein.
7. Accept Zakat Payer's appeal regarding (Shareholders' Current Account Adjusted by Shareholders' Rent for 2011) item, and overturn the primary Decision in this regard according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-87)
Delivered in Appeal No.
(ZW-1537-2018)

Principle No. 224

Acquittance is the rule and the burden of proof lies upon whomever claims the contrary.

Facts:

First: In Form:

Accepting Taxpayer's objection in form, according to the reasoning of the Decision.

Second: On Merits

- 1.1. Uphold Taxpayer's objection to item (Non-Deduction of Salaries and Wages of 2010 and 2011) for the Grounds stated in the Decision.
- 1.2. Dismiss Taxpayer's objection to item (Provisions and Reserves) for the Grounds stated in the Decision.
- 1.3. Resolution of dispute on item (Taxes and Fines of 2011) by GAZT's acceptance of Taxpayer's view.
- 1.4. Resolution of dispute on item (Damaged Materials of 2010 and 2011) by GAZT's acceptance of Taxpayer's view.
- 1.5. Resolution of dispute on item (Company's Share of Losses of Unregistered Joint Venture of 2010 and 2011) by GAZT's acceptance of Taxpayer's view.
- 1.6. Dismiss Taxpayer's objection to item (Bad Debts of 2010) for the Grounds stated in the Decision.
- 1.7. Resolution of dispute on item (Adjusted Deferred Losses of 2010 and 2011) by GAZT's acceptance of Taxpayer's view during the discussion session.
- 2.1 Dismiss Taxpayer's objection to item (Addition of Closing Balance of Credit Reservations of 2010 and 2011) for the Grounds stated in the Decision.
- 2.2 Dismiss Taxpayer's objection to item (Addition of Closing Balance of Other Credit Balances of 2010 and 2011) for the Grounds stated in the Decision.
- 2.3 Resolution of dispute between parties to Case by Taxpayer's submitting "Asset Depreciation Statements" in accordance with Circular No. (3299) of 1434 AH.
- 2.4 Dismiss Taxpayer's objection to item (Non-Deduction of Investment Balance of Joint Venture of 2010 and 2011) for the Grounds stated in the Decision.
- 2.5 Dismiss Taxpayer's objection to item (Non-Deduction of Deposits with Saudi Customs) for the Grounds stated in the Decision.
- 2.6 Resolution of dispute on item (Excavators Transportation Expenses) by GAZT's acceptance of Taxpayer's view.
- 3.1 As for item (Withholding Taxes on Amounts of "..... Company – India" of 2010):
 - a. Resolution of dispute on the amount of (SAR 165,752) for the Grounds stated in the Decision.
 - b. Dismiss Taxpayer's objection to the amount of (SAR 25,046.25) for the Grounds stated in the Decision.



- c. Uphold Taxpayer's objection to the amount of (SAR 266,063) for the Grounds stated in the Decision.
 - d. Dismiss Taxpayer's objection to the amount of (SAR 41,250) for the Grounds stated in the Decision.
 - e. Dismiss Taxpayer's objection to the amount of (SAR 40,678) for the Grounds stated in the Decision.
- 3.2 Resolution of dispute on item (Withholding Tax on Amount Remitted to "..... Company" of 2011) by GAZT's acceptance of Taxpayer's view.
- 3.3 Uphold Taxpayer's objection to item (Withholding Tax on Amount Remitted to "..... Company" of 2011) for the Grounds stated in the Decision.
- 3.4 Dismiss Taxpayer's objection to item (Withholding Tax and its Rate from Amount Remitted to "..... Company" of 2011) for the Grounds stated in the Decision.

Since Taxpayer (..... Company) was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

1. Item (Saudization Contractual Fine):

Taxpayer objects to the Primary Committee's Decision, which ruled to dismiss Taxpayer's objection to the non-addition of the provisions to the net profit, including the Saudization contractual fine, wherein Taxpayer stated, in response to the Primary Committee, that it did not object to GAZT's procedure in addressing the Saudization contractual fine, but rather its objection clearly indicates its request that GAZT should approve the used portion of provisions included in Statement No. (8) of Tax Return, which includes reducing the provision by an amount of (SAR 2,372,036) for non-compliance with Saudization criteria (subject of the objection and appeal).

Additionally, Taxpayer indicated that, according to GAZT's view, such a fine is imposed for non-compliance with laws and regulations, which was rejected pursuant to Article (10/6) of Implementing Regulations of Income Tax Law. Moreover, Taxpayer assumes, for the sake of argument, that if it had agreed with the Primary Committee's view that Taxpayer did not object to the item in question, its objection was primarily to GAZT's failure to take the provisions information into consideration as stated in Statement No. (8) of Tax Return, which includes the main contested item, since the main point of contention is the Saudization fines resulted from GAZT's amendments to Statement (8) of Tax Return. Accordingly, Taxpayer affirms that it explicitly indicated its disagreement with GAZT's procedure in its main contested item, which contradicts, as claimed, the Primary Committee's Decision that Taxpayer did not object to the item in question. Furthermore, in the event that Taxpayer's objection to the item in question, Taxpayer requests that the provisions included in Statement No. (8) of Tax Return be approved, which is the basis of its request.

With regard to the true nature of the fine in question, Taxpayer contends that the Primary Committee has upheld GAZT's Decision when it excluded the amount of (SAR 2,372,036) from the used portion of provision for doubtful debts of 2010, as that amount represents a statutory fine for non-compliance with laws and regulations pursuant to Article (10/6) of Implementing Regulations of Income Tax Law. Such a fine was imposed on "..... Saudi Company" for failure to comply with the Saudization rate, as Taxpayer contends that, according to the contract of "..... Saudi Company," they represent contractual fines that are deductible under Article (10/6) of Implementing Regulations of Income Tax Law. Taxpayer affirms that such fine was imposed by "..... Company" as a result of the Saudization rate falling below the rate stipulated in the contract concluded with the Company, and not as a result of violating the laws and regulations.

Taxpayer concluded by requesting amendment of the Primary Committee's Decision and acceptance of the used portion of provision as stated in Statement No. (8) of Tax Return submitted by Taxpayer of 2010.

2. Item (Fixed Assets of 2010 and 2011):



Taxpayer contends that the Primary Committee has considered that the dispute between GAZT and Taxpayer regarding the deduction of fixed assets from Zakat Base of 2010 and 2011 was resolved, based on GAZT's conditional approval of the method of calculating fixed assets applied by Taxpayer in its Returns, wherein Taxpayer states that it has taken the net book value of the fixed assets as in the audited financial statements and adjusted the same with the depreciation differences calculated in Statement No. (4) of Tax Returns submitted by Taxpayer.

In addition, Taxpayer affirms that it has provided both GAZT and the Primary Committee with a copy of the depreciation statements of 2005 – 2011 upon their request, along with the supporting documents. Taxpayer concluded by adhering to its right to file an objection in the event that the amended Decision is issued containing a method for calculating fixed assets in a manner that differs from the method included in its Tax Returns for years in question.

3. Item (Withholding Taxes of 2011):

Taxpayer objects to the Primary Committee's Decision for dismissal of its objection regarding the tax withholding on the amounts remitted to (..... Company "Italy") and dismissal of its objection regarding the amounts paid to (..... Company "India").

With regard to (..... Company "Italy"), Taxpayer affirms that it has submitted the documents supporting its claim during the hearing. Taxpayer added that it refuses the appealed Decision for considering this dispute as related to documents. Taxpayer concluded by requesting abolishment of the appealed Decision and acceptance of its procedure by subjecting the amounts remitted to (..... Company "Italy") to a withholding tax of (5%).

With regard to (..... Company "India"), Taxpayer states that the Primary Committee upheld GAZT regarding the amounts paid to (..... Company "India"), wherein the Primary Committee considered that the said amounts were not supported by documents, while Taxpayer contended that it had previously submitted the supporting documents within the specified period during the hearing before the Primary Committee, as Taxpayer stated that it had submitted the supporting documents for the amounts of (SAR 41,250), (SAR 27,551), and (SAR 40,229), which were rejected by the Primary Committee for lack of evidence. Taxpayer concluded by requesting acceptance of its appeal regarding the amounts in question.

4. Item (Late Payment Fine):

Taxpayer objects to the imposition of any late payment fine resulting from GAZT's procedures that are primarily objected to and requests their final abolishment due to the existence of a substantive disagreement that requires abolishment of the same.

On 10/04/1442 AH, corresponding to 25/11/2020 AD, the Department received a Rejoinder from GAZT, in which it responded to Taxpayer's statement of appeal regarding the contested items, which included the following:

1. Item (Saudization Contractual Fine):

The item was not subject to objection and is considered a new request from Taxpayer. GAZT requests dismissal of the item in question pursuant to Article (186) of Law of Civil Procedure, refers to its Reply submitted before the Primary Committee, and adheres to the merits and Grounds of the appealed Decision.

2. Item (Fixed Assets of 2010 and 2011):

GAZT stated that it would address the effect of the differences in accordance with Taxpayer's statement of appeal and the documents it has submitted, by implementing Circular No. (1434/16/3299) of 26/05/1434 AH.

3. Item (Withholding Taxes of 2011):

GAZT stated that Taxpayer did not submit the documents supporting its view within the specified period by the Primary Committee. GAZT added that providing letters of guarantee is not part of the beneficiary's activity, which indicates the validity of GAZT's



procedure pursuant to Article (57.3) of Implementing Regulations of Income Tax Law, which stipulates: “The burden of proof of correctness of information in Taxpayer’s Return regarding its revenues, expenses and any other data, rests on Taxpayer.”

4. Item (Late Payment Fine):

GAZT stated that the late payment fines were imposed on the unpaid tax differences on its regular date for the withholding tax and income tax in application of Article (77/A) of Income Tax Law and Paragraph (1/B, E) of Article (68) of its Implementing Regulations. GAZT added that it adheres to the validity and regularity of its procedure.

On 11/04/1442 AH, corresponding to 26/11/2020 AD, the Department has requested Taxpayer to submit any additional submissions to its appeal on the Decision in question within the period set by this Department or to be satisfied with earlier submissions.

On 25/04/1442 AH, corresponding to 10/12/2020 AD, Taxpayer submitted a number of documents represented by letters between Taxpayer and the Ministry of Labor related to Saudization rates, as well as a number of documents written in English.

On 13/07/1442 AH, corresponding to 25/02/2021 AD, the Department decided to hold an electronic pleading session, wherein no additional submissions were submitted by parties to Appeal.

The Department, during its session held on 24/08/1442 AH, corresponding to 06/04/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Taxpayer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

As for Taxpayer’s appeal regarding item (Saudization Contractual Fine), which includes its objection to the Primary Committee’s Decision regarding the same, wherein Taxpayer requested not to add the fines provision of the item in question to the Tax Base, since these fines represent contractual fines and not statutory fines pursuant to Article (10/6) of Implementing Regulations of Income Tax Law, while GAZT argued that the item in question was not subject to objection and is considered a new request from Taxpayer.

The Department, having taken cognizance of Taxpayer’s appeal and documents included in the Case file, found that: since it is legally established that fines resulting from the violation of contractual terms such as fines for late or poor implementation, if they are documented by the contracting party; and since the fines in dispute resulted from a violation of contractual terms, which necessitates their deduction from Tax Base; and since the aforementioned is not affected by GAZT’s claim that such item was not subject to objection and is considered a new request from Taxpayer, as it clarified in its view included in the appealed Decision the reason for its rejection to deduct that amount as a fine for violating laws and regulations, and that Taxpayer did not submit a document from (..... Company) regarding the fine in question, which determines that Taxpayer’s appeal was on the same item in question, even if it was not labeled under the same name in its main objection, since the essence of the subject of the dispute is the amount between the parties to Appeal, which is entirely related to fines for violating Saudization terms according to the contract entered into with (..... Company); Therefore, the Department satisfies to accept Taxpayer’s appeal and reverse the appealed Decision as to conclusion it had in this regard.



As for Taxpayer's appeal regarding item (Fixed Assets of 2010 and 2011), which includes its objection to the Primary Committee's Decision regarding the same, wherein Taxpayer claimed that it had amended method of calculating fixed assets as agreed upon with GAZT before the Primary Committee and affirmed to its right to file an objection in the event that the amended Decision is issued in a manner that differs from the agreed upon method with GAZT, while GAZT argued that it would address the effect of the differences in accordance with Taxpayer's statement of appeal and the documents it had submitted.

The Department, having taken cognizance of Taxpayer's appeal and documents included in the Case file, found that: since GAZT has agreed before the Primary Committee to the Taxpayer's request on condition that Taxpayer must submit a Depreciation Statement for 2005 – 2011, and that GAZT would amend its Assessments accordingly; and since the appealed Decision established that Taxpayer has submitted those statements and provided GAZT with a copy of the same; and since GAZT did not provide in its response to Taxpayer's appeal any evidence indicating that the Amended Assessment had included the calculation of fixed assets in accordance with Taxpayer's Tax Return; Therefore, the Department satisfies to decide that Taxpayer's is entitled to deduct the fixed assets as per its Tax Returns, upholding the appealed Decision.

As for Taxpayer's appeal regarding item (Withholding Taxes of 2011), which includes its objection to the Primary Committee's Decision regarding the same, wherein Taxpayer requested that the amounts remitted to (..... Company "Italy") be subjected to a withholding tax at a rate of (5%), and that the amounts paid to (..... Company "India") be accepted, while GAZT argued that Taxpayer did not submit the documents supporting its claim.

The Department, having taken cognizance of Taxpayer's appeal and documents included in the Case file, found that: With regard to (..... Company "Italy"); since Taxpayer claimed that the amounts in question were not paid to the Italian Company, while the Primary Committee requested Taxpayer to provide evidence that the amounts were not remitted to the Italian Company; and since it is unreasonable to request Taxpayer to prove that he did not initiate the payment process while denying the same, especially since GAZT did not provide any evidence supporting its request in this regard, whether from Taxpayer's financial statements or the result of its review of Taxpayer's documents during the field examination process; and since the burden of proof is on Plaintiff, which in this case is GAZT as mentioned; and since it is legally established that "Acquittance is the Rule and the Burden of Proof Lies upon Whomever Claims the Contrary;" Therefore, the Department satisfies to accept Taxpayer's appeal and reverse the appealed Decision as to conclusion it had in this regard. With regard to (..... Company "India"); since Taxpayer claimed that it had paid the withholding tax on the amounts paid to the Indian Company at a rate of (5%) and had submitted the supporting documents; and since the Primary Committee upheld GAZT's view that Taxpayer did not submit the supporting documents; and since the Department did not find evidence of the validity of the amounts paid to the non-resident party "the Indian Company", as the document (Appendix 5) pertaining to the amounts in question does not include the amounts mentioned in Taxpayer's statement of appeal and that the documents submitted by Taxpayer were in English; and since Article (28) of Tax Dispute and Violation Committee Procedures has stipulated: "Arabic shall be the official language used in suit proceedings. No memorandum or document may be submitted in another language, unless accompanied by a certified Arabic translation prepared by a licensed office. No statements in any language other than Arabic may be recorded by the circuit. A non-Arabic speaking party shall have an interpreter and both shall sign the hearing minutes. Documents submitted by any party in another language shall be accompanied by a certified Arabic translation;" and since the Department did not find any requirement for correction or further response in light of submissions thereto;



Therefore, the Department satisfies to decide that the foregoing does not affect the Primary Committee's Decision as to conclusion it had in this regard and, by extension, to dismiss Taxpayer's appeal and uphold the appealed Decision on the item in question.

As for Taxpayer's appeal regarding item (Late Payment Fine), which includes its objection to the Primary Committee's Decision regarding the same, wherein Taxpayer requested not to impose a late payment fine from the date of submitting Tax Return, but rather from the date of issuance of the final Decision by this Department, while GAZT argued that the fine is imposed from the date of submitting Tax Return; since its Assessment has become final.

The Department, having taken cognizance of Taxpayer's appeal and documents included in the Case file, found that: since the appealed Decision did not address this plea in its merits and Grounds; and since Taxpayer's statement of appeal, nor its supplementary memorandum, include any indication that such plea had previously been presented before the Primary Committee, despite had been given sufficient time to do so by this Department; and since Article (186) of Law of Civil Procedure has stipulated: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion;" Therefore, the Department satisfies to disregard the item in question.

Decision

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

First: In Form:

Accept Taxpayer's (..... Company. C.R. No.) appeal, against Decision No. (5) of 1437 AH delivered by the Third Primary Committee for Zakat and Tax Objections.

Second: On Merits:

1. Accept Taxpayer's appeal on item (Saudization Contractual Fine) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Entitle Taxpayer to deduct item (Fixed Assets of 2010 and 2011) as per its Tax Returns in implementation of the Primary Committee's Decision, for the Grounds stated herein.
3. As for item (Withholding Taxes of 2011):
 - Accept Taxpayer's appeal for subjecting the amounts paid to (..... Company "Italy") to a withholding tax at a rate of (5%), and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
 - Dismiss Taxpayer's appeal for subjecting the amounts paid to (..... Company "India"), and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Disregard Taxpayer's Appeal on item (Late Payment Fine) for the Grounds stated herein.

Similar Decisions:

First Appellate Department for Income Tax
Violations and Disputes
Appellate Decision (IR-2020-59)



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-81)
Delivered in Appeal No. (Z-1688-2018)

Principle No. 225

The evidence if it is permeated by prospect, is considered null and void

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet:

On Tuesday, 22/09/1442 AH, corresponding to 04/05/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 03/03/1439 AH, by General Authority of Zakat and Tax (“GAZT”), and the appeal filed on 03/03/1439 AH, by Company (“Zakat Payer”), against Decision No. (03/08) of 1437 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (49) of 13/12/1435 AH, in connection with Zakat Assessment of 01/02/1430 AH to 29/01/1434 AH, filed by Zakat Payer against GAZT. The appealed Decision ruled as follows:

First: In Form:

Accept Zakat Payer’s Objection No. (49) of 13/02/1435 AH, in form for been filed by a party having capacity and within the period prescribed by Law, meeting the conditions stipulated in the Implementing Regulations for the Collection of Zakat.

Second: On Merits

1. Uphold Zakat Payer’s objection to item (Addition of Opening or Closing Balance of Partner’s Credit Account to Zakat Base, Whichever is Less, to Zakat Base for Fiscal Period from 01/02/1430 AH to 29/01/1434 AH).
2. Uphold GAZT’s Decision regarding item (Addition of Hospitality Expenses to Zakat Base for Fiscal Period Ending on 30/01/1432 AH).
3. Uphold GAZT’s Decision regarding item (Addition of Unsupported Retained Profits to Zakat Base for Fiscal Periods Ending on 30/01/1432 AH, 30/01/1433 AH, and 29/01/1434 AH, Respectively).
4. Uphold GAZT’s Decision regarding item (Addition of Personal Donations to Zakat Base for Fiscal Year Ending on 30/01/1432 AH).
5. Uphold Zakat Payer’s objection to item (Non-Addition of Amount of “SAR 60,000” to Zakat Base for Fiscal Year Ending on 30/01/1433 AH), and uphold GAZT’s Decision regarding item (Addition of Amount of “SAR 100,000” and Amount of “SAR 73,902” to Zakat Base for Fiscal Years Ending on 30/01/1432 AH and 30/01/1433 AH, Respectively).
6. Uphold GAZT’s Decision regarding item (Addition of Undeclared Revenues to Zakat Base for Fiscal Year Ending on 29/01/1434 AH).
7. Uphold GAZT’s Decision regarding item (Addition of Amount of “SAR 2,808,334” to Zakat Base for Fiscal Period Ending on 29/01/1434 AH).



Since parties to the Appeal were dissatisfied with that Decision; they submitted a statement of appeal that included their objection to the Decision in question, wherein GAZT's objected to the following items:

1. Item (Addition of Opening or Closing Balance of Partner's Credit Account, Whichever is Less, to Zakat Base):

GAZT objects to the Primary Committee's Decision, which upheld Zakat Payer regarding the item in question, as GAZT asserts that its Zakat Assessment is sound and valid, on the Grounds that the Primary Committee based its Decision on Clause No. (17) of GAZT's Circular No. (01/35) of 02/03/1413 AH, which stipulates: "GAZT may add the opening or closing balance of Zakat Payer's current credit account for institutions and companies, whichever is less." However, the Primary Committee did not the debit current account that is not deducted from Zakat base, as it is considered debts on the partners pursuant to Fatwa No. (02/3077) of 08/11/1426 AH, Fatwa No. (19643) of 23/05/1418 AH, GAZT's Circular No. (02/4337) of 16/05/1409 AH, which stipulates: "In all cases, partners' credit current account shall be added to Zakat Base, while the debit current account of a partner shall not be deducted from Zakat Base except within its share limits of the retained profits, if any."

Moreover, GAZT states that Zakat Payer did not clarify the true nature of such debit current account, whether it represents cash withdrawals, dues from a partner for using Zakat Payer's hotels, or settlements of Zakat Payer's revenues and expenses, especially since GAZT, through the field examination, found that Zakat Payer is processing some of revenues of the commercial stores in the partner's (.....) current account, which is the holder of the debit current account. GAZT also found that the statements of partners' current account were for each hotel separately, and are undated and undetailed.

Based on the foregoing, GAZT adheres to the validity and soundness of its Decision and affirms that Primary Committee's Decision was incorrect in upholding Zakat Payer by adding balance of the partners' credit current account (the opening or closing balance, whichever is less) to Zakat Base for the fiscal period from 01/02/1430 AH to 29/01/1434 AH.

2. Item (Addition of Amount of "SAR 60,000" to Zakat Base for Fiscal Year Ending on 30/01/1433 AH):

GAZT objects to the Primary Committee's Decision, which upheld Zakat Payer for the non-addition of an amount of (SAR 60,000) to Zakat Base, as GAZT adheres to the validity of its Assessment, since it represents professional fees for (..... Hotel), for a contract for a period of three (3) years in the amount of (SAR 90,000), as Zakat Payer charged the full amount for the year in question, while the contract term is three (3) years; hence, Zakat Payer should have charged that pertains to the said year only. Accordingly, the difference of (SAR 60,000) was added to Zakat Base due to the fact that it does not pertain to the said fiscal period.

GAZT replies to the Primary Committee's statement mentioned in Paragraph (C) of Page No. (10) of its Decision, wherein it stated: "With reference to Note No. (17) related to administrative expenses from the Zakat Payer's financial statements for the fiscal year ending 30/01/1433 AH, by the Primary Committee found that item (Professional Fees) is listed at an amount of (SAR 30,000)." GAZT clarifies that the Primary Committee's statement is not disputed; however, the dispute lies in the fact that the amount of (SAR 60,000) was included within item the accrued expenses as professional fees for the year in question, while the fact is that it does not pertain to the same, but rather to the two years following the year in question, and the question remains is that "Why the amount of (SAR 60,000) was included in the accrued expenses, while is should be included in the advance expenses?"

Moreover, at the end of Paragraph (C) of Page No. (10) of the said, the Primary Committee had requested Zakat Payer's Representative to submit an analytical statement of the



accrued expenses and their true nature, along with a copy of the daily logs and a copy of the supporting documents, as Zakat Payer's Representative promised to submit these documents within two (2) weeks, however, the period elapsed with no submissions until the date of issuance of this Decision.

Zakat Payer (..... Company) also dissatisfied with that decision, as it submitted a statement of appeal that included its objection to the decision in question, wherein it objected to the following items:

1. Item (Retained Profits):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT for the addition of the unsupported retained profits to Zakat Base for the fiscal periods ending on 30/01/1432 AH, 30/01/1433 AH, and 29/01/1434 AH, respectively, as Zakat Payer affirms that no retained profits from previous years have been shown in its financial statements nor its accounts, as they are closed in partners' current accounts. Accordingly, the partners' shares in the annual profits were set aside in the partner's current account and withdrawals were made from that account during the two (2) years. Also, all profits distributed during the year were withdrawn, and no amounts were carried forward to the following year. Accordingly, Zakat is not due on these profits due to the non-completion of Zakat Year.

2. Item (Undeclared Revenues):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT for the addition of undeclared revenues to Zakat Base for the fiscal year ending on 29/01/1434 AH, as Zakat Payer states that GAZT has considered the debit side of the bank to be revenues; thus, a difference arose between the declared amounts in the financial statements and those appeared in the debit activity of the bank statement. Accordingly, Zakat Payer requests that the undeclared revenues not be added, as they do not represent revenues in their true nature, but rather are represented by the opening balances, deposits from partners' accounts, and the adjustments made for the purpose of rectifying entries, since considering all bank deposits as revenues is unfair.

3. Item (Rent Differences):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT for the addition of rent differences in the amount of (SAR 2,808,334) to Zakat Base for the fiscal year ending on 29/01/1434 AH, as Zakat Payer states that GAZT has refunded an amount of (SAR 220,000) to Zakat Base, considering that the rent for (..... Hotel) is an amount of (SAR 14,000,000), not the amount of (SAR 16,200,000) for the first rental year as per the contract signed with the Hotel Owner.

Zakat Payer added that the previous contract for (..... Hotel) ends on 14/10/1432 AH with an annual rental value of (SAR 8,400,000). Then, the contract was renewed from 15/01/1433 AH for an amount of (SAR 14,000,000), and the period from 15/01/1432 AH to 14/01/1433 AH for an amount of (SAR 5,700,000). Also, the first year for of the contract term was calculated at an amount of (SAR 16,200,000), including the value of the period from 15/01/1432 AH to 14/01/1433 AH. Moreover, the difference in the previous rent was not settled in the budget for the fiscal year ending on 30/01/1433 AH, as it appeared in the budget at the previous rent value amounted to (SAR 8,400,000). Accordingly, Zakat Payer asserts that the previous period must be added to the rent of 1433 AH.

On 12/10/1441 AH, corresponding to 04/06/2020 AD, since the Department decided opening of pleadings, it addressed GAZT to submit its response to Zakat Payer's appeal.

On 26/03/1442 AH, corresponding to 11/11/2020 AD, GAZT submitted a Rejoinder to Zakat Payer's appeal, wherein it stated that it adheres to its view presented before the Primary Committee regarding on the contested items, as well as the rulings supporting the same. GAZT added that claims raised by Zakat Payer are consistent with the earlier submissions, which GAZT responded to at that time. Accordingly, GAZT requests



validation of Zakat Payer's appeal in form and dismissal of the same on its merits.

On 25/02/1442 AH, corresponding to 12/10/2020 AD, the Department addressed Zakat Payer to submit its response to GAZT's appeal, and to provide any additional submissions it wishes to add to its appeal within the period set by this Department or to be satisfied with earlier ones.

On 06/03/1442 AH, corresponding to 22/10/2020 AD, Zakat Payer submitted documents related to revenues for hotels and banks, and adjusting entries.

The Department, during its session held on 10/08/1442 AH, corresponding to 23/03/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of the Case documents and statements of appeal submitted by parties to Appeal, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, both appeals are accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

As for Zakat Payer's appeal regarding item (Retained Profits), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested not to calculate partners' withdrawals from its Zakat Base, on the Grounds that they took all the profits distributed during the year and that no amounts were carried forward to the following years; hence, there is no justification for calculation of Zakat as explained in Zakat Payer's statement of appeal, while GAZT argued that it added retained profits in question for lack of documents regarding their distribution as per the field examination. GAZT added that the list of changes in equity showed that the profits are closed in partners' current account, and they were not added when calculating the partners' credit current account, and that Zakat Payer did not provide any proof of payment.

The Department, having taken cognizance of Zakat Payer's financial statements, found that: since there is no statement clarifying the existence of retained profits that were independently classified, but merely a calculation by Zakat Payer of the annual profits through remitting the same to the partners' current account; and since the partners' current account was considered a deductible item from Zakat Base, the profits claimed by GAZT to be added to Zakat Base were basically calculated within elements of the partners' current account; Accordingly, the method of calculation requested by GAZT will result in double charge of Zakat on annual profits as previously stated; Therefore, the Department satisfies to accept Zakat Payer's appeal by excluding the retained profits from Zakat Base for years in question, and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Undeclared Revenues), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested not to add the amounts of undeclared revenues to Zakat Base due to its disagreement with GAZT's approach in its perception that all amounts deposited in the bank for Zakat Payer's account represent revenues for the same, as such an approach cannot be relied upon to estimate revenues, especially since there may be advance revenues, advance expenses, and accrued expenses that do not pertain to the fiscal year in question; accordingly, GAZT's approach is represented by the cash basis when making its Assessment, while Zakat Payer uses the accrual basis when recording its revenues according to the accounting standards that are clarified in Zakat Payer's financial statements for the fiscal year in question, while GAZT argued that the field examination has shown that the daily revenues of the hotels are deposited in two bank accounts, and by reviewing the account statements for the fiscal for the year in question, it found that

there are differences between the total revenues for the said year and the amounts included in Zakat Declaration submitted by Zakat Payer, amounted to (SAR 8,332,885), and that Zakat Payer did not provide any document supporting the existence of that difference; Accordingly, GAZT rejected Zakat Payer's claim that such difference represents adjustments made to the bank's account in total.

The Department, having taken cognizance of the subject of dispute and view of parties to Appeal regarding the same, found that: since the conclusion that the deposits in the banks that Zakat Payer considers to be revenues related to its activity cannot be accepted, since it is usual for deposits related to those carrying out commercial activities to be related to other reasons that do not necessarily require that they be classified as revenues, such as if they were loan repayments or deposits from partners to serve Zakat Payer's activity; and since GAZT has failed to provide evidence that the difference it concluded certainly represents actual revenue that has not been declared by Zakat Payer, but rather they are interpretations and prospects for explaining that difference from its perspective; and since it was established that "The evidence if it is permeated by prospect, is considered null and void;" Therefore, the Department satisfies to accept Zakat Payer's appeal by excluding the item in question from Zakat Base for the year 1434 AH, and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Rent Differences), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested not to add the rent differences to Zakat Base, as they pertain to the fiscal period and that GAZT has miscalculated the rent, while GAZT argued that the difference was overcharged to the accounts by an amount of (SAR 220,0000) and added to Zakat Base, considering that the rent for (..... Hotel) is an amount of (SAR 14,000,000), not the amount of (SAR 16,200,000) for the first rental year as per the contract signed with the Hotel Owner.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that: since Zakat Payer's appeal was based on the fact that the Primary Committee had mistakenly assumed that the amount of the rent was similar to the rest of the years covered by the contract, which were five (5) years at an amount of (SAR 14,000,000) for each year, while the first year was different from the other four (4) years, as it was concerned with an annual rent amounted to (SAR 16,200,000); and since the rent contract had detailed the rent value for the first year, where its total amount was (SAR 16,200,000); and since the rent difference in question was related to the year 1434 AH; and since that year is included within its calculation the estimated rental value of (SAR 14,000,000), due to its irrelevance to the first year in which the rent value differed as previously stated, through the details of those rental payments under the said contract; accordingly, Zakat Payer's claim is pertaining to the first year, which has no connection with the year in question; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision by adding the item in question to Zakat Base.

As for GAZT's appeal regarding item (Addition of Opening or Closing Balance of Partner's Credit Account to Zakat Base, Whichever is Less, to Zakat Base for Fiscal Period from 01/02/1430 AH to 29/01/1434 AH), which includes its objection to the Primary Committee's Decision regarding the same, wherein GAZT asserted that the conclusion reached by the Primary Committee was incorrect in upholding Zakat Payer's objection, as the partner's current account should be added to Zakat Base in all cases, in accordance with GAZT's instructions. As for the debit current account of a partner, it is not deducted from Zakat Base except within the limits of its share of the retained profits, if any, while Zakat Payer did not clarify the true nature of such debit current account, whether it represents cash withdrawals, dues from a partner for using Zakat Payer's hotels, or settlements of Zakat Payer's revenues and expenses, especially if GAZT's the field examination is taken into consideration, which showed that Zakat Payer has processed

some of revenues of the commercial stores in the partner's (.....) current account, which is the holder of the debit current account, and that the statements of partners' current account were for each hotel separately, and are undated and undetailed, which determines invalidity of the Primary Committee's Decision in upholding Zakat Payer by adding the item in question to Zakat Base.

The Department, having taken cognizance of GAZT's appeal and the appealed Decision, found that: since parties to Appeal have no disagreement regarding the addition of the item in question, but rather the disagreement arose over the amount to be added from the balance of the item in question to Zakat Base, as Zakat Payer stated that the balance of the partner's current account must be deducted from the credit balance and the difference be added only, which GAZT has rejected as mentioned in its appeal; and since the established method in addressing balances of credit and debit current account is by offsetting those accounts to figure out the amount to be added to Zakat Base of Zakat Payer, since Zakat Payer is independent in its financial liability from the liability of partners when estimating the Zakat due on the same, which is not affected by the special relationship of some partners without the others upon calculating the Zakat; and since GAZT's appeal regarding the method of addressing the item in question did not affect the result reached in the appealed Decision; Therefore, the Department satisfies to dismiss GAZT's appeal and uphold the appealed Decision as to conclusion it had in this regard.

As for GAZT's appeal regarding item (Addition of Amount of "SAR 60,000" for Fiscal Year Ending on 30/01/1433 AH), which includes its objection to the Primary Committee's Decision regarding the same, wherein GAZT claimed that the value of the professional fees represents a contract for a period of three (3) years in the amount of (SAR 90,000); hence, the share of each year is (SAR 30,000), which is contrary to the Primary Committee's Decision that ruled to uphold Zakat Payer in the non-addition of (SAR 60,000) to Zakat Base for the fiscal year ending on 30/01/1433 AH

The Department, having taken cognizance of GAZT's appeal and Zakat Payer's view presented before the Primary Committee, found that: since the contract term for which the professional fees were paid was three (3) years, for an amount of (SAR 90,000), the correct processing by Zakat Payer is to charge each year of its pertained amount, which is the amount of (SAR 30,000); and since the matter was as stated, GAZT's addition of the difference of (SAR 60,000) to Zakat Base is valid and sound, since it does not pertain to the period associated with the year regarding the item in question; Therefore, the Department satisfies to accept GAZT's appeal by adding the amount in question to Zakat Base, and reverse the appealed Decision as to conclusion it had in this regard.

Decision

First: In Form:

Accept GAZT's appeal and Zakat Payer's appeal against Decision No. (03/08) of 1437 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Dismiss GAZT's appeal on item (Addition of Opening or Closing Balance of Partner's Credit Account to Zakat Base, Whichever is Less, to Zakat Base) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Accept GAZT's appeal on item (Addition of Amount of "SAR 60,000" to Zakat Base for Fiscal Year Ending on 30/01/1433 AH) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Accept Zakat Payer's appeal on item (Retained Profits) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Accept Zakat Payer's appeal on item (Undeclared Revenues) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



5. Dismiss Zakat Payer's appeal on item (Rent Differences) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-125)

Delivered in Appeal No. (Z-1712-2018)

Principle No. 226

The adjudication of the dispute between Zakat Payer and GAZT requires taking into consideration the completion and arrangement of Zakat calculation of the items in question to determine which items should be added to or excluded from Zakat.

Facts:

On Saturday, 13/04/1442 AH, corresponding to 28/11/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, in accordance with Paragraph (B) of Article (67) of Income Tax Law, promulgated under Royal Decree No. (M/1) of 15/01/1425 AH, as amended under Royal Decree No. (M/113) of 02/11/1438 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 15/04/1437 AH, by Company ("Zakat Payer"); against Decision No. (05) of 1437 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (59) and Objection No. (266), filed by Zakat Payer against General Authority of Zakat and Tax ("GAZT"). The appealed Decision ruled as follows:

First: In Form:

Accept Zakat Payer's (..... Company) objection to GAZT's Zakat and Tax Assessment of 2001 – 2008 Taxes.

Second: On Merits:

1. Uphold GAZT's Decision for rejecting Zakat Payer's request to deduct item (Machinery and Equipment Expenses) from its Zakat Base in question, for the Grounds stated in the Decision.
2. Uphold GAZT's Decision for rejecting the deduction of item (Labor Salaries) for the period preceding the beginning of the activity from Zakat Base, for the Grounds stated in the Decision.
3. Oblige GAZT to recalculate the depreciation for subsequent years for consideration of the differences of 2001, for the Grounds stated in the Decision.
4. Uphold GAZT's Decision for rejecting the deduction of item (Vehicle Expenses of 2001 – 2004) from Zakat and Tax Base, for the Grounds stated in the Decision.
5. Uphold GAZT's Decision for rejecting the deduction of item (Computer Expenses of 2001) from Zakat and Tax Base, for the Grounds stated in the Decision.
6. Establish resolution of dispute on item (Currency Differences) by GAZT accepting Zakat Payer's view.
7. Establish resolution of dispute on item (Miscellaneous Expenses) by GAZT accepting Zakat Payer's view.
8. Uphold GAZT's Decision for rejecting the deduction of item (Salaries of Mr. of 2001 – 2006) from Zakat and Tax Base, for the Grounds stated in the Decision.

9. Uphold GAZT's Decision for approval of item (Import Differences) as undeclared imports in Zakat Payer's Declaration and issuance of an Estimated Assessment for differences of all years, for the Grounds stated in the Decision.
10. Uphold GAZT's Decision for adding item (Payables of 2005 – 2008) to Zakat Base, for the Grounds stated in the Decision.
11. Uphold GAZT's Decision adding item (Zakat Provision of 2002, 2006, and 2007), for the Grounds stated in the Decision.

Since Zakat Payer (..... Company) was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

1. Item (Depreciation Differences of “SAR 2,734,652”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's addition of the depreciation differences amounted to (SAR 2,734,652) to Zakat Base for all years from 2001 to 2008, as Zakat Payer contends that the factory has calculated depreciation according to generally accepted accounting principles and that such depreciation pertains to machines' depreciation that GAZT excluded from the fixed assets; however, these assets are actually represent the said factory. In addition, if GAZT excluded those machines, it would be as if the factory had become completely nonexistent. Zakat Payer concluded by requesting exclusion of these differences from Zakat Base and abolishment of Zakat and Tax differences resulting therefrom.

2. Item (Vehicle Expenses of “SAR 28,497”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's rejection of the item in question on the Grounds that Zakat Payer's assets do not include vehicles, as Zakat Payer contends that they are actual expenses supported by documents and are not of a capital nature, since the nature of Zakat Payer's business is industrial activity and the nature of the factories' business necessitates the presence of vehicles, whether for sales and marketing representatives or personnel. Also, the Income Tax Law endorses the deduction of these expenses from Zakat and Tax Base in accordance with Articles (12) and (13) of Income Tax Law and Article (13) of its Implementing Regulations, since these expenses are related to realizing income and are not among expenses that may not be deducted as stated in the above Articles.

3. Item (Computer Expenses of “SAR 1,175”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's rejection of the item in question on the Grounds that Zakat Payer's assets do not include computers, as Zakat Payer contends that they represent actual expenses incurred that are necessary to carry out its activity and supported by documents and are not of a capital nature. In addition, Zakat Payer has submitted its financial statement since its incorporation. Also, the Income Tax Law endorses the deduction of these expenses from Zakat and Tax Base in accordance with Articles (12) and (13) of Income Tax Law and Article (13) of its Implementing Regulations, since these expenses are related to realizing income and are not among expenses that may not be deducted as stated in the above Articles.

4. Item (Salary of Mr. “Surname:”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's rejection to add the item in question to Zakat Base for years 2001 to 2006 on the Grounds that the employee is not sponsored by Zakat Payer, as Zakat Payer contends it adheres to its previous pleas, since the said employee is under its sponsorship. In addition, Zakat Payer has previously submitted a copy of his Iqama ID No. (...) issued by the Jeddah Passports Department, which shows that his legal sponsor (the employer) is Company “Zakat Payer.” Accordingly, it is not legally correct to add the employee's salary to Zakat Base.

5. Item (Import Differences and its Profits of “SAR 6,229,063”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's



procedure regarding the item in question on the Grounds that Zakat Payer had previously declared the internal and offshore procurements in its Declarations, which was affirmed by Zakat Payer in its previous memorandum, wherein it stated the following:

“Internal procurements were inadvertently declared in some years, which is an honest mistake that will be corrected, as long as they are supported by evidence. Also, some years have included inaccurate classification of internal and offshore procurement items due to figures overlapping. Eventually, the total amount of procurements remains accurate and consistent with the books. Therefore, the procurement differences and its profits added by GAZT to Zakat and Tax Base are incorrect.”

6. Item (Payables of “SAR 2,376”):

Zakat Payer objects to the Primary Committee’s Decision, which upheld GAZT’s addition of the item in question to Zakat Base, as Zakat Payer adheres to its view regarding the same, since it represents trade payables that have not completed the Zakat Year; hence, they shall not be added to Zakat Base. Zakat Payer concluded by requesting exclusion of these payables from Zakat Base and abolishment of Zakat and Tax differences resulting therefrom.

7. Item (Zakat Provision of “SAR 34,906”):

Zakat Payer objects to the Primary Committee’s Decision, which upheld GAZT’s addition of the Zakat due of 2002, 2006, and 2007 to Zakat Base, as Zakat Payer contends that Zakat amounts shall not be subject to Zakat, even if it had completed the Zakat Year. Accordingly, the addition of Zakat amounts to Zakat Base is considered a violation of Sharia. Moreover, the year profit was subjected to Zakat and Tax before deduction. Therefore, the addition of Zakat amounts to Zakat Base for a second time is considered a double charge of Zakat.

8. Item (Fixed Assets of “SAR 24,323,370”):

Zakat Payer objects to the Primary Committee’s Decision, which upheld GAZT’s non-deduction of the full amount of fixed assets due to its exclusion of machines and equipment from fixed assets, on the Grounds that the in-kind share did not include those assets, as the value of the machines amounted to (SAR 4,010,000), which were excluded from Zakat Base, in addition to their depreciation for all years, which resulted in a cumulative effect of the excluded assets amounting to (SAR 24,323,370), wherein Zakat Payer contends that these machines represent assets owned by the factory “Zakat Payer” that were acquired during 2001. Also, the invoices issued by “..... Institution” to transfer those machines to Zakat Payer, including all their details were previously submitted. Therefore, there is no legal justification for upholding GAZT in excluding these machines, especially since they are the only machines employed in production, as no factory can be operated without machines. Moreover, GAZT added the counterpart funding to these machines represented by the partners’ equity to Zakat Base, which necessitates their deduction from the same in accordance with the System applied by GAZT, which stipulates that the acquisition assets shall be deducted from Zakat Base due to the fact that they are not subject to Zakat as per Sharia.

9. Item (Incorporation Expenses of “SAR 1,473,637”):

Zakat Payer objects to the Primary Committee’s Decision, which upheld GAZT’s non-approval of some incorporation expenses represented by the salaries of some employees in the period preceding the beginning of the activity, as the contested Assessment mentioned that these expenses are duplicated with general and administrative expenses, wherein Zakat Payer contends that GAZT’s conclusion is incorrect, as the incorporation expenses are considered intangible assets that are deducted from Zakat Base in accordance with the System applied by GAZT in this regard.



On 02/08/1439 AH, GAZT submitted a Rejoinder to Zakat Payer's appeal, which included its view on the contested items as follows:

1. Item (Depreciation Differences for All Years):

GAZT affirms that these differences are due to the failure to approve equipment and incorporation expenses for the lack of evidence of the existence of equipment and machines at all, and that the reason for its procedure will be explained upon addressing Items No. (8) and (9) of its Rejoinder.

2. Item (Vehicle Expenses of 2001 – 2004):

GAZT affirms that it rejected the item in question due to the absence of vehicles within Zakat Payer's assets as mentioned in Item No. (1), as well as the further discussion of Items No. (8) and (9) of its Rejoinder.

3. Item (Computer Expenses of 2001):

GAZT affirms that it rejected the item in question due to the absence of vehicles within Zakat Payer's fixed assets.

4. Item (Salary of Mr. "Surname:" of 2001 – 2006):

GAZT affirms that the employee is not sponsored by Zakat Payer, as the name mentioned in the payroll is ".....," not ".....," since the name that is included in the payroll must be the employee's name and not his surname. In addition, the employee's name reported by Zakat Payer is not the same name included in the passport printout attached to the Case file, nor is his Iqama ID submitted in its Version No. (3) which expires on 30/12/1434 AH, which indicates that Version No. (1) which represents the first issuance of Iqama ID was in 1431 AH, corresponding to 2010 AD; hence, the employee was not sponsored by Zakat Payer during the previous years from 2001 to 2008.

5. Item (Import Differences for All Years):

GAZT affirms that the Declarations include the value of internal and offshore procurement, which are signed and certified by Zakat Payer's auditor, indicating that these Declarations were reviewed and audited before certification. Accordingly, GAZT's procedure is valid and sound in charging Zakat Payer for the import differences resulting from the review and comparison.

6. Item (Payables of 2005 – 2008):

GAZT affirms that these amounts of the item in question are fixed with no activity thereon as per the analytics submitted by Zakat Payer as shown for 2005 and 2006, noting that the amounts included in the Assessment are (SAR 950) and (SAR 250), not (SAR 484), (SAR 836), and (SAR 220), as included in Zakat Payer's objection, as these amounts were added pursuant to Fatwa No. (22656) of 1424 AH.

7. Item (Zakat Provision of 2002, 2006, and 2007):

GAZT affirms that these amounts withheld by Zakat Payer for GAZT's benefit have not been paid and completed the Zakat Year; thus, it had to add these amounts to Zakat Base pursuant to Paragraph (4) of Clause (First) of GAZT's Circular No. (8843) of 1392 AH.

8. Item (Fixed Assets for All Years):

GAZT affirms that, according to the Articles of Association, the in-kind share provided by "..... Institution" did not appear to include machines, in addition to the fact that the invoice submitted by Zakat Payer does not include modified equipment.

9. Item (Incorporation Expenses for All Years):

GAZT affirms that the non-approval of the salaries included in the item in question was due to the double charge of these salaries pursuant to documents submitted by Zakat Payer, as they are included in the salaries of general expenses of 2001, indicating the existence of a duplication. In addition, those employees were not sponsored by Zakat Payer, and that Zakat Payer had submitted (2) two different analyses for the same item.



GAZT concluded by adhering to the validity of its procedure regarding the contested items.

Since the Department decided opening of pleadings, it asked parties to Appeal whether they had further additions. The Department did not receive any response from Zakat Payer despite being dully notified through email on 09/11/1441 AH, while GAZT responded with the submission of its Rejoinder to Zakat Payer's statement of appeal.

The Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory.

On Merits:

The Department, having taken cognizance of Case documents, statements of appeal submitted by parties to Appeal, and the subject of dispute, found that; since it decided upon examining the contested items and their arrangement and classification in the appealed Decision, that the proper sequence of Zakat calculation of items (Fixed Assets), (Incorporation Expenses), and (Depreciation Differences) is related to each other, the adjudication of the dispute between parties to Appeal requires taking into consideration the completion and arrangement of Zakat calculation of the said items to determine which items should be added to or excluded from Zakat.

As for Zakat Payer's appeal regarding item (Fixed Assets), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the full amount of the fixed assets shown in the financial statement, as these machines were acquired in 2001; hence, there is no legal justification preventing the deduction of these assets, while GAZT argued that, according to the Articles of Association, the in-kind share provided by "..... Institution" did not include machines, in addition to the fact that the invoice submitted by Zakat Payer does not include modified equipment.

The Department, having taken cognizance of Zakat Payer's appeal and its financial statement and Articles of Association, found that: since Zakat Payer has requested to deduct the net fixed assets as per the financial statements it had submitted; and since the Primary Committee based its Decision on the conclusion it had from the Articles of Association, which stated that the in-kind shares amounted to (SAR 8,275,000), consisting of (.....) worth (SAR 6,000,000), buildings worth (SAR 2,000,000), and parking lots and building services worth (SAR 275,000), without any further assets included in the Articles of Association; and since Note No. (1) of the first audited financial statements issued for Zakat Payer upon its incorporation (in 2001) and all subsequent years subject to the dispute, stated that Zakat Payer's capital was set at (SAR 13,150,000) divided into in-kind shares amounting to (SAR 8,275,000) riyals and cash shares amounting to (SAR 4,875,000); and since Note No. (5) "Fixed Assets" stated that there was equipment for Zakat Payer that was added during the year of (SAR 4,716,000), tools and equipment of (SAR 5,289), and furniture and decoration of (SAR 3,644) during 2001, which was confirmed by the cash flow statement regarding the existence of a cash flow for investment activities of (SAR 12,999,993), including in-kind shares and other assets. In addition, Zakat Payer's current assets (cash, inventory) amount to only (SAR 429,357), which confirms the disbursement of the cash shares provided for purchasing fixed assets; and since the matter was as stated, it is not possible to rely solely on the Articles of Association regarding the estimation of



the in-kind shares stated therein to verify the existence of fixed assets without considering the value of the cash shares, which were used to purchase the fixed assets in question pursuant to Zakat Payer's use of its funds to acquire those assets, which determines that the basis for calculating fixed assets is according to Zakat Payer's Declaration, which is confirmed by the evidence referred to in the details of the item in question; Consequently, the GAZT's conclusion groundless of any fact or law; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Incorporation Expenses), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to approve the deduction of all incorporation expenses from Zakat Base, which are represented by the salaries of some employees in the period preceding the beginning of the activity, while GAZT argued that the non-approval of those salaries was due to the double charge of these salaries pursuant to documents submitted by Zakat Payer, as they are included in the salaries of general expenses of 2001, indicating the existence of a duplication, and that those employees were not sponsored by Zakat Payer. The Department, having taken cognizance of Zakat Payer's appeal and the appealed Decision, found that: since expenses rejected by GAZT are salaries of employees claimed to be paid by Zakat Payer in the period preceding its incorporation; and since the Articles of Association stated that the Zakat Payer was a branch of "..... Institution for Agriculture and Industry" and was converted into a company; and since such a matter does not require the existence of a preparatory activity carried out by a number of employees before practicing the actual activity of an institution, as the activity is ongoing and continuous; since GAZT has deducted the expenses necessary for the said institution to be converted into a company such as fees for issuing license, extracting Articles of Association and Commercial Registration; and since Zakat Payer has failed to submit documents supporting its claims of the absence of duplication between the expenses of employees' salaries added as administrative expenses and employees' salaries included as an incorporation expense; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

With regard to GAZT's claim for the existence of a duplication regarding those labor salaries and that these employees were not sponsored by Zakat Payer; since GAZT did not take into consideration the tracking of those expenses and the extent to which they were incurred in through the years in question; and since the mere consideration that those employees were not sponsored by Zakat Payer does not negate the incurrence of these expense regardless of the existence of a statutory violation when employing workers who were not sponsored by Zakat Payer; Therefore, the Department satisfies to amend the appealed Decision by deducting the expenses of employees' salaries who were not sponsored by Zakat Payer for the year 2001, and to dismiss Zakat Payer's appeal on the remaining amounts claimed to be within the incorporation expenses.

As for Zakat Payer's appeal regarding item (Depreciation Differences of "SAR 2,734,652"), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested not to add the depreciation differences for all years in question, as these differences pertain to machines' depreciation that GAZT excluded from the fixed assets as if the factory did not exist, while GAZT argued that these differences are due to the failure to approve equipment and incorporation expenses for the lack of evidence of the existence of equipment and machines at all, since the in-kind share provided by "..... Institution" did not include machines, tools, or equipment, and that the invoice submitted by Zakat Payer does not include modified equipment. GAZT added that it adheres to the validity of its procedure.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, found that: since adjudication of item in question requires



referring to the Decision issued by this Department regarding items (Fixed Assets) and (Incorporation Expenses), wherein the Department accepted Zakat Payer's appeal on the first item and dismissed the same on the second item as previously stated above; and since the Department has established the existence of assets held by Zakat Payer, which determines that the associated depreciation amounts must be deducted, without accepting Zakat Payer's request to deduct the depreciation related to the incorporation expenses based on the conclusion that had been reached by this Department in this regard as previously stated above; Therefore, the Department satisfies to amend the appealed Decision by deducting the depreciation related to item (Fixed Assets), and dismissing the same regarding item (Incorporation Expenses).

As for Zakat Payer's appeal regarding item (Vehicle Expenses of "SAR 28,497" of 2001 – 2004), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the expense of the item in question, as they are actual expenses supported by documents, while GAZT argued that those expenses should not be deducted due to the absence of assets in Zakat Payer's budget that would verify the existence of those expenses claimed by Zakat Payer.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute between parties was centered on the existence of evidence proving the incurrence of these expense to determine their deduction from Zakat Base; and since the subject of these expenses is not necessarily related to Zakat Payer's possession of vehicles; and since it is customary for establishments to pay transportation and use allowances for their employees' private vehicles in the form of allowances given to them or added to their wages; and since the appealed Decision has upheld GAZT's Decision for rejecting the deduction of these expenses due to their lack of connection to assets held by Zakat Payer without considering Zakat Payer statement regarding the existence of actual documents supporting the incurrence of these expense without relying on the existence of vehicles held by Zakat Payer; Therefore, the Department satisfies to decide that GAZT's Decision is groundless of any fact or law, and by extension, to accept Zakat Payer's appeal by deducting the item in question as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Computer Expenses of "SAR 1,175" of 2001), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the expense of the item in question, as they are actual expenses that do not require the presence of computers within the Zakat Payer's assets in order to accept the same as an expense, while GAZT argued that Zakat Payer's assets do not include computers within the fixed assets. The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute between parties was centered on the existence of evidence proving the incurrence of these expense; and since the subject of these expenses is not necessarily related to Zakat Payer's possession of computers and thus considering the same among its fixed assets; and since the appealed Decision has upheld GAZT's Decision for rejecting the deduction of these expenses due to their lack of connection to assets held by Zakat Payer without considering Zakat Payer statement regarding the existence of actual documents supporting the incurrence of these expense without relying on the existence of computers held by Zakat Payer; Therefore, the Department satisfies to decide that GAZT's Decision is groundless of any fact or law, and by extension, to accept Zakat Payer's appeal by deducting the item in question as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Salary of Mr. "Surname:"), which includes its objection to the Primary Committee's Decision regarding the same,

wherein Zakat Payer requested to deduct the salaries of the said employee from Zakat and Tax Base of 2001 – 2006, while GAZT argued that it rejected the deduction of those salaries for the absence of Zakat Payer's sponsorship of the said employee regarding the years in question.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute was centered on the absence of Zakat Payer's sponsorship of the said employee; thus, the absence of employment relationship between the said employee and Zakat Payer, which results in GAZT's rejection to deduct his salaries from Zakat Payer's Zakat and Tax Base; and since the absence of Zakat Payer's sponsorship of its employees and the assumption of the occurrence of a violation by Zakat Payer does not negate the consideration of the salaries paid to the said employee as deductible expenses when calculating Zakat Base; and since GAZT has failed to provide evidence that refutes the incurrance of these expense by Zakat Payer in order to claim that the said employee was not sponsored by Zakat Payer; Therefore, the Department satisfies to decide that GAZT's Decision is groundless of any fact or law, and by extension, to accept Zakat Payer's appeal by deducting the item in question as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Import Differences and its Profits of "SAR 6,229,063"), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the import differences and its profits, while GAZT argued that the Declarations include the value of internal and offshore procurement, which are signed and certified by Zakat Payer's auditor.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute was centered on the deduction of the import differences and its profits; and since the Department may take the Grounds of the Decision in question without addition whenever it deems that these Grounds were sufficient to provide any further addition, which indicates that by supporting these Grounds, it only emphasizes that the Department did not find any Decision-related objections that require a response that went beyond those Grounds; and since it was established that the appealed Decision, with regard to the items in dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Primary Committee issuing the Decision has examined the source of the dispute for each item and reached to the conclusion stated in its wording; and since this Department did not find any requirement for correction or further response in light of submissions and pleas presented thereto; Therefore, the Department satisfies to decide that the foregoing does not affect the conclusion reached by the Primary Committee's Decision; and since the aforementioned is not affected by Zakat Payer's claim that internal procurements were inadvertently declared in some years, which is an honest mistake that will be corrected, as long as they are supported by evidence, and that the inaccurate classification of internal and offshore procurement items that took place in some years caused an overlap in figures in order to match Zakat Payer's books, as such unfounded claim did not address the reason that could undermine the violent presumption applicable to Zakat Payer's case after the figures of the amounts of those imports were approved by Zakat Payer, and then the existence of the certification of its external auditor on those data after auditing; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Payables of "SAR 2,376"), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the item in question from Zakat Base, while GAZT argued that these amounts of the item in question are fixed with no activity thereon as per

the analytics submitted by Zakat Payer

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute was centered on the deduction of those payables from Zakat Base; and since the Department may take the Grounds of the Decision in question without addition whenever it deems that these Grounds were sufficient to provide any further addition, which indicates that by supporting these Grounds, it only emphasizes that the Department did not find any Decision-related objections that require a response that went beyond those Grounds; and since it was established that the appealed Decision, with regard to the items in dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Primary Committee issuing the Decision has examined the source of the dispute for each item and reached to the conclusion stated in its wording; and since this Department did not find any requirement for correction or further response in light of submissions and pleas presented thereto; Therefore, the Department satisfies to decide that the foregoing does not affect the conclusion reached by the Primary Committee's Decision; and since the aforementioned is not affected by Zakat Payer's pleas or Grounds that the amounts of the item in question should not be added to its Zakat Base for years 2005 and 2006 on the Grounds that these amounts represent trade payables that have not completed the Zakat Year in light of GAZT's verification of the same during 2005 and 2006; hence, their existence in Zakat Payer's accounts necessitates addition to Zakat Base since they considered debts owed by Zakat Payer to third parties; and since Zakat Payer has failed to provide evidence supporting its claim; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Zakat Provision of "SAR 34,906"), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the amount of Zakat due from its Zakat Base, as the addition of Zakat amounts to Zakat Base of 2002, 2006, and 2007, is considered a violation of Sharia

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute was centered on the deduction of Zakat amounts from Zakat Base; and since these amounts, even if they represent a Zakat obligation that must be paid for each year in dispute by Zakat Payer, do not negate the fact that they represent funds in Zakat Payer's possession; and since the estimation of the amount due that must be paid does not conflict with the addition all of these funds that in Zakat Payer's possession upon completing the Zakat Year, as Zakat Payer's delay in paying the Zakat amount does not negate the existence of these funds in its possession, nor and the necessity of adding the same to its Zakat Base; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

Decision

First: In Form:

Accept Zakat Payer's (..... Company "Factory", C.R. No, TIN No.) appeal against Decision No. (05) of 1437 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal on item (Fixed Assets of "SAR 24,323,370" for All Years) by approving the fixed assets stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein. 2. Amend the appealed Decision by Majority regarding item (Incorporation Expenses of "SAR 1,473,637" for All Years) by deducting the expenses related to employees' salaries who



were not sponsored by Zakat Payer of 2001 without any other expenses, for the Grounds stated herein. **3.** Amend the appealed Decision regarding item (Depreciation Differences of “SAR 2,734,652” for All Years) by deducting the depreciation related to item (Fixed Assets) without the depreciation related to item (Incorporation Expenses), for the Grounds stated herein.

- 4.** Accept Zakat Payer’s appeal on item (Vehicle Expenses of “SAR 28,497” of 2001 – 2004) by deducting the vehicle expenses as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
- 5.** Accept Zakat Payer’s appeal on item (Computer Expenses of “SAR 1,175” of 2001 – 2004) by deducting the computer expenses as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
- 6.** Accept Zakat Payer’s appeal by Majority on item (Salary of Mr. “Surname:”) by deducting the salaries of 2001 – 2006 as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
- 7.** Dismiss Zakat Payer’s appeal on item (Import Differences and its Profits of “SAR 6,229,063” for All Years) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
- 8.** Dismiss Zakat Payer’s appeal on item (Payables of “SAR 2,376” of 2005 – 2008) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
- 9.** Dismiss Zakat Payer’s appeal on item (Zakat Provision of “SAR 34,906” of 2002, 2006, and 2007) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-103)
Delivered in Appeal No. (Z-
1727-2018)

Principle No. 227

The principle in calculating Zakat is based on Zakat Declaration submitted by Zakat Payer, unless there is evidence proves the contrary.

Facts:

First: In Form:

Accept Zakat Payer's (..... Company) objection to General Authority of Zakat and Tax's ("GAZT") Zakat Assessment of 2006 – 2010.

Second: On Merits

1. Dismiss Zakat Payer's objection by Majority to item (Imposition of Zakat for Short Fiscal Period of 2006) for the Grounds stated in the Decision.
2. Establish resolution of dispute on item (Partners' Current Account and Loans of 2007) for the Grounds stated in the Decision.
3. Dismiss Zakat Payer's objection to item (Addition of Partners' Loans of 2008 – 2010) for the Grounds stated in the Decision.
4. Dismiss Zakat Payer's objection by Majority to item (Non-Deduction of Long-Term Investments in Lands and Projects under Development of 2008 and 2009) for the Grounds stated in the Decision.
5. Dismiss Zakat Payer's objection to item (Non-Deduction of Investment in "..... Company" of 2009) for the Grounds stated in the Decision.

Since Zakat Payer (..... Company) was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

1. Item (Imposition of Zakat for Short Fiscal Period of 2006):

Zakat Payer maintains its statements presented before the Primary Committee issuing the Decision in question, wherein it stated that it decided to amend the first fiscal period referred to in the Articles of Association to be from June 27, 2006, to the end of 2006. Accordingly, Zakat shall not be due for that period for lack of completion of Zakat Year. Zakat Payer concluded by requesting abolishment of Zakat Assessment for the said period.

2. Item (Addition of Partners' Loans of 2008 – 2010):

Zakat Payer maintains its right to exclude these loans from Zakat Base for lack of completion of Zakat Year and lack of use in financing fixed assets.

3. Item (Non-Deduction of Long-Term Investments in Lands and Projects under Development of 2008 and 2009):

Zakat Payer contends that its intention when purchasing these lands was for long-term investment with the aim of developing the same and constructing investment projects; However, due to the circumstances of the financial crisis, it had to offer some of those lands for sale in the years following the crisis due to the urgent need for cash. Moreover, Zakat Payer has also submitted the financial statements, which



distinguished between short-term investments prepared for sale and not excluded from Zakat Base, and long-term investments not prepared for sale in their current state.

4. Item (Non-Deduction of Investment in “..... Company” of 2009):

Zakat Payer contends that (..... Arabian Company) is a Closed Saudi Joint Stock Company that submits its Zakat Declarations and pays its Zakat due. Also, the investment in (..... Company) was made by transferring land representing a long-term real estate investment as an in-kind share in the capital of (..... Company), and the generated profits were declared in Company’s Declaration and the Zakat due was paid as per its Declaration. As for the Primary Committee’s statement that the investment in (..... Arabian Company) is unfounded regarding year 2009, as the Company’s Articles of Association and its Commercial Registration were issued in 2010. Moreover, the capital deposit precedes the signing of the Articles of Association and such deposit is required to occur before the issuance of Commercial Registration by Ministry of Commerce.

Since the Department decided opening of pleadings, GAZT submitted a Rejoinder on 30/05/1441 AH, corresponding to 26/01/2020 AD, to Zakat Payer’s statement of appeal, wherein it stated that it adheres to its view presented before the Primary Committee. GAZT added that claims raised by Zakat Payer are consistent with the earlier submissions, which GAZT responded to at that time, and concluded by requesting dismissal of Zakat Payer’s appeal and uphold of the appealed Decision as to conclusion it reached.

On Thursday 26/08/1442 AH corresponding to 08/04/2021 AD, the Department decided to hold a 10-day e-hearing session, wherein Zakat Payer submitted a supplementary memorandum, a summary of which that it maintains its previously statements mentioned in its statement of appeal. GAZT did not submit any further submissions.

On 23/06/1442 AH corresponding to 05/02/2021 AD, with regard to Zakat Payer’s claim that its investment in (..... Arabian Company) was in the form of an in-kind share represented by the transfer of a long-term real estate investment to the said company, the Department has requested Zakat Payer to provide evidence supporting its claim within the specified period, wherein Zakat Payer submitted the Articles of Association of the Investee Company.

On 22/09/1442 AH, corresponding to 04/05/2021 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

As for Zakat Payer’s appeal regarding item (Imposition of Zakat for Short Fiscal Period of 2006), which includes its objection to the Primary Committee’s Decision regarding the same, wherein Zakat Payer rejected the addition of the item in question to Zakat Base for lack of completion of Zakat Year, while GAZT argued that Zakat Payer’s Articles of Association stipulated that the first fiscal year would be a full year as of the date of issuance of its Commercial Registration by Ministry of Commerce until the end of 2007. Accordingly, the Assessment would be on a full fiscal year.



The Department, having taken cognizance of subject of dispute and the Decision issued therein along with its Grounds on which it was based, found that; since it was found that the conclusion reached by the Primary Committee was sound and valid, and that the Grounds on which its Decision was based were sufficient to uphold this Decision, which is not affected by Zakat Payer's pleas that have no effect on conclusion of the appealed Decision; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusions it had in this regard, attributed to its Grounds.

As for Zakat Payer's appeal regarding item (Addition of Partners' Loans of 2008 – 2010), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested exclusion of the item in question from Zakat Base for lack of completion of Zakat Year and lack of use in financing fixed assets, while GAZT argued that it added the amounts that completed the Zakat Year, as well as the amounts that financed fixed assets.

The Department, having taken cognizance of subject of dispute, found that; since the loans in question have not completed the Zakat Year, nor have financed fixed assets; and since Zakat Payer has submitted an analytical statement to the Primary Committee of the loan activity proving that the balance in question has not completed the Zakat Year, along with evidence establishing the addition of loans that have financed fixed assets or investment to Zakat Base; and since the Primary Committee based its Decision on the conclusion that documents submitted by Zakat Payer were insufficient without clarifying the required documents other than the documents submitted by Zakat Payer; and since the principle in calculating Zakat is based on Zakat Declaration submitted by Zakat Payer, unless there is evidence proves the contrary; and since GAZT has failed to provide evidence that the amounts in question have completed the Zakat Year or used to finance fixed assets or specific investments deducted from Zakat Base; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Non-Deduction of Long-Term Investments in Lands and Projects under Development of 2008 and 2009), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer rejected the exclusion of the item in question from Zakat Base on the Grounds that its intention when purchasing these lands was for long-term investment with the aim of developing the same and constructing investment projects; However, due to the circumstances of the financial crisis, it had to offer some of those lands for sale in the years following the crisis due to the urgent need for cash, while GAZT argued that the projects of the item in question were for the purpose of sale and trade, not acquisition, which is evident by the change in intention, which requires addition of the said item to Zakat Base. The Department, having taken cognizance of subject of dispute and Zakat Payer's financial statements, found that; since the financial statements submitted by Zakat Payer has shown the distinction between short-term investments prepared for sale and not excluded from Zakat Base, and long-term investments not prepared for sale in their current state; and since Zakat Payer has submitted an analytical statement of the reasons that led to the sale of projects that were under development; and since evidence presented by Zakat Payer supporting its view were not refuted by any evidence that could be relied upon to reject its request; and since the appealed Decision in dismissing Zakat Payer's objection had no basis other than Zakat Payer's sale of the investments in a subsequent year; and since such evidence is not substantial enough to establish that Zakat Payer's intention upon acquisition was to offer those investments for sale in their current state; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Non-Deduction of Investment in "..... Company" of 2009), which includes its objection to the Primary Committee's



Decision regarding the same, wherein Zakat Payer rejected the addition of the item in question to Zakat Base on the Grounds that its investment in (..... Arabian Company) was in the form of an in-kind share represented by the transfer of a long-term real estate investment to the said company, while GAZT argued that Zakat Payer did not provide evidence proving the payment of Zakat of the investment for the year in question, as they are investments representing pre-incorporation payments and that as the incorporation of the Investee Company took place on a date subsequent to the year in question.

The Department, having taken cognizance of the subject of dispute, found that; since Zakat Payer has submitted the Articles of Association of (..... Arabian Company), which showed that Zakat Payer's share in the capital of the said company was an in-kind share and for the same amount in question; Therefore, the Department satisfies to accept Zakat Payer's appeal by deciding that Zakat Payer's investment in (..... Arabian Company) is not subject to Zakat, and reverse the appealed Decision as to conclusion it had in this regard.

Decision

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

First: In Form:

Accept Zakat Payer's (..... Company, TIN No.) appeal against Decision No. (30) of 1437 AH delivered by the Primary Committee for Zakat and Tax Objections in Dammam.

Second: On Merits:

1. Dismiss Zakat Payer's appeal on item (Imposition of Zakat for Short Fiscal Period of 2006) uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Accept Taxpayer's appeal on item (Addition of Partners' Loans of 2008 – 2010) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Accept Zakat Payer's appeal on item (Non-Deduction of Long-Term Investments in Lands and Projects under Development of 2008 and 2009) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Accept Taxpayer's appeal on item (Non-Deduction of Investment in “..... Company” of 2009) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-92)
Delivered in Appeal No. (Z-
1894-2018)

Principle No. 228

The criterion when deducting expenses from Zakat Base is to consider the true nature of those amounts and the validity of their deduction or addition to Zakat Base, regardless of their title that may appear in the financial statements submitted by Zakat Payers to GAZT.

Facts:

First: In Form:

Accept Zakat Payer's (..... Company) objection.

Second: On Merits:

1. Uphold General Authority of Zakat and Tax's ("GAZT") Decision regarding item (Addition of Equivalent of Financing Projects Under Implementation to Partners' Current Account of 2012 – 2014) by adding the same to Zakat Base.
2. Establish resolution of dispute on item (Addition of Insurance Balance with Third Parties "Performance Bond" to Zakat Base of 2011 – 2013) by GAZT accepting Zakat Payer's view.

Since Zakat Payer (..... Company) was dissatisfied with this Decision; it submitted a statement of appeal on 19/02/1440 AH, summarized as follows:

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's addition of the equivalent of projects under implementation to partners' current account of 2012 – 2014 to Zakat Base, on the Grounds that GAZT had not added the said equivalent of 2011 to Zakat Base, and then had added the same in the following years of 2012 – 2014 despite the non-completion of Zakat Year.

Accordingly, GAZT has deviated from following the same approach for the years subject to Assessment. Therefore, Zakat Payer adheres to objecting to the addition of the said equivalent to partners' current account, since it actually represents amounts financed by the partners' current account. Moreover, the item of financial projects under implementation mentioned in the financial statements and Zakat Declarations includes pre-operational expenses, which are deferred revenue expenses and are not considered capital developments under implementation, "Acquisition Assets."

Furthermore, the incorporation and pre-operational expenses are considered expenses stipulated in Paragraph (7/Second) of Article (3) of Implementing Regulations for the Collection of Zakat. Accordingly, their equivalent shall not be added to the partners' current account pursuant to the Law, and by extension, shall not be added to Zakat Base. The Department, having taken cognizance of Zakat Payer's statement of appeal and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds



The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

The Department, having taken cognizance of documents included in Case file and Zakat Payer's statement of appeal, as well as the conclusion reached in the appealed Decision, found that: since the dispute was centered on the addition of the equivalent of projects under implementation to partners' current account of 2012 – 2014 to Zakat Base; and since the Department may take the Grounds of the Decision in question without addition whenever it deems that these Grounds were sufficient to provide any further addition, which indicates that by supporting these Grounds, it only emphasizes that the Department did not find any Decision-related objections that require a response that went beyond those Grounds; and since it was established that the appealed Decision, with regard to the items in question, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Primary Committee issuing the Decision has examined the source of the dispute for each item and reached to the conclusion stated in its wording; and since this Department did not find any requirement for correction or further response in light of submissions and pleas presented thereto; Therefore, the Department satisfies to decide that the foregoing does not affect the conclusion reached in the Primary Committee's Decision; and since the aforementioned is not affected by Zakat Payer's Grounds included in its statement of appeal, since the addition of the equivalent of projects under implementation to partners' current account did not satisfy this department to decide invalidity of the GAZT's procedure upon addressing the same for addition to Zakat Base, as Zakat Payer claim that the projects under implementation has included pre-operational expenses cannot be accepted, since the criterion when deducting these amounts from Zakat Base is to consider the true nature of those amounts and the validity of their deduction or addition to Zakat Base, regardless of their title that may appear in the financial statements submitted by Zakat Payers to GAZT; and since GAZT has deducted all the projects under implementation financed during the year from partners' current account; Therefore, the Department satisfies to decide that Zakat Payer's appeal is groundless of any fact or law, and that GAZT's procedure in addressing the item in question was sound and valid, and by extension, to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

Decision

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

First: In Form:

Accept Zakat Payer's (..... Company) appeal against Decision No. of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

Dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-117)
Delivered in Appeal No.
(ZW-1897-2018)

Principle No. 229

The issuance of a Decision without enabling Taxpayer present its pleas results in depriving its right to litigate at both degrees.

Facts:

First: In Form:

Accept Taxpayer's (..... Company) objection to Zakat, Tax, and Custom Authority's ("ZATCA") Zakat Assessment and Withholding Tax of 2007.

Second: On Merits:

Dismiss Taxpayer's objection to item (Addition of Obsolete Inventory to Profits) and uphold ZATCA's Decision regarding the same.

Dismiss Taxpayer's objection to item (Imposition of Withholding Tax on Computer Software Procurement) and uphold ZATCA's Decision regarding the same.

Since Taxpayer (..... Company) was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

1. Item (Used Portion of Obsolete Inventory):

Taxpayer objects to the Primary Committee's Decision, which upheld ZATCA's addition of the provision of the obsolete inventory in the amount of (SAR 9,550,620) to its profits, as Taxpayer contends that such provision is automatically configured from the accounting system according to inventory's lifespans. Also, the field examination team has reviewed the method of calculating the provision, opening entries, and adjusting entries as per ZATCA's report. Moreover, the Primary Committee stated that: "The dispute is related to documents, and no representative of Taxpayer has appeared for the Grounds stated. In addition, the field examination report has shown that Taxpayer did not reduce its profits by the value of the obsolete inventory provision."

2. Item (Overstated Import Differences):

Taxpayer objects to the result of adjusting the accounts with the import differences, as ZATCA did not clarify the method of calculating these import differences.

3. Item (Provision for Doubtful Debts):

Taxpayer requests to exclude the provision for doubtful debts from Zakat Base, since that provision is determined by the authorized person, which is the one who decides whether the debts are bad or not.

4. Item (Imposition of Withholding Tax on Computer Software Procurement):

Taxpayer maintains its right to not subject the payments of the item in question to a withholding tax on the Grounds that these amounts are for the purchase of computer software for resale in the local market and should not be subject to a withholding tax due to their relation to business transactions. Taxpayer also requests to cancel the late payment fines resulting therefrom.



Since the Department decided opening of pleadings, ZATCA submitted a Rejoinder on 21/03//1442 AH, corresponding to 06/11/2020 AD, to Taxpayer's statement of appeal, wherein it stated that it adheres to its view presented before the Primary Committee. ZATCA added that claims raised by Taxpayer are consistent with the earlier submissions, which ZATCA responded to at that time, and concluded by requesting dismissal of Taxpayer's appeal and uphold of the appealed Decision as to conclusion it reached.

On 30/03/1442 AH, corresponding to 15/11/2020 AD, the Department addressed Taxpayer to provide any additional submissions it wishes to add to its appeal or to be satisfied with earlier ones.

On 10/05/1442 AH, corresponding to 25/11/2020 AD, Taxpayer submitted a Reply, wherein it stated that it adheres to the pleas presented in its statement of appeal and demonstrates its readiness to provide the Department with any additional data or documents it requests. Taxpayer added that the reason for its absence from the hearing of the Primary Committee held on 04//11/1439 AH was due to the failure of receipt of the hearing date notification, and by reviewing the mail, it found that the said notification was sent back to its issuer.

On Thursday 19/08/1442 AH, corresponding to 01/04/2021 AD, the Department decided to hold a 10-day e-hearing session, wherein Taxpayer submitted a supplementary memorandum, a summary of which that it maintains its previously mentioned statements in its statement of appeal, while ZATCA did not submit any further submissions.

On 14/09/1442 AH, corresponding to 26/04/2021 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, has decided that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Taxpayer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

The Department, having taken cognizance of Taxpayer's appeal and documents included in Case file, found that: since Taxpayer was not informed of the hearing date of the First Primary Committee for Zakat and Tax Objections in Riyadh, which result in depriving Taxpayer to present all pleas, since it is a right established for all parties to dispute; and since the issuance of a Decision without enabling Taxpayer present its pleas that may have an impact on the conclusion of that Decision results in depriving its right to litigate at both degrees; Therefore, the Department satisfies to abolish the appealed Decision and remand the Objection to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for consideration on its merits in the light of Taxpayer's primary objection.

Decision

First: In Form:

Accept Taxpayer's (..... Company) appeal against Decision No. (33) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections.

Second: On Merits:

Abolish the appealed Decision and remand the Objection to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for consideration on its merits in the light of Taxpayer's primary objection.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-52)
Delivered in Appeal No. (Z-
13577-2020)

Principle No. 230

Holding the harm represented by depriving the right to appeal against judicial rulings and Decisions due to general pandemics is consistent with the established principle that there is no binding obligation on Zakat Payer if that obligation is impossible or it is difficult to verify its implementation for a reason beyond Zakat Payer's control.

Facts:

First: In Form:

Accept Plaintiff's "Zakat Payer" (..... Company, C.R No.) Case.

Second: On Merits:

1. Dismiss Zakat Payer's objection to item (Long-Term Loans of "SAR78,127,788").
2. Dismiss Zakat Payer's objection to item (Creditors "..... Institution" of "SAR 1,300,000").

Since Zakat Payer (..... Company) was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

1. Item (Reassessment):

Zakat Payer maintains its rights to plea of limitation due to the lapse of more than five (5) years of the issuance of Zakat Assessment.

2. Item (Loans of "SAR 78,127,788"):

Zakat Payer objects to the Primary Department's Decision, which ruled to dismiss its objection to exclude the item in question from Zakat Base, on the Grounds that it is entitled to do so since these loans were not used to finance fixed assets, as the opening balance of those loans amounted to (SAR 41,863,889), and an amount of (SAR 33,936,111) was paid, while the remaining amount of (SAR 7,927,778) was subjected to Zakat, which GAZT's branch should have deducted when refunding the amount of the loans, as the full amount of these loans was refunded without deducting the same from Zakat Base. In addition, Zakat Payer clarifies the asset additions during the period amounted to (SAR 44,700,000) and were financed through the year profit amounted to (SAR 4,735,530), the year depreciation of (SAR 22,109,199), and creditors of the purchase of assets of (SAR 17,855,271). Moreover, these loans in question have not completed the Zakat Year, since this year is the first year of Zakat Payer.

3. Item (Creditors "..... Institution" of "SAR 1,300,000"):

Zakat Payer objects to the Primary Department's Decision, which ruled to dismiss its objection to exclude the item in question from Zakat Base, on the Grounds that it is entitled to do so pursuant to the New Implementing Regulations for the Collection of Zakat currently in force.

4. Item (Addition of "SAR 70,647"):

Zakat Payer objects to GAZT's addition of an amount of (SAR 70,647) when amending



the Assessment and calculation of the same within the Zakat Declaration previously submitted to GAZT, on the Grounds that the amount in question was duplicated.

The Department, during its session held on 13/07/1442 AH, corresponding to 25/02/2021 AD, decided to hold a 10-day e-hearing session, wherein GAZT submitted a Rejoinder dated 19/07/1442 AH, corresponding to 02/03/2021 AD, to Zakat Payer's statement of appeal regarding the contested items, a summary of which is as follows:

1. Item (Long-Term Loans of "SAR 78,127,788"):

GAZT stated that it had issued its Amended Assessment by adding these loans on the basis that they financed fixed assets pursuant to Article (4) of Implementing Regulations for the Collection of Zakat, as it determined that these loans had financed fixed assets according to the field examination report in which Zakat Payer acknowledged that a portion of the assets has been financed by these loans.

2. Item (Creditors "..... Institution" of "SAR 1,300,000"):

GAZT stated that it had issued its Amended Assessment on the item in question after reviewing the account activity submitted by Zakat Payer to GAZT in pursuant to its Notification dated 08/11/2017 AD, and that Zakat Payer had not submitted any documents supporting its claim. GAZT concluded by requesting dismissal of Zakat Payer's appeal. The Department did not receive any further submissions from Zakat Payer rather than its statement of appeal.

The Department, during its session held remotely on 25/07/1442 AH, corresponding to 09/03/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

The Department, having taken cognizance of documents included in Case file and Zakat Payer's appeal, found that, since the statement of appeal was filed on 12/08/1441 AH, corresponding to 05/04/2020 AD, after the lapse of the statutory deadline specified for filing statements of appeal; and since the statement of appeal was filed during period coinciding with the occurrence of exceptional circumstances related to the Corona pandemic and the resulting lockdown that restricted the movement of individuals to carry out their activities; and since the periods set for appealing and objecting to judicial rulings are applied by calculating those periods if the conditions are normal and not exceptional; and since such a pandemic is considered an unpredicted, exceptional, and unusual incident that imposed general precautions resulted in a curfew and restrictions on movement and travel between cities and neighborhoods in some cities, in addition to suspending attendance at workplaces in government agencies; all resulted in the suspension of the work in many accounting and law firms specializing in filing appeals against judicial rulings related to Zakat and Tax on behalf of Zakat Payer; and since the consequences of such a pandemic are general matters beyond Zakat Payer's control, as they cannot be anticipated or prevented; and since the reason for the delay in filing the appeal cannot be attributed to Zakat Payer's negligence or failure; and since holding the harm represented by depriving the right to appeal against judicial rulings and Decisions due to general pandemics is consistent with the established principle that there is no binding obligation on Zakat Payer if that obligation is impossible or it is difficult to verify its implementation for a reason beyond Zakat Payer's control, especially since the period following Zakat Payer's filing of



its statement of appeal after the lapse of the statutory period for filing appeals is a short period, with which the occurrence of unusual circumstances must be taken into consideration as previously stated. Therefore, the Department unanimously decided to accept Zakat Payer's appeal in form.

As for Zakat Payer's appeal regarding item (Reassessment), wherein Zakat Payer maintains its rights to abolish GAZT's Assessment for the lapse of more than five (5) years of the issuance of Zakat Assessment in question. The Department, having taken cognizance of the appealed Decision, found that, since the item in question was not subject to objection by Zakat Payer against GAZT by virtue of its Letter addressed to the Director General of GAZT's Branch in Dammam on 28/06/1438 AH, corresponding to 27/03/2017 AD, nor it had pleaded of limitation before the Primary Department issuing the Decision in question, which is considered a new request that must be disregarded pursuant to Article (186) of Law of Civil Procedure, which stipulates: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion;" Therefore, the Department satisfies by Majority to dismiss Zakat Payer's appeal on the item in question and uphold the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Loans of "SAR 78,127,788"), which includes its objection to the Primary Department's Decision regarding the same, wherein Zakat Payer requested to abolish GAZT's Zakat Assessment for adding the item in question, as these loans have not completed the Zakat Year, nor have they financed fixed assets, while GAZT argued that these loans have been added to Zakat Base for financing fixed assets. The Department, having taken cognizance of the subject of dispute and the cash flow statement for the year in question, found that, since Zakat Payer, in section (Cashflows from Investment Activities), has acknowledged the purchase of fixed assets in the amount of (SAR 198,433,844); and since section (Cashflows from Financing Activities) has shown that Zakat Payer had obtained loans in the amount of (SAR 78,127,778); and since the total equity in addition to partners' current account amounted to (SAR 101,601,725) riyals only, which determines that these loans were obtained to finance fixed assets; and since GAZT has deducted the net fixed assets from Zakat Base in the amount of (SAR 176,324,645); thus, the amounts used from the loans to finance fixed assets has been deducted from Zakat Base, while the amounts used to finance Zakat Payer's current activity, which is considered a trading asset, on which the Zakat is due; and since the aforementioned is not affected by Zakat Payer's claim that the amount of fixed assets added Zakat Base during the year in question was of (SAR 44,700,000) as per the fixed assets statement attached to the financial statements, as the cashflow statement clarifies the amounts collected and disbursed during the year in question according to the cash basis; and since the said cashflow statement has shown that the fixed assets were purchased during the said year for an amount of (SAR 198,433,844), which contradicts the amount mentioned in the fixed assets statement (Note No. "5"); hence, the amount in the cashflow statement should be taken into consideration, as it includes all cashflows paid and collected during the year in question; and since loans are considered an element of Zakat Base, regardless of their type, source, or purpose, provided that their balances complete the Zakat Year or being used to finance fixed assets; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and amend the appealed Decision wherein the loans amounts added to Zakat Base is (SAR 74,722,920), representing the difference between the total fixed assets deducted by GAZT from Zakat Base and the total equity, including the partners' current account, representing the amount financing for fixed assets even if it had not completed the Zakat Year.

As for Zakat Payer's appeal regarding item (Creditors "..... Institution" of "SAR 1,300,000"), which includes its objection to the Primary Department's Decision regarding the same, wherein Zakat Payer requested to abolish GAZT's Decision to add the creditors' balance in the amount of (SAR 1,300,000) to Zakat Base, on the Grounds that the New



Implementing Regulations for the Collection of Zakat endorses that the creditors' balance shall not be added to Zakat Base unless it was used to finance fixed assets, while GAZT argued that it had added the balance that had completed the Zakat Year after reviewing the activity of the Ledger Account of Institution. The Department, having taken cognizance of the subject of dispute and the activity of the Ledger Account of Institution, found that, since the Ledger Account is considered the main ref reference for determining the debt balance and its activity during the year in question, which showed that the opening balance amounted to (SAR 7,500,000), the amount paid during the year was (SAR 6,200,000), and the closing balance that completed the Zakat Year amounted to (SAR 1,300,000); and since GAZT's procedure to add the balance in question to Zakat Base came in compliance with the relevant Fatwas; and since the aforementioned is not affected by Zakat Payer's inferencing to the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2216) of 07/07/1440 AH, which stipulated that the creditors' balance shall not be added to Zakat Base unless it was used to finance fixed assets, since the application of the provisions of the said Regulations take effect as of on 01/01/2019 AD, while the Assessment in question is subject to the provisions and regulations applied on its date of issuance; hence, the provisions of the said Regulations only apply to matters that occurred from the date of its enforcement, and its effects do not extend to matters that occurred prior to its issuance, in application of the "Principle of Non-Retroactivity of Laws;" and since the classification of loans in the financial statements as long-term or short-term has no effect on calculating Zakat, as the basis for a loan to be subjected to Zakat is the completion of Zakat Year or its usage in financing fixed assets; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Addition of "SAR 70,647"), which includes its objection to GAZT's addition of the amount of (SAR 70,647) when amending the Assessment. The Department, having taken cognizance of the appealed Decision, found that, since the item in question was not subject to objection by Zakat Payer against GAZT before the Primary Department issuing the Decision in question, which is considered a new request that must be disregarded pursuant to Article (186) of Law of Civil Procedure, which stipulates: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion;" Therefore, the Department satisfies to disregard Zakat Payer's appeal in this regard.

Decision

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

First: In Form:

Accept Taxpayer's (..... Company, C.R. No.) appeal against Decision No. (IZD-2020-20) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam in Case No. (32-2018-Z).

Second: On Merits:

1. Dismiss Zakat Payer's appeal by Majority on item (Reassessment) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Dismiss Zakat Payer's appeal on item (Loans of "SAR 78,127,788") and amend the appealed Decision wherein the loans amounts added to Zakat Base is (SAR 74,722,920), representing the difference between the total fixed assets deducted by GAZT from Zakat Base and the total equity, including the partners' current account, representing the amount financing for fixed assets even if it had not completed the Zakat Year, for the Grounds stated herein.



3. Dismiss Zakat Payer's appeal on item (Creditors "..... Institution" of "SAR 1,300,000") and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Disregard Zakat Payer's appeal on item (Addition of "SAR 70,647") for the Grounds stated herein.

Similar Decisions:

First Appellate Department for Income Tax
Violations and Disputes

Appellate Decision (IR-2021-409)

Appellate Decision (IR-2021-412)

Appellate Decision (IR-2022-21)



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-137)
Delivered in Appeal No. (Z-20844-2020)

Principle No. 231

It is legally established that Plaintiff's Attorney shall be provided with sufficient time to rectify its Power of Attorney in the event that it did not authorize the same to carry out a certain action.

Facts:

Taxpayer requests abolishment of the Primary Department's Decision, which ruled to dismiss the Case in form for being filed without a party having capacity, on the Grounds that there was an error in the attached Power of Attorney, as the Primary Department has concluded that the said Power of Attorney did not include the right to file lawsuits, pleading, and defending Plaintiff "Taxpayer" before Committee for Resolution of Tax Violations and Disputes. In addition, the said Power of Attorney has been corrected by including the right to file lawsuits, pleading, and defending Plaintiff.

In addition, the General Authority of Zakat and Tax ("GAZT") was addressed through the e-portal of the General Secretariat of Tax Committees on 29/11/1441 AH, corresponding to 20/07/2020 AD, to submit its response to Taxpayer's statement of appeal, wherein no response has been received within the specified period granted.

Grounds

The Department, having taken cognizance of documents included in Case file and Taxpayer's appeal, found that; since the Primary Department's Decision was available for receipt on 12/10/1441 AH, corresponding to 04/06/2020 AD, while the statement of appeal was filed on 25/11/1441 AH, corresponding to 15/07/2020 AD, which determines that the beginning of the statutory deadline specified for filing statements of appeal was during the period of curfew and suspension of work due to the Corona pandemic and the resulting lockdown that restricted the movement of individuals to carry out their activities; and since such a pandemic is considered an unpredicted, exceptional, and unusual incident that imposed general precautions resulted in a curfew and restrictions on movement and travel between cities and neighborhoods in some cities, in addition to suspending attendance at workplaces in government agencies; all resulted in the suspension of the work in many accounting and law firms specializing in filing appeals against judicial rulings related to Zakat and Tax on behalf of Taxpayers; and since the consequences of such a pandemic are general matters beyond Taxpayer's control, as they cannot be anticipated or prevented; and since the reason for the delay in filing the appeal cannot be attributed to Taxpayer's negligence or failure; and since holding the harm represented by depriving the right to appeal against judicial rulings and Decisions due to general pandemics is consistent with the established principle that there is no binding obligation on Taxpayer if that obligation is impossible or it is difficult to verify its implementation for a reason beyond



Taxpayer's control, especially since the period following Taxpayer's filing of its statement of appeal after the lapse of the statutory period for filing appeals is a short period, with which the occurrence of unusual circumstances must be taken into consideration as previously stated. Therefore, the Department unanimously decided to accept Taxpayer's appeal in form.

On Merits:

The Department, having taken cognizance of documents included in Case file, Taxpayer's statement of appeal, and the Primary Department's Decision, found that, since the reason for dismissal of Plaintiff's "Taxpayer" Case by the Primary Department was due to lack of capacity, as the Power of Attorney did not include the right to file lawsuits, pleading, and defending Plaintiff; and since it is legally established that Plaintiff's Attorney shall be provided with sufficient time to rectify its Power of Attorney in the event that it did not authorize the same to carry out a certain action; and since the Primary Department has failed to provide Plaintiff's Attorney with sufficient time to rectify its Power of Attorney pursuant to Article (50.3) of Implementing Regulations of Law of Civil Procedure, which stipulated: "If the agent of the plaintiff submits a power of attorney not authorizing him to carry out a certain action, the circuit shall notify him to provide the required power of attorney. Upon failing to do so in the next hearing, Article 55 of the Law shall apply. If he is the agent of the defendant, the circuit shall instruct him to provide the proper power of attorney. If he fails to do so in the next hearing, he shall be deemed absent, and Article 57 of the Law shall apply;" Therefore, the Department satisfies to abolish the appealed Decision and enable Taxpayer to present its Case, and by extension, to accept Taxpayer's appeal and remand the Case to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh for consideration on its merits.

Decision

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

First: In Form:

Accept Taxpayer's (.....) appeal against Decision No. (ISZR-2020-34) delivered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh.

Second: On Merits:

Abolish the appealed Decision and remand the Case to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh for consideration on its merits, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-301)
Delivered in Appeal No.
(ZW-32484-2020)

Principle No. 232

The Grounds for the judgment must include an answer to every request or plea made before the judicial department and ruling thereon may entail a change of opinion on the dispute, otherwise the judgment would be flawed.

Facts:

Dismiss Plaintiff's (Mr., Owner of Institution, C.R. No.) Case in form. Since Zakat Payer (Mr., Owner of Institution "..... Automotive") was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

Zakat Payer objects to the Primary Department's Decision in question, on the Grounds that the said Decision was based on an assumption contrary to fact, and contrary to the established facts by virtue of documents included in Case file.

In addition, GAZT has argued to dismiss the Case in form despite the reasons presented by Zakat Payer which prevented him from submitting his objection within the statutory period, as Zakat Payer was not present within the Kingdom during that period due to a medical treatment outside the Kingdom. Moreover, the Primary Department should have taken such an excuse into consideration when it issued its Decision. Zakat Payer concluded by requesting reversal of the Primary Department's Decision in question for the stated Grounds.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

The Department, having taken cognizance of documents included in Case file, Zakat Payer's statement of appeal, and the Primary Department's Decision, found that, since Zakat Payer's objection was centered on its inability to file its objection within the statutory period due to a medical treatment outside the Kingdom, and that the Primary Department did not take such an excuse into consideration when it issued its Decision; and since the facts in the appealed Decision established that the Primary Department has requested GAZT to provide evidence that Zakat Payer had received the Assessment Notification on a specific date, as well as the method of receipt of Zakat Payer's objection; However, the said Decision was not clear whether these requests had been addressed, nor the documents submitted regarding the same; and since Zakat Payer claimed that he submitted a written objection to GAZT's Assessment due to malfunction in GAZT's e-portal to accept Zakat



Payer's objection; and since the judicial ruling is based on elements, most importantly are its reasons; including requests and pleas of litigants, as well as examining and discussing their Grounds to reach a correct ruling in accordance with established judicial principles; and since Grounds for the judgment must include an answer to every request or plea made before the judicial department and ruling thereon may entail a change of opinion on the dispute, otherwise the judgment would be flawed; and since the Primary Department's Decision was found to be devoid of consideration of Zakat Payer's pleas presented thereto, as the Primary Department failed to provide clear justifications for refraining from discussing or dismissing those pleas, which determines that the Decision is flawed and must be reversed; and since Zakat Payer have the right to litigate at both degrees; Therefore, the Department satisfies to abolish the appealed Decision and remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration on its merits.

Decision

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

First: In Form:

Accept Zakat Payer's (Mr., Owner of Institution "..... Automotive," C.R. No.) appeal against Decision No. (IZJ-228-2020) delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in Case No. (ZW-7876-2019), in connection with Zakat Assessment of 1418 – 1426 AH.

Second: On Merits:

Accept Zakat Payer's appeal, abolish the appealed Decision, and remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration on its merits, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-34)
Delivered in Appeal No. (Z-28206-2020)

Principle No. 233

The submission of all documents before the administrative authority initially is not a requirement by Law to establish litigant's right.

Facts:

First: In Form:

Accept Plaintiff's (..... Company, C.R No.) Case.

Second: On Merits:

1. Accept Plaintiff's objection to item (Import Differences of "SAR 1,277,772") and abolish Defendant's Decision regarding the same.
2. Dismiss Plaintiff's objection to item (Payables of "SAR 3,683,537").

Since Zakat Payer (..... Company) was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

Zakat Payer objects to the Primary Department's Decision in question regarding item (Payables of "SAR 3,683,537"), wherein it requests to deduct the amount of the item in question from Zakat Base for the non-completion of Zakat Year pursuant to Article (4.3/A) of Implementing Regulations for the Collection of Zakat. Zakat Payer concluded by requesting abolishment of the Primary Department's Decision in question for the stated Grounds.

Since the Department decided opening of pleadings, Zakat, Tax and Customs Authority ("ZATCA") has submitted a Rejoinder on 05/08/1442 AH, corresponding to 18/03/2021 AD, to Zakat Payer's appeal, a summary of which included that it adheres to its view presented before the Primary Department, and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. ZATCA added that it requests the Department not to accept any new documents from Zakat Payer that have not been submitted during the examination and objection stages. ZATCA concluded by adhering to the validity and soundness of its procedure and requested dismissal of Zakat Payer's appeal and uphold of the Primary Department's Decision in question for the stated Grounds.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:



As for Zakat Payer's appeal regarding item (Payables of "SAR 3,683,537"), which includes its objection to the Primary Department's Decision regarding the same, wherein Zakat Payer requests to deduct the item in question from Zakat Base for the non-completion of Zakat Year, while ZATCA requested that Zakat Payer's appeal be dismissed and the Primary Department's Decision be upheld.

The Department, having taken cognizance of the subject of dispute, the documents included in Case file, and Zakat Payer's appeal, found that: since payables are considered an element of Zakat Base, regardless of their type, source, or purpose, provided that their amounts complete the Zakat Year or being used to finance fixed assets; and since the detailed statements of vendors (credit balances) has shown that the amount of (SAR 102,475.52) has completed the Zakat Year; and since the aforementioned is not affected by ZATCA's request to reject any documents that had not previously been submitted to ZATCA, since the Law, in order to establish litigant's right, did not require the submission of all documents before the administrative authority initially, as Article (23) of Tax Dispute and Violation Committee Procedures has entitled parties to Case to establish their claims before the judicial department by all means of proof at any stage of the Case; Therefore, the Department satisfies to amend the appealed Decision by adding only the amount that has completed the Zakat Year, which is (SAR 102,475.52).

Decision

First: In Form:

Accept Zakat Payer's (....., Company, C.R. No.) appeal against Decision No. (IZD-2020-199) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in Case No. (Z-3861-2019), in connection with Zakat Assessment of 2018 AD.

Second: On Merits:

Accept Zakat Payer's appeal and amend the Decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam by adding only the amount that has completed the Zakat Year, which is (SAR 102,475.52), for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-424)
Delivered in Appeal No. (Z-
31373-2020)

Principle No. 234

The statute of limitations resulting from the lapse of the statutory period and related to GAZT's ineligibility to make or revise the Assessment is a right established in the interest of Zakat Payers and those addressed by the Assessment, not for the administrative authority itself.

Facts:

First: Accept Zakat Payer's (..... Company) appeal and General Authority of Zakat and Tax's ("GAZT") appeal against Decision No. (5) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Riyadh, in form.

Second: On Merits:

1. Dismiss GAZT's appeal on item (Recalculation of Zakat Differences of 2005 and 2006) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated in this Decision.
2. Accept Zakat Payer's appeal on item (Readjustment of Zakat Differences of 2007 – 2009) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated in this Decision.
3. Accept Zakat Payer's appeal on item (End-of-Service Remuneration) by calculating the provision as per Zakat Payer's Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated in this Decision.
4. Accept Zakat Payer's appeal on item (Non-Addition of Loans Added to Zakat Assessment without Completion of Zakat Year to Zakat Base of 2010 – 2012) by adopting Zakat Payer's Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated in this Decision.

Since GAZT was dissatisfied with this Decision; it submitted a petition for reconsideration summarized as follows:

GAZT seeks reconsideration the Appellate Department's Decision in question, claiming that the wording of the said Decision contradicts each other, as GAZT clarifies that the Appellate Department, when it addressed item (Statute of Limitations) argued by GAZT and Zakat Payer, concluded that GAZT was not entitled to make the Assessment, while it refuted item (Provision of End-of-Service Remuneration) objectively without addressing the procedure in which it ended with GAZT's ineligibility to make the Assessment, which indicates that the Appellate Department did not adopt a static approach to the reasoning of the Decision. In addition, addressing the subject of the latter item is clear evidence of the contradiction of the principle on which the Appellate Department was initially decided. Moreover, GAZT has submitted all the documents supporting its claims, contrary to the Appellate Department decided regarding the lack of sufficient evidence, and that its Decision was not based on a legitimate or clear justification, but was unfounded without addressing explicit and influential articles in its reasons.



Furthermore, the instructions for collection of Zakat, on which the Appellate Department based its Decision, do not go beyond the following:

- A. Ministerial Decision No. (2555) of 19/10/1417 AH**, wherein GAZT replied that the periods mentioned therein are only related to revising Assessments and not making the same initially, as in the case of Zakat Payer in question.
- B. Ministerial Decision No. (393) of 06/08/1370 AH**, wherein GAZT replied that, by reviewing all the articles mentioned therein, it did not contain any articles specifying the period for making Assessments.
- C. Ministerial Decision No. (2028) of 01/06/1438 AH**, wherein GAZT replied that, although the period was specified in Article (21) of the Implementing Regulations for the Collection of Zakat issued pursuant thereto, the Assessment in question was issued on a date prior to the date of issuance of the said Decision. The Ministerial Decision stated: “These rules and procedures shall apply to Zakat Payers subject to the Implementing Regulations for the Collection of Zakat as of the date of issuance of this Ministerial Decision.”

Based on the foregoing, GAZT requests that its petition be accepted and the Decision in question abolished.

Grounds

The Department, having taken cognizance of GAZT’s petition and documents included in Case file, found that: since it is established that if judicial rulings become final, they may not be reconsidered except in accordance with the cases and controls set forth in Article (200) of Law of Civil Procedure promulgated by Royal Decree No. (M/1) of 22/01/1435 AH, provided that such a petition shall be filed within the statutory period specified in Article (201) of the same Law, which is thirty (30) days from the date of knowledge of the justifications relied upon in the petition submitted before this Department; and since GAZT’s petition did not include a new matter that would change the conclusion reached in this Department’s Decision; and since the aforementioned is not affected by and GAZT’s claim of existence of a contradiction in the Appellate Department’s Decision in question, represented by deciding that GAZT was not entitled to make the Assessment for the lapse of the statutory period, while at the same time it accepted Zakat Payer’s appeal and addressed the same on its merits regarding other items, as the statute of limitations resulting from the lapse of the statutory period and related to GAZT’s ineligibility to make or revise the Assessment is a right established in the interest of Zakat Payers and those addressed by the Assessment, not for the administrative authority itself, which the Law has entitled to rectify Zakat Payers’ Declaration within a specific period and in a manner that maintains stability of Zakat Payers’ transactions; and since such a right is established for Zakat Payers, GAZT cannot invoke the same in a manner that prevents Zakat Payers from invoking any defenses related to the lapse of the statutory period; and since the matter was as stated, this Department concludes that there is no contradiction in the Appellate Department’s Decision in question as claimed by GAZT, which necessitates accepting its petition since such a petition was not based on any cases stipulated in the permissibility of reconsidering final judgments; Therefore, the Department satisfies to dismiss GAZT’s petition.

Decision

Dismiss GAZT’s petition for reconsideration against Decision No. (IR-2020-86) delivered by the First Appellate Department for Income Tax Violations and Disputes in Case No. (Z-1533-2018) in connection with Zakat Assessment of 2001 – 2012 in form, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-426)
Delivered in Appeal No. (Z-13422-2020)

Principle No. 235

“1. The audited financial statements are presumed valid and sound, unless evidence proves the contrary that can be relied upon.

Facts:

Facts of the case are summarized as follows: Mr., holder of National ID No., in his capacity as Plaintiff's (..... Company, C.R. No.) (“Zakat Payer”) Attorney, under POA No., issued by Notary Public Mr., (License No.; has filed a statement of claim objecting to the Decision issued by General Authority of Zakat and Tax (“Defendant/GAZT”) regarding Zakat Assessment of 2012 AD, which centered in the following items:

2. Item (Statute of Limitations):

Plaintiff objects to Defendant's Decision on the Grounds that Defendant is not entitled to make the Zakat Assessment of 2012 for the lapse of its statutory period to do so.

3. Item (Investment in Subsidiaries):

Plaintiff objects to Defendant's Decision for deducting the supporting loans and advances provided to the Subsidiaries in proportion to Plaintiff's share in the Subsidiaries. Also, Plaintiff requests deduction of the entire balance of the loans and advances provided to the Subsidiaries, considering the same as an investment that is fully deductible.

4. Item (Addition of Instruments to Zakat Base):

Plaintiff objects to Defendant's Decision for adding the instruments to Zakat Base, on the Grounds that these instruments were issued to finance capital expansions in new enterprises.

Having presented the statement of claim to Defendant, it argued that the case is inadmissible pursuant to Article (75) of Law of Civil Procedure promulgated by Royal Decree No. (M/1) of 22/01/1435 AH, due to the existence of a pending case at the General Secretariat under No. (Z-13419-2000).

Defendant submitted a supplementary memorandum in which it responded that Declarations submitted by Plaintiff were incorrect, as it found that there was incorrect Zakat calculation within Plaintiff's Declaration; thus, it has the right to amend Plaintiff's Declaration to comply with the relevant laws, regulations, and instructions at any time without being bound by a specific period. Defendant added that its Decision was based on Article (21/B) of Implementing Regulations for the Collection of Zakat.

As for item (Investment in Subsidiaries):

Defendant affirms that the loans provided to Subsidiaries are registered with Defendant and require special Zakat calculation in order to avoid double charge of Zakat, as part of these loans (as per the investment ratio) does not represent a loan provided to another



party; hence, Plaintiff has the right to deduct part of the loans provided to Subsidiaries from its Zakat Base in an amount equal to the ratio of its investment in the Subsidiary Company to which it provided the loan.

As for item (Addition of Instruments to Zakat Base):

Defendant adheres to the validity and soundness of its procedure.

On Wednesday, 14/04/2020 AD, the Department held its session remotely to consider the Case, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, under POA No., issued by Notary Public Mr.; and Mr., holder of National ID No., appeared in his capacity as Defendant's Representative, by virtue of Authorization No. dated 17/10/1441 AH, issued by GAZT's Deputy Governor for Legal Affairs; wherein Defendant's Representative submitted a supplementary memorandum, while Plaintiff's Attorney requested a continuance to respond to Defendant's Representative memorandum. Accordingly, the Department decided to give Plaintiff's Representative a continuance, provided that its response be submitted within ten (10) days from the date of this hearing. Therefore, the Department decided to postpone the continuation of the hearing of the Case to the session on Saturday, 01/05/2021 AD.

On Saturday, 01/05/2021 AD, the Department held its session remotely to consider the Case, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, under POA No., issued by Notary Public Mr.; and Mr., holder of National ID No., appeared in his capacity as Defendant's Representative.

Having asked Plaintiff's Attorney regarding his Case, he maintained the statements previously contained in the statement of claim previously submitted to General Secretariat of Tax Committees. Having asked Defendant's Representative regarding his response, he maintained Defendant's Reply previously submitted to General Secretariat of Tax Committees. He also requested the Department not to accept any new documents submitted. Having asked parties to Case whether they had further statements, they responded with denial. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form:

Since Plaintiff filed the Case to abolish Defendant's Decision regarding Zakat Assessment of 2012, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a party having capacity and within the period prescribed by Law, it is then accepted in form.

On Merits:

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's Decision regarding issuance of Zakat Assessment of 2012 AD, which included the following:



1. **Item (Statute of Limitations)**, which includes Plaintiff's objection to Defendant's Decision regarding the issuance of Zakat Assessment, wherein Plaintiff contented that Defendant was not entitled to make the Zakat Assessment of 2012 for the lapse of its statutory period to do so, while Defendant argued that it had the right to make the Zakat Assessment due to miscalculation of Zakat that has been found within Plaintiff's Declaration.

The Department found that, since Article (21.8) of Implementing Regulations for the Collection of Zakat stipulates: "The Authority may make or amend the Assessment at any time without being bound by a specific period in the following cases: (A) If Zakat Payer's written consent was obtained to make or amend the Assessment; (B) If Zakat Payer failed to submit the Declaration; and (C) If the Authority found that the Declaration contains incorrect information;" and since Article (21.10) of the same Regulations stipulates: "The Authority may rectify the incorrect implementation of Zakat Law or regulations within five (5) years from the final date set for submission of Zakat Declaration for the Zakat Year at Zakat Payer's request, or if the error was discovered by the Authority or by the regulatory authorities;" and since Defendant's claim regarding its right to make the Zakat Assessment without being bound by a specific period on the Grounds that the Implementing Regulations for the Collection of Zakat has entitled the same to carry out such a procedure cannot be taken into account in absolute terms, since such a right is restricted by a set of conditions and cases, including those contained in Article (21.8/C) of Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, which entitles Defendant to make or amend the Zakat Assessment without being bound by a specific period in the event that Plaintiff's Declaration contains incorrect information; However, in the event that the Plaintiff's Declaration is invalid due to the incorrect implementation of Zakat regulations or disagreement in viewpoints during the Zakat calculation; Defendant's right to make the Zakat Assessment lapses after five (5) years from the final date set for submission of Zakat Declaration, in accordance with Article (21.10) of Implementing Regulations for the Collection of Zakat; and since the aforementioned is not affected by Defendant's claim that Plaintiff's Declaration includes incorrect Zakat calculations, as Defendant has failed to provide any substantial evidence of incorrect information included in Plaintiff's Declaration that entitles Defendant to make the Zakat Assessment without being bound by a specific period, as amendments made by Defendant resulted from disagreement in viewpoints during the Zakat calculation. Accordingly, Defendant has right to make the Zakat Assessment within five (5) years from the final date set for submission of Zakat Declaration pursuant to Article (21.10) of Implementing Regulations for the Collection of Zakat; and since Article (21.8/C) of Implementing Regulations for the Collection of Zakat does not apply to Plaintiff's Case; and since Defendant has failed to inform Plaintiff of Zakat Assessment of 2012 AD until 09/10/2019 AD, i.e., after the lapse of five (5) years from the final date set for submission of Zakat Declaration; and since Defendant has failed to provide any substantial evidence of incorrect information included in Plaintiff's Declaration; Therefore, the Department satisfies to abolish Defendant's Decision regarding the item in question.

2. **Item (Investment in Subsidiaries)**, which includes Plaintiff's objection to Defendant's Decision regarding the deduction of the supporting loans and advances provided to the Subsidiaries in proportion to Plaintiff's share in the Subsidiaries, wherein Plaintiff requested deduction of the entire balance of the loans and advances provided to Subsidiaries, while Defendant argued that the loans provided to Subsidiaries are registered with Defendant and require special Zakat calculation in order to avoid double charge of Zakat, as part of these loans (as per the investment ratio) does not represent a loan provided to another party; hence, Plaintiff has the



right to deduct part of the loans provided to Subsidiaries from its Zakat Base in an amount equal to the ratio of its investment in the Subsidiary Company to which it provided the loan.

The Department found that, since Fatwa No. (22665) of 15/04/1424 AH stipulates: “Zakat shall be calculated in the capital of the parent holding joint stock company and its subsidiaries, each company separately, since each company has an independent legal entity and an independent financial liability, provided that the deduction of the investments of the parent company in the capital of its subsidiaries shall be taken into consideration upon the calculation of Zakat, whereby a capital is not subject to double charge of Zakat in a single Zakat Year;” and since the Department has decided ineligibility of Defendant to make the Zakat Assessment in first item above; Therefore, the Department satisfies to abolish Defendant’s Decision regarding the item in question.

3. Item (Addition of Instruments to Zakat Base):

Since the Department has decided ineligibility of Defendant to make the Zakat Assessment in first item above; Therefore, the Department satisfies to abolish Defendant’s Decision regarding the item in question.

Decision

For the aforementioned Grounds, the Department unanimously decided as follows:

1. Abolish Defendant’s Decision regarding item (Statutory Period for Zakat Assessment of 2012).
2. Abolish Defendant’s Decision regarding item (Investment in Subsidiaries of 2012).
3. Abolish Defendant’s Decision regarding item (Addition of Instruments to Zakat Base of 2012).

This Decision was delivered in presence of Parties. The Department has set thirty (30) days as the date for receipt of the Decision copy. Parties hereto may request to appeal against the Decision within thirty (30) days from the day following the date set for receipt of the Decision. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

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. (IAR-2020-98)
Delivered in Appeal No. (Z-1635-2018)**

Principle No. 236

The consideration of pleas and objections stated in Zakat Payer's appeal would ensure that the Zakat due from Zakat Payer has been paid on funds whose ownership and subjection to Zakat must be verified in the manner required by Sharia and Zakat Regulations.

Facts:

On Saturday, 07/03/1442 AH, corresponding to 24/10/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, in accordance with Paragraph (B) of Article (67) of Income Tax Law, promulgated under Royal Decree No. (M/1) of 15/01/1425 AH, as amended under Royal Decree No. (M/113) of 02/11/1438 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 25/04/1438 AH, by Institution ("Zakat Payer"); against Decision No. (05) of 1438 AH delivered by the First Primary Committee for Zakat and Tax Objections in Riyadh in Case No. (37/09), filed by Zakat Payer against General Authority of Zakat and Tax ("GAZT"). The appealed Decision ruled as follows:

- Dismiss Zakat Payer's objection in form.

Since Zakat Payer (..... Institution) was dissatisfied with this Decision, it submitted a statement of appeal summarized as follows:

Zakat Payer appeals against the Primary Committee's Decision, which ruled to dismiss its objection in form, on the Grounds that the said objection filed on 04/01/1437 AH was not reasoned, as the Primary Committee considered that objection is in violation of Paragraph (10) Implementing Regulations for the Collection of Zakat issued by Ministry of Finance's Decision No. (393) of 06/08/1437 AH, which stipulates: "If Zakat Payer found that the amount required to be paid under Zakat Assessment's Notification was not in conformity with reality, it may object to that Notification by virtue of a reasoned motion sent by registered mail to the Authority that notified Zakat Payer within sixty (60) days from the date of its receipt of the Notification; however, failure to do so will result in forfeiting its right to object to or reconsider that Notification." Also, Zakat Payer contends that it has filed its objection to Zakat Assessment within the statutory period, which confirms its view on the validity of its objection to Zakat Assessment in form for being filed within the said period. In addition, the submission of the objection within the statutory period ensures the soundness of Zakat Payer's action in form. As for the acceptance of the objection on its merits, it is necessary to accept the Grounds contained therein. Accordingly, the Primary Committee's Decision in question was incorrect, as the said objection was filed within the statutory period and that its substantive Grounds were not addressed or discussed by the Primary Committee.



Moreover, Zakat Payer clarifies that it does not have the amount mentioned in Zakat Assessment, as charging Zakat Payer with such a large and exaggerated amount would have an adverse impact on its business and all its personnel and would often result in the closure of the Institution “Zakat Payer” and its failure to meet its obligations towards its employees and customers. However, Zakat Payer’s request regarding the calculation of Zakat to be carried out pursuant to its regular accounts that show its true business volume and accurately clarify the value of the amount subject to Zakat under these accounts is considered a fundamental ground for objecting to the Primary Committee’s Decision in question.

Furthermore, Zakat Payer affirms that, since Zakat imposed on institutions within the Kingdom is related to the funds that have completed the Zakat Year, in accordance with the teachings of our true religion, the funds in the possession of Zakat Payer were not all its own funds; so how is Zakat Payer required to pay Zakat on the total of those funds without verifying their authenticity and their true owner? However, it is necessary to take into consideration the existence of large financial losses that were incurred by Zakat Payer as a result of embezzlement and theft of sums of money therefrom, in addition to some incidents.

Zakat Payer concluded by requesting acceptance of its appeal against Decision No. (5) of 1438 AH delivered by the Primary Department, as well as acceptance of revising the Zakat Assessment for years 1432 – 1435 AH to submit the regular financial statements according to accurate and valid accounts to determine the true amount of Zakat that can be charged with, which will clear Zakat Payer’s conscience before Allah, in addition to its full readiness to submit any financial statements and documents required.

On Wednesday, 09/07/1441 AH, the Department held its session to consider the appeal filed by Zakat Payer, wherein it asked Zakat Payer’s Attorney whether the Zakat due in question had been paid, as Zakat Payer’s Attorney replied that that he had no information on this matter and that he would return to his client for inquiry.

Having asked GAZT’s Representatives regarding Zakat Payer’s Attorney response, they replied that Article (23.3) Implementing Regulations for the Collection of Zakat has endorsed that the appeal is dismissed in form for failure of payment and that Zakat Payer acknowledged that failure of payment after reviewing the said appeal, as this situation is similar to the consideration of appeals filed that are of the same nature as the appeal filed before the Department.

The Department, having taken cognizance of Zakat Payer’s statement of Projects appeal and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

The Department, having taken cognizance of Zakat Payer’s appeal and the appealed Decision, found that:

- With regard to GAZT’s request to disregard Zakat Payer’s appeal for lack of submission of the bank guarantee in order to hear its claim as stated in its appeal, on the ground that the Implementing Regulations for the Collection of Zakat had stipulated this condition for accepting Zakat Payer’s appeal; and since Royal Order No. (26040) of 21/04/1441 AH enacted to approve the Tax Dispute and Violation Committee

Procedures has stipulated in Clause (Third) that: “The Dispute and Appellate Circuits shall consider the objections submitted by the concerned parties against the Decisions issued by the General Authority of Zakat and Tax regarding Zakat Assessments in accordance with Tax Dispute and Violation Committee Procedures;” and since these Procedures did not include any requirement obligating Zakat Payers to pay the amounts required to be paid when objecting to the same, as the Income Tax Law, as amended in 1438 AH, came to revoke to that requirement; and since Acquittance is the rule and the burden of proof lies upon whomever claims the contrary; and since GAZT was the first party objecting to Zakat Declaration submitted by Zakat Payer; and since the dispute between GAZT and Zakat Payer was not within the time frame of the Implementing Regulations for the Collection of Zakat of 1438 AH; Therefore, the Department satisfies to disregard GAZT’s request.

- With regard to Zakat Payer’s objection to the Primary Committee’s Decision, which ruled to dismiss the same in form for lack of submission within the statutory period, since the dispute between GAZT and Zakat Payer was centered on Zakat Payer’s dissatisfaction of GAZT’s Estimated Assessment after its Zakat Declaration was rejected by GAZT; and since the Primary Committee has decided to disregard Zakat Payer’s objection on the ground that the said objection dated 04/01/1437 AH was not reasoned and that the next objection dated 05/01/1437 AH was not registered with GAZT until 27/02/1437 AH, thus exceeding the statutory period after which the subject of the objection cannot be addressed; and since it is established that Zakat Payer has filed its First Objection to the Estimated Assessment on 04/01/1437 AH, which determines that the objection was filed within the statutory period set for filing objections; and since the facts of the Primary Committee’s Decision in question have established that the First Objection filed by Zakat Payer within the statutory period was sufficient enough to state the reason for the objection, which included Zakat Payer’s request to calculate Zakat as per its Declaration submitted and disregard GAZT’s Estimated Assessment, and that the Primary Department should have examined that matter by confronting Zakat Payer with the reasons or evidence claimed by GAZT that would make the Primary Department revoke its Decision, which ruled to accept GAZT’s Estimated Assessment and disregard Zakat Declaration submitted by Zakat Payer; and since the aforementioned conclusion is not affected by the statement that the Second Objection was filed after the lapse of the statutory period for considering the objection, since considering those pleas and objections stated in Zakat Payer’s appeal would ensure that the Zakat due from Zakat Payer has been paid on funds whose ownership and subjection to Zakat must be verified in the manner required by Sharia and Zakat Regulations; Therefore, the Department satisfies to accept Zakat Payer’s appeal, abolish the Decision delivered by the First Primary Committee for Zakat and Tax Objections in Riyadh as to conclusion it had in this regard, and refer the Objection to First Department for Determination of Income Tax Violations and Disputes in Riyadh for consideration on its merits.

Decision

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

First: In Form:

Accept Zakat Payer’s (..... Institution, C.R. No) appeal against Decision No. (05) of 1438 AH delivered by the First Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:



Abolish the appealed Decision and refer the Objection to First Department for Determination of Income Tax Violations and Disputes in Riyadh, for consideration on its merits, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-125)

Delivered in Appeal No. (Z-1712-2018)

Principle No. 237

Zakat Payer's Declaration shall be taken into consideration in the calculation of the fixed assets if it is supported by evidence.

Facts:

On Saturday, 13/04/1442 AH, corresponding to 28/11/2020 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, in accordance with Paragraph (B) of Article (67) of Income Tax Law, promulgated under Royal Decree No. (M/1) of 15/10/1425 AH, as amended under Royal Decree No. (M/113) of 20/11/1438 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 15/04/1437 AH, by Company ("Zakat Payer"); against Decision No. (05) of 1437 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (59) and Objection No. (266), filed by Zakat Payer against General Authority of Zakat and Tax ("GAZT"). The appealed Decision ruled as follows:

First: In Form:

Accept Zakat Payer's (..... Company) objection to GAZT's Zakat and Tax Assessment of 2001 – 2008 Taxes.

Second: On Merits:

1. Uphold GAZT's Decision for rejecting Zakat Payer's request to deduct item (Machinery and Equipment Expenses) from its Zakat Base in question, for the Grounds stated in the Decision.
2. Uphold GAZT's Decision for rejecting the deduction of item (Labor Salaries) for the period preceding the beginning of the activity from Zakat Base, for the Grounds stated in the Decision.
3. Oblige GAZT to recalculate the depreciation for subsequent years for consideration of the differences of 2001, for the Grounds stated in the Decision.
4. Uphold GAZT's Decision for rejecting the deduction of item (Vehicle Expenses of 2001 – 2004) from Zakat and Tax Base, for the Grounds stated in the Decision.
5. Uphold GAZT's Decision for rejecting the deduction of item (Computer Expenses of 2001) from Zakat and Tax Base, for the Grounds stated in the Decision.
6. Establish resolution of dispute on item (Currency Differences) by GAZT accepting Zakat Payer's view.
7. Establish resolution of dispute on item (Miscellaneous Expenses) by GAZT accepting Zakat Payer's view.
8. Uphold GAZT's Decision for rejecting the deduction of item (Salaries of Mr. of 2001 – 2006) from Zakat and Tax Base, for the Grounds stated in the Decision.

9. Uphold GAZT's Decision for approval of item (Import Differences) as undeclared imports in Zakat Payer's Declaration and issuance of an Estimated Assessment for differences of all years, for the Grounds stated in the Decision.
10. Uphold GAZT's Decision for adding item (Payables of 2005 – 2008) to Zakat Base, for the Grounds stated in the Decision.
11. Uphold GAZT's Decision adding item (Zakat Provision of 2002, 2006, and 2007), for the Grounds stated in the Decision.

Since Zakat Payer (..... Company) was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

1. Item (Depreciation Differences of “SAR 2,734,652”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's addition of the depreciation differences amounted to (SAR 2,734,652) to Zakat Base for all years from 2001 to 2008, as Zakat Payer contends that the factory has calculated depreciation according to generally accepted accounting principles and that such depreciation pertains to machines' depreciation that GAZT excluded from the fixed assets; however, these assets are actually represent the said factory. In addition, if GAZT excluded those machines, it would be as if the factory had become completely nonexistent. Zakat Payer concluded by requesting exclusion of these differences from Zakat Base and abolishment of Zakat and Tax differences resulting therefrom.

2. Item (Vehicle Expenses of “SAR 28,497”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's rejection of the item in question on the Grounds that Zakat Payer's assets do not include vehicles, as Zakat Payer contends that they are actual expenses supported by documents and are not of a capital nature, since the nature of Zakat Payer's business is industrial activity and the nature of the factories' business necessitates the presence of vehicles, whether for sales and marketing representatives or personnel. Also, the Income Tax Law endorses the deduction of these expenses from Zakat and Tax Base in accordance with Articles (12) and (13) of Income Tax Law and Article (13) of its Implementing Regulations, since these expenses are related to realizing income and are not among expenses that may not be deducted as stated in the above Articles.

3. Item (Computer Expenses of “SAR 1,175”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's rejection of the item in question on the Grounds that Zakat Payer's assets do not include computers, as Zakat Payer contends that they represent actual expenses incurred that are necessary to carry out its activity and supported by documents and are not of a capital nature. In addition, Zakat Payer has submitted its financial statement since its incorporation. Also, the Income Tax Law endorses the deduction of these expenses from Zakat and Tax Base in accordance with Articles (12) and (13) of Income Tax Law and Article (13) of its Implementing Regulations, since these expenses are related to realizing income and are not among expenses that may not be deducted as stated in the above Articles.

4. Item (Salary of Mr. “Surname:”):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's rejection to add the item in question to Zakat Base for years 2001 to 2006 on the Grounds that the employee is not sponsored by Zakat Payer, as Zakat Payer contends it adheres to its previous pleas, since the said employee is under its sponsorship. In addition, Zakat Payer has previously submitted a copy of his Iqama ID No. (...) issued by the Jeddah Passports Department, which shows that his legal sponsor (the employer) is Company “Zakat Payer.” Accordingly, it is not legally correct to add the employee's salary to Zakat Base.

5. Item (Import Differences and its Profits of “SAR 6,229,063”):



Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's procedure regarding the item in question on the Grounds that Zakat Payer had previously declared the internal and offshore procurements in its Declarations, which was affirmed by Zakat Payer in its previous memorandum, wherein it stated the following:

"Internal procurements were inadvertently declared in some years, which is an honest mistake that will be corrected, as long as they are supported by evidence. Also, some years have included inaccurate classification of internal and offshore procurement items due to figures overlapping. Eventually, the total amount of procurements remains accurate and consistent with the books. Therefore, the procurement differences and its profits added by GAZT to Zakat and Tax Base are incorrect."

6. Item (Payables of "SAR 2,376"):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's addition of the item in question to Zakat Base, as Zakat Payer adheres to its view regarding the same, since it represents trade payables that have not completed the Zakat Year; hence, they shall not be added to Zakat Base. Zakat Payer concluded by requesting exclusion of these payables from Zakat Base and abolishment of Zakat and Tax differences resulting therefrom.

7. Item (Zakat Provision of "SAR 34,906"):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's addition of the Zakat due of 2002, 2006, and 2007 to Zakat Base, as Zakat Payer contends that Zakat amounts shall not be subject to Zakat, even if it had completed the Zakat Year. Accordingly, the addition of Zakat amounts to Zakat Base is considered a violation of Sharia. Moreover, the year profit was subjected to Zakat and Tax before deduction. Therefore, the addition of Zakat amounts to Zakat Base for a second time is considered a double charge of Zakat.

8. Item (Fixed Assets of "SAR 24,323,370"):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's non-deduction of the full amount of fixed assets due to its exclusion of machines and equipment from fixed assets, on the Grounds that the in-kind share did not include those assets, as the value of the machines amounted to (SAR 4,010,000), which were excluded from Zakat Base, in addition to their depreciation for all years, which resulted in a cumulative effect of the excluded assets amounting to (SAR 24,323,370), wherein Zakat Payer contends that these machines represent assets owned by the factory "Zakat Payer" that were acquired during 2001. Also, the invoices issued by "..... Institution" to transfer those machines to Zakat Payer, including all their details were previously submitted. Therefore, there is no legal justification for upholding GAZT in excluding these machines, especially since they are the only machines employed in production, as no factory can be operated without machines. Moreover, GAZT added the counterpart funding to these machines represented by the partners' equity to Zakat Base, which necessitates their deduction from the same in accordance with the System applied by GAZT, which stipulates that the acquisition assets shall be deducted from Zakat Base due to the fact that they are not subject to Zakat as per Sharia.

9. Item (Incorporation Expenses of "SAR 1,473,637"):

Zakat Payer objects to the Primary Committee's Decision, which upheld GAZT's non-approval of some incorporation expenses represented by the salaries of some employees in the period preceding the beginning of the activity, as the contested Assessment mentioned that these expenses are duplicated with general and administrative expenses, wherein Zakat Payer contends that GAZT's conclusion is incorrect, as the incorporation expenses are considered intangible assets that are

deducted from Zakat Base in accordance with the System applied by GAZT in this regard.

On 02/08/1439 AH, GAZT submitted a Rejoinder to Zakat Payer's appeal, which included its view on the contested items as follows:

1. Item (Depreciation Differences for All Years):

GAZT affirms that these differences are due to the failure to approve equipment and incorporation expenses for the lack of evidence of the existence of equipment and machines at all, and that the reason for its procedure will be explained upon addressing Items No. (8) and (9) of its Rejoinder.

2. Item (Vehicle Expenses of 2001 – 2004):

GAZT affirms that it rejected the item in question due to the absence of vehicles within Zakat Payer's assets as mentioned in Item No. (1), as well as the further discussion of Items No. (8) and (9) of its Rejoinder.

3. Item (Computer Expenses of 2001):

GAZT affirms that it rejected the item in question due to the absence of vehicles within Zakat Payer's fixed assets.

4. Item (Salary of Mr. "Surname:" of 2001 – 2006):

GAZT affirms that the employee is not sponsored by Zakat Payer, as the name mentioned in the payroll is ".....," not ".....," since the name that is included in the payroll must be the employee's name and not his surname. In addition, the employee's name reported by Zakat Payer is not the same name included in the passport printout attached to the Case file, nor is his Iqama ID submitted in its Version No. (3) which expires on 30/12/1434 AH, which indicates that Version No. (1) which represents the first issuance of Iqama ID was in 1431 AH, corresponding to 2010 AD; hence, the employee was not sponsored by Zakat Payer during the previous years from 2001 to 2008.

5. Item (Import Differences for All Years):

GAZT affirms that the Declarations include the value of internal and offshore procurement, which are signed and certified by Zakat Payer's auditor, indicating that these Declarations were reviewed and audited before certification. Accordingly, GAZT's procedure is valid and sound in charging Zakat Payer for the import differences resulting from the review and comparison.

6. Item (Payables of 2005 – 2008):

GAZT affirms that these amounts of the item in question are fixed with no activity thereon as per the analytics submitted by Zakat Payer as shown for 2005 and 2006, noting that the amounts included in the Assessment are (SAR 950) and (SAR 250), not (SAR 484), (SAR 836), and (SAR 220), as included in Zakat Payer's objection, as these amounts were added pursuant to Fatwa No. (22656) of 1424 AH.

7. Item (Zakat Provision of 2002, 2006, and 2007):

GAZT affirms that these amounts withheld by Zakat Payer for GAZT's benefit have not been paid and completed the Zakat Year; thus, it had to add these amounts to Zakat Base pursuant to Paragraph (4) of Clause (First) of GAZT's Circular No. (8843) of 1392 AH.

8. Item (Fixed Assets for All Years):

GAZT affirms that, according to the Articles of Association, the in-kind share provided by "..... Institution" did not appear to include machines, in addition to the fact that the invoice submitted by Zakat Payer does not include modified equipment.

9. Item (Incorporation Expenses for All Years):

GAZT affirms that the non-approval of the salaries included in the item in question was due to the double charge of these salaries pursuant to documents submitted by Zakat Payer, as they are included in the salaries of general expenses of 2001, indicating the existence of a duplication. In addition, those employees were not sponsored by



Zakat Payer, and that Zakat Payer had submitted (2) two different analyses for the same item.

GAZT concluded by adhering to the validity of its procedure regarding the contested items.

Since the Department decided opening of pleadings, it asked parties to Appeal whether they had further additions. The Department did not receive any response from Zakat Payer despite being duly notified through email on 09/11/1441 AH, while GAZT responded with the submission of its Rejoinder to Zakat Payer's statement of appeal.

The Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory.

On Merits:

The Department, having taken cognizance of Case documents, statements of appeal submitted by parties to Appeal, and the subject of dispute, found that; since it decided upon examining the contested items and their arrangement and classification in the appealed Decision, that the proper sequence of Zakat calculation of items (Fixed Assets), (Incorporation Expenses), and (Depreciation Differences) is related to each other, the adjudication of the dispute between parties to Appeal requires taking into consideration the completion and arrangement of Zakat calculation of the said items to determine which items should be added to or excluded from Zakat.

As for Zakat Payer's appeal regarding item (Fixed Assets), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the full amount of the fixed assets shown in the financial statement, as these machines were acquired in 2001; hence, there is no legal justification preventing the deduction of these assets, while GAZT argued that, according to the Articles of Association, the in-kind share provided by "..... Institution" did not include machines, in addition to the fact that the invoice submitted by Zakat Payer does not include modified equipment.

The Department, having taken cognizance of Zakat Payer's appeal and its financial statement and Articles of Association, found that: since Zakat Payer has requested to deduct the net fixed assets as per the financial statements it had submitted; and since the Primary Committee based its Decision on the conclusion it had from the Articles of Association, which stated that the in-kind shares amounted to (SAR 8,275,000), consisting of (.....) worth (SAR 6,000,000), buildings worth (SAR 2,000,000), and parking lots and building services worth (SAR 275,000), without any further assets included in the Articles of Association; and since Note No. (1) of the first audited financial statements issued for Zakat Payer upon its incorporation (in 2001) and all subsequent years subject to the dispute, stated that Zakat Payer's capital was set at (SAR 13,150,000) divided into in-kind shares amounting to (SAR 8,275,000) riyals and cash shares amounting to (SAR 4,875,000); and since Note No. (5) "Fixed Assets" stated that there was equipment for Zakat Payer that was added during the year of (SAR 4,716,000), tools and equipment of (SAR 5,289), and furniture and decoration of (SAR 3,644) during 2001, which was confirmed by the cash flow statement regarding the existence of a cash flow for investment activities of (SAR 12,999,993), including in-kind shares and other assets. In addition, Zakat Payer's current assets (cash, inventory) amount to only (SAR 429,357), which confirms the disbursement



of the cash shares provided for purchasing fixed assets; and since the matter was as stated, it is not possible to rely solely on the Articles of Association regarding the estimation of the in-kind shares stated therein to verify the existence of fixed assets without considering the value of the cash shares, which were used to purchase the fixed assets in question pursuant to Zakat Payer's use of its funds to acquire those assets, which determines that the basis for calculating fixed assets is according to Zakat Payer's Declaration, which is confirmed by the evidence referred to in the details of the item in question; Consequently, the GAZT's conclusion groundless of any fact or law; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Incorporation Expenses), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to approve the deduction of all incorporation expenses from Zakat Base, which are represented by the salaries of some employees in the period preceding the beginning of the activity, while GAZT argued that the non-approval of those salaries was due to the double charge of these salaries pursuant to documents submitted by Zakat Payer, as they are included in the salaries of general expenses of 2001, indicating the existence of a duplication, and that those employees were not sponsored by Zakat Payer. The Department, having taken cognizance of Zakat Payer's appeal and the appealed Decision, found that, since expenses rejected by GAZT are salaries of employees claimed to be paid by Zakat Payer in the period preceding its incorporation; and since the Articles of Association stated that the Zakat Payer was a branch of "..... Institution for Agriculture and Industry" and was converted into a company; and since such a matter does not require the existence of a preparatory activity carried out by a number of employees before practicing the actual activity of an institution, as the activity is ongoing and continuous; since GAZT has deducted the expenses necessary for the said institution to be converted into a company such as fees for issuing license, extracting Articles of Association and Commercial Registration; and since Zakat Payer has failed to submit documents supporting its claims of the absence of duplication between the expenses of employees' salaries added as administrative expenses and employees' salaries included as an incorporation expense; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

With regard to GAZT's claim for the existence of a duplication regarding those labor salaries and that these employees were not sponsored by Zakat Payer; since GAZT did not take into consideration the tracking of those expenses and the extent to which they were incurred in through the years in question; and since the mere consideration that those employees were not sponsored by Zakat Payer does not negate the incurrence of these expense regardless of the existence of a statutory violation when employing workers who were not sponsored by Zakat Payer; Therefore, the Department satisfies to amend the appealed Decision by deducting the expenses of employees' salaries who were not sponsored by Zakat Payer for the year 2001, and to dismiss Zakat Payer's appeal on the remaining amounts claimed to be within the incorporation expenses.

As for Zakat Payer's appeal regarding item (Depreciation Differences of "SAR 2,734,652"), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested not to add the depreciation differences for all years in question, as these differences pertain to machines' depreciation that GAZT excluded from the fixed assets as if the factory did not exist, while GAZT argued that these differences are due to the failure to approve equipment and incorporation expenses for the lack of evidence of the existence of equipment and machines at all, since the in-kind share provided by "..... Institution" did not include machines, tools, or equipment, and that the invoice submitted by Zakat Payer does not include modified equipment. GAZT added that it adheres to the validity of its procedure.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, found that: since adjudication of item in question requires referring to the Decision issued by this Department regarding items (Fixed Assets) and (Incorporation Expenses), wherein the Department accepted Zakat Payer's appeal on the first item and dismissed the same on the second item as previously stated above; and since the Department has established the existence of assets held by Zakat Payer, which determines that the associated depreciation amounts must be deducted, without accepting Zakat Payer's request to deduct the depreciation related to the incorporation expenses based on the conclusion that had been reached by this Department in this regard as previously stated above; Therefore, the Department satisfies to amend the appealed Decision by deducting the depreciation related to item (Fixed Assets), and dismissing the same regarding item (Incorporation Expenses).

As for Zakat Payer's appeal regarding item (Vehicle Expenses of "SAR 28,497" of 2001 – 2004), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the expense of the item in question, as they are actual expenses supported by documents, while GAZT argued that those expenses should not be deducted due to the absence of assets in Zakat Payer's budget that would verify the existence of those expenses claimed by Zakat Payer.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute between parties was centered on the existence of evidence proving the incurrance of these expense to determine their deduction from Zakat Base; and since the subject of these expenses is not necessarily related to Zakat Payer's possession of vehicles; and since it is customary for establishments to pay transportation and use allowances for their employees' private vehicles in the form of allowances given to them or added to their wages; and since the appealed Decision has upheld GAZT's Decision for rejecting the deduction of these expenses due to their lack of connection to assets held by Zakat Payer without considering Zakat Payer statement regarding the existence of actual documents supporting the incurrance of these expense without relying on the existence of vehicles held by Zakat Payer; Therefore, the Department satisfies to decide that GAZT's Decision is groundless of any fact or law, and by extension, to accept Zakat Payer's appeal by deducting the item in question as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Computer Expenses of "SAR 1,175" of 2001), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the expense of the item in question, as they are actual expenses that do not require the presence of computers within the Zakat Payer's assets in order to accept the same as an expense, while GAZT argued that Zakat Payer's assets do not include computers within the fixed assets.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute between parties was centered on the existence of evidence proving the incurrance of these expense; and since the subject of these expenses is not necessarily related to Zakat Payer's possession of computers and thus considering the same among its fixed assets; and since the appealed Decision has upheld GAZT's Decision for rejecting the deduction of these expenses due to their lack of connection to assets held by Zakat Payer without considering Zakat Payer statement regarding the existence of actual documents supporting the incurrance of these expense without relying on the existence of computers held by Zakat Payer; Therefore, the Department satisfies to decide that GAZT's Decision is groundless of any fact or law, and by extension, to accept Zakat Payer's appeal by deducting the item in question as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard.



As for Zakat Payer's appeal regarding item (Salary of Mr. "Surname:"), which includes its objection to the Objection Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the salaries of the said employee from Zakat and Tax Base of 2001 – 2006, while GAZT argued that it rejected the deduction of those salaries for the absence of Zakat Payer's sponsorship of the said employee regarding the years in question.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the appealed Decision, found that: since the dispute was centered on the absence of Zakat Payer's sponsorship of the said employee; thus, the absence of employment relationship between the said employee and Zakat Payer, which results in GAZT's rejection to deduct his salaries from Zakat Payer's Zakat and Tax Base; and since the absence of Zakat Payer's sponsorship of its employees and the assumption of the occurrence of a violation by Zakat Payer does not negate the consideration of the salaries paid to the said employee as deductible expenses when calculating Zakat Base; and since GAZT has failed to provide evidence that refutes the incurrence of these expense by Zakat Payer in order to claim that the said employee was not sponsored by Zakat Payer; Therefore, the Department satisfies to decide that GAZT's Decision is groundless of any fact or law, and by extension, to accept Zakat Payer's appeal by deducting the item in question as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Import Differences and its Profits of "SAR 6,229,063"), which includes its objection to the Primary Committee's Decision regarding the same, wherein Zakat Payer requested to deduct the import differences and its profits, while GAZT argued that the Declarations include the value of internal and offshore procurement, which are signed and certified by Zakat Payer's auditor.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that: since the dispute was centered on the deduction of the import differences and its profits; and since the Department may take the Grounds of the Decision in question without addition whenever it deems that these Grounds were sufficient to provide any further addition, which indicates that by supporting these Grounds, it only emphasizes that the Department did not find any Decision-related objections that require a response that went beyond those Grounds; and since it was established that the appealed Decision, with regard to the items in dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Primary Committee issuing the Decision has examined the source of the dispute for each item and reached to the conclusion stated in its wording; and since this Department did not find any requirement for correction or further response in light of submissions and pleas presented thereto; Therefore, the Department satisfies to decide that the foregoing does not affect the conclusion reached by the Primary Committee's Decision; and since the aforementioned is not affected by Zakat Payer's claim that internal procurements were inadvertently declared in some years, which is an honest mistake that will be corrected, as long as they are supported by evidence, and that the inaccurate classification of internal and offshore procurement items that took place in some years caused an overlap in figures in order to match Zakat Payer's books, as such unfounded claim did not address the reason that could undermine the violent presumption applicable to Zakat Payer's case after the figures of the amounts of those imports were approved by Zakat Payer, and then the existence of the certification of its external auditor on those data after auditing; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Payables of "SAR 2,376"), which includes its objection to the Primary Committee's Decision regarding the same, wherein



Zakat Payer requested to deduct the item in question from Zakat Base, while GAZT argued that these amounts of the item in question are fixed with no activity thereon as per the analytics submitted by Zakat Payer.

The Department, having taken cognizance of statements of appeals, defenses, and pleas raised by parties thereto, as well as the conclusion reached in the appealed Decision, found that, since the dispute was centered on the deduction of those payables from Zakat Base; and since the Department may take the Grounds of the Decision in question without addition whenever it deems that these Grounds were sufficient to provide any further addition, which indicates that by supporting these Grounds, it only emphasizes that the Department did not find any Decision-related objections that require a response that went beyond those Grounds; and since it was established that the appealed Decision, with regard to the items in dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Primary Committee issuing the Decision has examined the source of the dispute for each item and reached to the conclusion stated in its wording; and since this Department did not find any requirement for correction or further response in light of submissions and pleas presented thereto; Therefore, the Department satisfies to decide that the foregoing does not affect the conclusion reached by the Primary Committee's Decision; and since the aforementioned is not affected by Zakat Payer's pleas or Grounds that the amounts of the item in question should not be added to its Zakat Base for years 2005 and 2006 on the Grounds that these amounts represent trade payables that have not completed the Zakat Year in light of GAZT's verification of the same during 2005 and 2006; hence, their existence in Zakat Payer's accounts necessitates addition to Zakat Base since they considered debts owed by Zakat Payer to third parties; and since Zakat Payer has failed to provide evidence supporting its claim; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed Decision as to conclusion it had in this regard.

With regard to item of Zakat Due in the amount of SAR 34,906, having considered content of the appeal filed by Zakat Payer regarding this item and ZATCA's response thereto, and having reviewed the primary Decision, it turned out that subject of the dispute lies in the Appellant's request to deduct the amount of zakat due from him, and not to add it to his zakat base, by claiming that the amount due as zakat is not legally permissible to be added to his base for the years 2002, 2006 and 2007. Since these funds, although related to Zakat Payer's liability as a duty that must be paid as the amount specified for each year in dispute, this does not negate the fact that the amounts of these zakat dues represent funds held by Zakat Payer, and that estimating the amount due to be paid does not conflict with including all of these funds that are held by Zakat Payer when a year passed thereon, as Zakat Payer delay in paying zakat amount does not negate the existence of these funds with him and necessity of adding the same within his base. Therefore, the Department concluded to dismiss Zakat Payer's appeal and to uphold the primary Decision regarding the item under consideration.

Decision

First: In Form:

Accept Zakat Payer's (..... Company "Factory", C.R. No.) appeal against Decision 05) of 1437 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

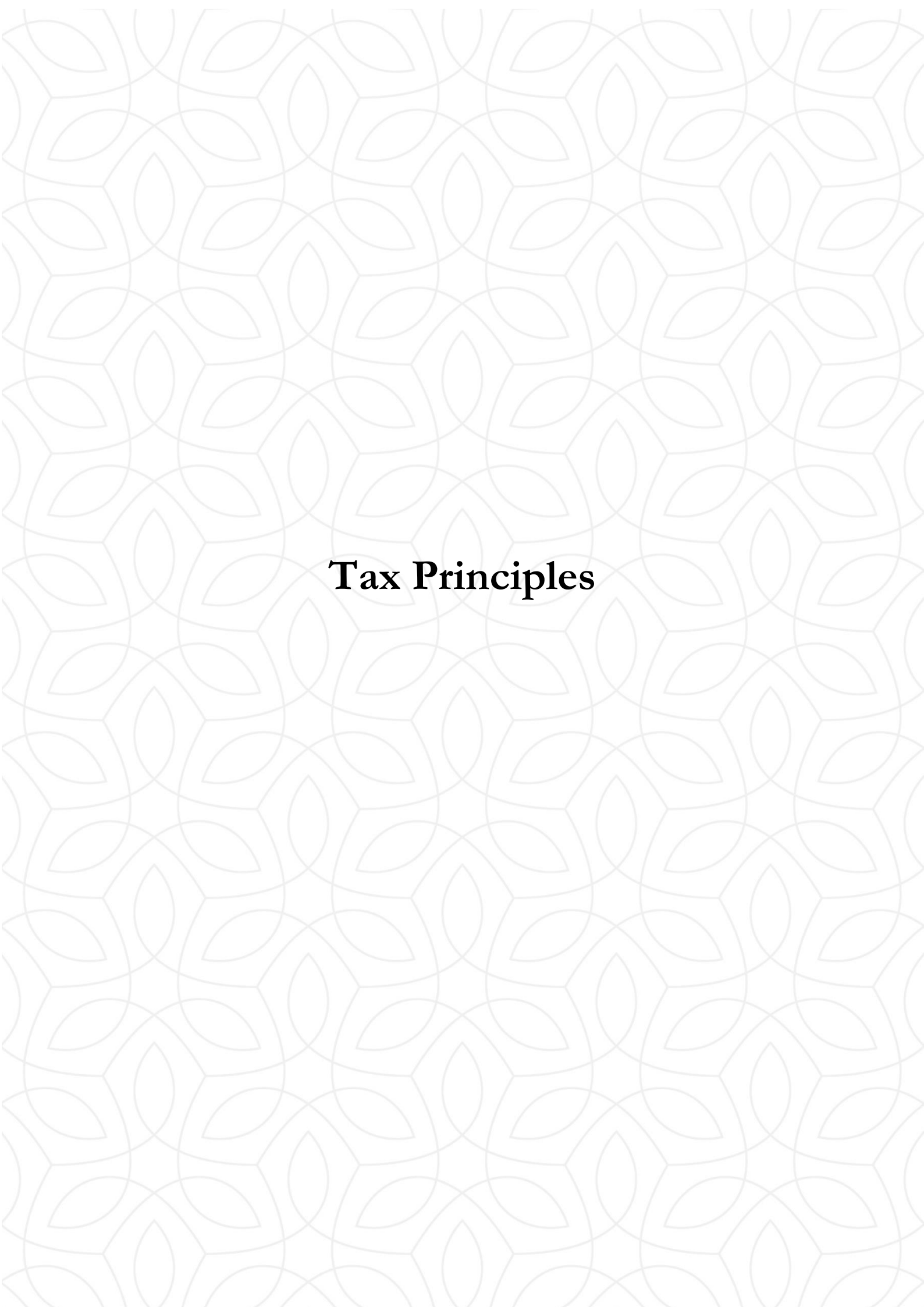
Second: On Merits:

1. Accept Zakat Payer's appeal on item (Fixed Assets of "SAR 24,323,370" for All Years) by approving the fixed assets stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Amend the appealed Decision by Majority regarding item (Incorporation Expenses of "SAR 1,473,637" for All Years) by deducting the expenses related to employees'

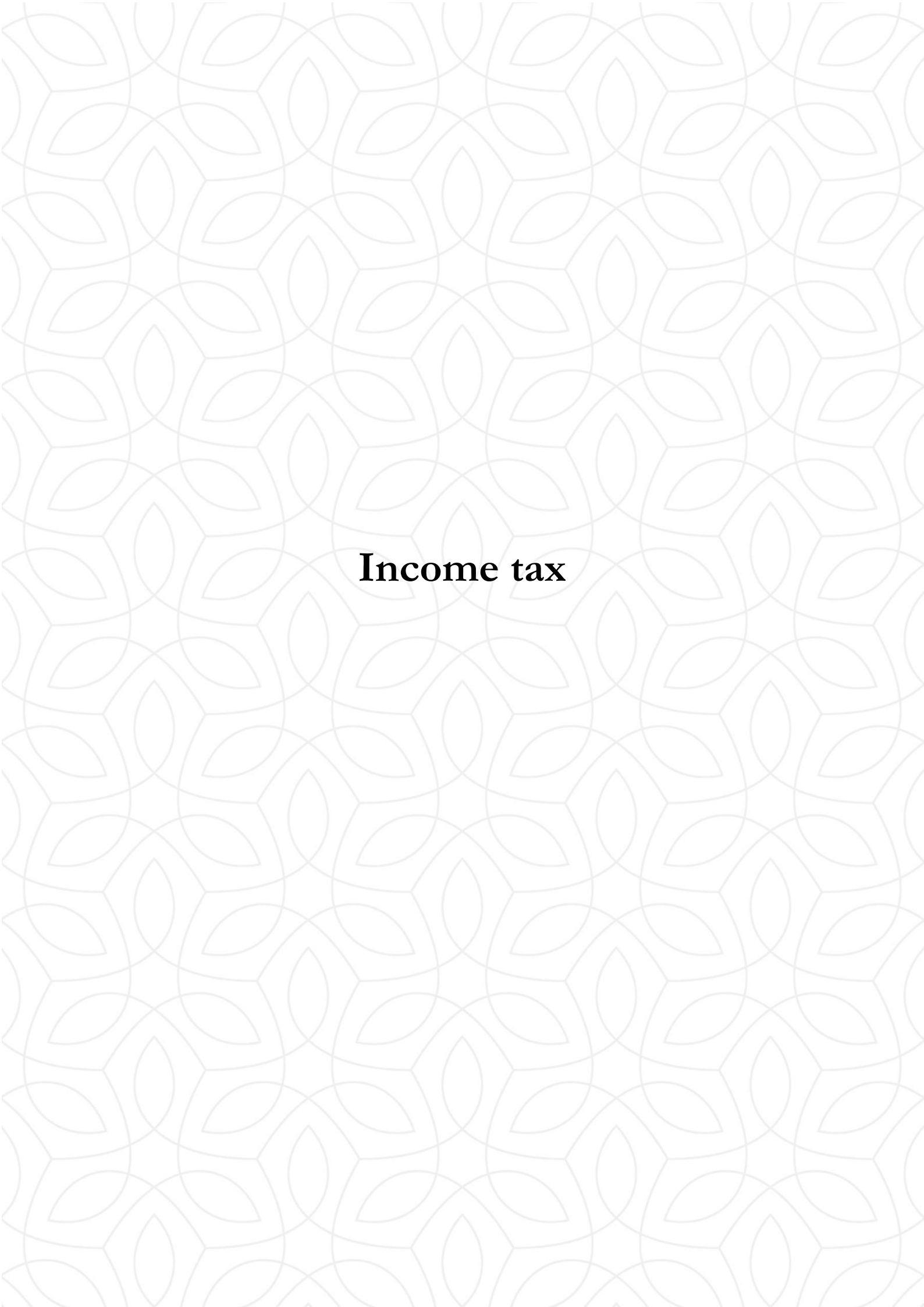


salaries who were not sponsored by Zakat Payer of 2001 without any other expenses, for the Grounds stated herein.

3. Amend the appealed Decision regarding item (Depreciation Differences of “SAR 2,734,652” for All Years) by deducting the depreciation related to item (Fixed Assets) without the depreciation related to item (Incorporation Expenses), for the Grounds stated herein.
4. Accept Zakat Payer’s appeal on item (Vehicle Expenses of “SAR 28,497” of 2001 – 2004) by deducting the vehicle expenses as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
5. Accept Zakat Payer’s appeal on item (Computer Expenses of “SAR 1,175” of 2001 – 2004) by deducting the computer expenses as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
6. Accept Zakat Payer’s appeal by Majority on item (Salary of Mr. “Surname:”) by deducting the salaries of 2001 – 2006 as stated in its Declaration, and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
7. Dismiss Zakat Payer’s appeal on item (Import Differences and its Profits of “SAR 6,229,063” for All Years) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
8. Dismiss Zakat Payer’s appeal on item (Payables of “SAR 2,376” of 2005 – 2008) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
9. Dismiss Zakat Payer’s appeal on item (Zakat Provision of “SAR 34,906” of 2002, 2006, and 2007) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



Tax Principles



Income tax



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Dammam

Decision No. (IZD-2021-260)

Delivered in Appeal No. (Z-10010-2019)

Principle No. 238

The late payment fine resulting from the imposition of tax shall be dismissed by abolishing that tax amount.

Facts:

Facts of the case are summarized as follows: Mr., holder of National ID No., in his capacity as Plaintiff's (..... Company, C.R. No.) ("Taxpayer") Director, by virtue of its Articles of Association; has filed a statement of claim objecting to the Decision issued by General Authority of Zakat and Tax ("Defendant/GAZT") regarding Zakat Assessment of 2013 AD, which centered in the following items:

1. **Item (Undeclared Revenues of "SAR 5,405,243"):**
Plaintiff objects to Defendant's Decision, claiming that it maintains regular accounts, which are prepared, supervised, and audited by a certified public accountant, and that all amounts have been duly declared.
2. **Item (Net Fixed Assets of "SAR 619,9773"):**
Plaintiff objects to Defendant's Decision, claiming that it has submitted a statement clarifying the reasons that precluded the registration of assets under its name.
3. **Item (Addition of Investments of "SAR 5,95,260" to Zakat Base):**
Plaintiff objects to Defendant's Decision, claiming that these investments were not for the purpose of Murabaha, but rather low-risk investments held with a local bank as part of collateral provided to the bank in exchange for banking facilities provided to Plaintiff. In addition, any profits generated from these investments, if any, are recorded in the income statement.
4. **Item (Unrecorded Payments):**
Plaintiff objects to Defendant's Decision, claiming that it has paid an amount of (SAR 200,000,00) on 15/05/2014 AD under receipt No. (.....).

Having presented the statement of claim to Defendant, it responded as follows:

1. **Item (Creditors Completed Zakat Year):**
Defendant has accepted Plaintiff's objection to the item in question.
2. **Item (Net Fixed Assets):**
Defendant clarifies that it did not deduct the net fixed assets from Zakat Base since they were not registered under Plaintiff's name. Defendant added that its Decision was based on Article (4/Second) of Implementing Regulations for the Collection of Zakat.
3. **Item (Investments of 2013):**
Defendant clarifies that notes to the financial statement have shown that the investment in question was included in a Murabaha-based portfolio. Accordingly, it is considered a part of trading assets that are added to Zakat Base. Defendant added that its Decision was based on Article (4/Second) of Implementing Regulations for the Collection of Zakat.



4. Item (Payments):

Defendant adheres to the validity and soundness of its procedure regarding the item in question.

5. Item (Undeclared Revenues):

Defendant clarifies that it has rejected Plaintiff's objection to the item in question for failure to submit documents supporting its claim. Defendant added that its Decision was based on Paragraph (3) of Implementing Regulations for the Collection of Zakat.

On Sunday, 14/04/1442 AH, the Department held its session remotely to consider the Case, wherein Mr., holder of National ID No., appeared in his capacity as Defendant's Representative, by virtue of Authorization No. dated 17/10/1441 AH, issued by GAZT's Deputy Governor for Legal Affairs. Plaintiff's Representative did not appear at the session, nor did Plaintiff submit an excuse for her absence despite being duly served of the session through the e-portal of the General Secretariat of Tax Committees. Accordingly, Plaintiff hereby waives its right to attend and present its pleas. The Department, having taken cognizance of Article (20.2) of Tax Dispute and Violation Committee Procedures, has unanimously decided to drop the Case.

On Saturday, 21/08/2021 AD, the Department held its session remotely to consider the Case, wherein Mr., holder of National ID No., in his capacity as Plaintiff's (..... Company, C.R. No.) Director, by virtue of its Articles of Association; and Mr., holder of National ID No., appeared in his capacity as Defendant's Representative.

Having asked Plaintiff's Representative regarding his Case, he maintained the statements previously contained in the statement of claim previously submitted to General Secretariat of Tax Committees. Having asked Defendant's Representative regarding his response, he maintained Defendant's Reply previously submitted to General Secretariat of Tax Committees. He also requested the Department not to accept any new documents submitted. Having asked parties to Case whether they had further statements, they responded with denial. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form:

Since Plaintiff filed the Case to abolish Defendant's Decision regarding Zakat Assessment of 2013, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since consideration of such a claim is conditional upon filing an objection within sixty (60) days from the date of notification, pursuant to Article (22.1) of Implementing Regulations for the Collection of Zakat issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, which stipulates: "Zakat Payer may object to the Authority's Assessment within sixty (60) days from the date of receipt of the Assessment letter, and his objection must be by virtue of a written and reasoned memorandum submitted to the entity that informed him of the Assessment. If the event of a lapse of period specified to submit an objection at the statutory holiday, the objection shall be acceptable if submitted on the first business day immediately following the

statutory holiday,” and since the documents included in the Case file established that Plaintiff has received the Assessment Notification on 13/02/2019 AD and filed its objection on 07/04/2019 AD; Therefore, the Case has met its formal requirements, thus, it is accepted in form.

On Merits:

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2013 AD, which included the following:

1. Item (Creditors Completed Zakat Year):

Since Article (70) of Law of Civil Procedure promulgated by Royal Decree No. (M/1) of 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 since Article (70.1) of Implementing Regulations of Law of Civil Procedure issued by Minister of Justice's Decision No. (39933) of 19/05/1435 AH, 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;” and since Defendant has accepted Plaintiff's request as stated in Rejoinder No. (1) submitted by Defendant, which included the following: “Defendant has accepted Plaintiff's objection due to the submission of an analytical statement of the creditors, showing the opening balance, additions, and payments. Accordingly, the added balance to Zakat Base that has completed the Zakat Year amounts to (SAR 2,681,272) of 2013 AD;” Therefore, the Department satisfies to establish resolution of the dispute regarding the item in question.

2. Item (Net Fixed Assets of “SAR 619,9773”):

Plaintiff objected to Defendant's Decision regarding the deduction of the land value from the net assets, while Defendant argued that it did not deduct the net fixed assets from Zakat Base after excluding the lands that were not registered under Plaintiff's name.

The Department found that, since Fatwa No. (22644) of 09/03/1424 AH states: “Some companies purchase some real estate or vehicles for the purpose of using and not for trading, and they may not be able at the end of their fiscal year to transfer ownership of these real estate or assets in the name of the company even though they are used to carry out its activity. Are these assets deducted from Zakat Base of that company whether the ownership is transferred in its name or not? Noting that the purchase took place in accordance with regular contracts and that the company uses these purchased assets.

The Answer: Zakat is not due on any real estate, vehicles, or similar property that the company purchases for the purpose of using and not for trading. This shall apply equally to property whose ownership has been transferred and those has not, as this has no effect on establishing ownership;” and since Article (4.1) of Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, stipulates: “The following items shall be deducted from Zakat Base: (1) Fixed Assets, including the net value of fixed assets “Acquisition 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 Zakat Payer, unless there is a legal impediment to transferring ownership, and that they are used to carry out its activity;” and since Paragraph (18) of Circular No. (01/35) of 02/03/1413 AH stipulates: “The method of deducting the land value within the fixed assets from Zakat Base is as



follows: The Authority may continue working with the instructions related to deducting the land value registered in the name of the partners from Zakat Base, except for banks that have been issued special instructions thereto, noting the following cases: (A) If the lands registered in the name of one of the partners are provided as an in-kind share within the company's capital and were used to carry out its activity and were deducted from Zakat Base; and (B) If the partner's credit current account who owns the land registered in his name covers its full value, it shall be deducted from the entire Zakat Base; otherwise, only the portion of that land equivalent to the balance of that current account shall be deducted from the entire Zakat Base;" and since Article (22.3) of Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, stipulates: "The burden of prove of correctness of information in Zakat Payer's Declaration regarding items and any other data rests on Zakat Payer. If Zakat Payer fails to prove correctness of the items in its Declaration, the Authority may disapprove the item whose correctness has not been proven by Zakat Payer or make an Estimated Assessment according to the Authority's opinion based on relevant circumstances and facts and available information."; and since Plaintiff has failed to submit documents proving that the land requested to be deducted is used to carry out Plaintiff's activity or that its ownership is being transferred from the founding partner (deceased) or some of the partners to Plaintiff, nor did it state the reasons that precluded the transfer of ownership; Therefore, the Department satisfies to dismiss Plaintiff's objection.

3. Item (Investments):

Plaintiff objected to Defendant's Decision regarding the deduction of the Investments from Zakat Base, while Defendant argued that the notes to the financial statement have shown that investment in question was included in a Murabaha-based portfolio; hence, it is considered part of the trading assets that are added to Zakat Base.

The Department found that: Since Fatwa No. (19382) of 20/01/1418 AH states: "As for assets, Zakat is not due if they are not prepared for sale; however, if they are prepared for sale, Zakat shall be due along with their profits whenever they complete a Zakat Year, same as all other trading assets;" and since Article (4.4/C) of Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, stipulates: "In all cases, if the investments, whether domestic or foreign, were in form of bonds, instruments, currencies, deposits, or forward transactions, they shall not be deducted from Zakat Base, whether they are short-term or long-term;" and since Clause (Third) of Ministerial Decision No. (1005) of 28/04/1428 AH, stipulates: "No investments, whether domestic or foreign, in forward transactions or instruments representing debts or bonds, regardless of their source and regardless of the duration of that investment, shall not be deducted from Zakat Base;" and since Paragraph (139) of the Accounting Standard for Investment in Securities approved by the Board of Directors of the Saudi Organization for Certified Public Accountants ("SCOPA") under Decision No. (05/02/05) of 11/09/1419 AH state: "There are two basic types of securities that are allowed to be invested:

A. Securities Representing Equity:

They represent the right to participate in the ownership of the enterprise (such as common or preferred shares) or represent the right to obtain or dispose of that participation at a predetermined price; and

B. Securities Representing Debts to Third Parties:

They are the financial instruments that are issued when loans are concluded between borrowers and lenders (investors), the most important forms of which are government bonds, bonds issued by companies, and other debt instruments that apply to the previous definition of securities.



This definition does not include collectible amounts, which do not constitute securities that can be sold to investors, such as accounts receivable, installment payment facilities, and real estate loans;” and since Plaintiff’s financial statements has shown that they were investments in securities (low-risk investments restricted by cost for the purpose of Murabaha held with a local bank as part of the collateral provided to the bank in exchange for banking facilities provided to Plaintiff); and since these investments in banks represent a debt owed by the bank to Plaintiff, and are owned by Plaintiff, they are not considered funds subject to Zakat when the bank is held accountable for these deposits; Therefore, the Department satisfies to dismiss Plaintiff’s objection.

4. Item (Payments):

Plaintiff objected to Defendant’s Decision regarding the non-deduction of the payments, while Defendant argued that these payments appeared in Plaintiff’s account statement and were taken into consideration when calculating the Zakat due.

The Department found that, since Article (22.3) of Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, stipulates: “The burden of prove of correctness of information in Zakat Payer’s Declaration regarding items and any other data rests on Zakat Payer. If Zakat Payer fails to prove correctness of the items in its Declaration, the Authority may disapprove the item whose correctness has not been proven by Zakat Payer or make an Estimated Assessment according to the Authority’s opinion based on relevant circumstances and facts and available information.”; and since Plaintiff has failed to provide evidence that it did not benefit from the amounts paid, thus, it is not entitled to deduct the claimed amounts from Zakat Base; Therefore, the Department satisfies to dismiss Plaintiff’s objection.

5. Item (Undeclared Revenues):

Plaintiff objected to Defendant’s Decision regarding the addition of undeclared revenues of 2013 in the amount of (SAR 5,405,242) to the net profit, while Defendant argued that it added these undeclared revenues to the net profit due to Plaintiff’s failure to submit documents supporting its view.

The Department found that: Since Article (8) of Law of Commercial Books promulgated by Royal Decree No. (M/61) of 17/12/1409 AH stipulates: “The merchant and his heirs shall keep the books provided for in this Law and the correspondence and documents referred to in Article (6) for at least ten (10) years;” and since Article (22.3) of Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, stipulates: “The burden of prove of correctness of information in Zakat Payer’s Declaration regarding items and any other data rests on Zakat Payer. If Zakat Payer fails to prove correctness of the items in its Declaration, the Authority may disapprove the item whose correctness has not been proven by Zakat Payer or make an Estimated Assessment according to the Authority’s opinion based on relevant circumstances and facts and available information.”; and since Plaintiff has failed to submit documents that it was supposed to keep pursuant to Article (8) of Law of Commercial Books, which is determined by ten (10) years; Therefore, the Department satisfies to dismiss Plaintiff’s objection.

Decision

For the aforementioned Grounds, the Department unanimously decided as follows:

- Establish resolution of dispute on item (Creditors Completed Zakat Year) and dismiss all Plaintiff’s requests.

This decision was delivered in presence of Parties. The Department has set thirty (30) days as the date for receipt of the decision copy. Parties hereto may request to appeal against



the decision within thirty (30) days from the day following the date set for receipt of the decision. In the event enforceable that objection is not submitted within this period, it shall become final and after expiration hereof.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-7)
Delivered in Appeal No.
(IW-19-2018)

Principle No. 239

The original and reliable source of information that must be included in Tax Assessment and objection is the Tax Return or financial statements to which the expense was charged.

Facts:

On Thursday, 06/06/1442 AH, corresponding to 19/01/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 08/01/1438 AH, by Branch of Bank ("Taxpayer"), against Decision No. (30) of 1438 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Riyadh, in the Case filed by Zakat Payer against General Authority of Zakat and Tax ("GAZT") in connection with Tax Assessment of 2007 – 2010 AD. The appealed Decision ruled as follows:

First: In Form:

Accept Taxpayer's (Branch of Bank) objection to Tax Assessment of 2007 – 2010 AD in form for the Grounds stated in the Decision.

Second: On Merits:

1. Dismiss Taxpayer's objection to item (Social Insurance of 2008) for the Grounds stated in the Decision.
2. Establish resolution of dispute on item (Insurance Expenses of Bahraini Personnel 2008) for the Grounds stated in the Decision.
3. Dismiss Taxpayer's objection to item (Insurance Expenses of 2007) for the Grounds stated in the Decision.
4. Dismiss Taxpayer's objection to item (Withholding Tax on Interest Paid to Foreign Banks) for the Grounds stated in the Decision.
5. Dismiss Taxpayer's objection to item (Late Payment Fines on Withholding Tax) for the Grounds stated in the Decision.

Since Taxpayer (Branch of Bank) was dissatisfied with this Decision, it submitted a statement of appeal summarized as follows:

1. Item (Statute of Limitations):

Taxpayer objects to GAZT's Decision for the issuance of Tax Assessment regarding the years in question after the lapse of the statutory period set forth in Article (65) of Income Tax Law, wherein Taxpayer contends that Tax Assessment was issued on 14/04/1436 AH, corresponding to 03/02/2015 AD, i.e., five (5) years after the statutory date set for submitting Tax Returns of 2009, which is 30/04/2010 AD, corresponding to 16/05/1431 AH.

2. Item (Social Insurance of 2008):

Taxpayer objects to the Primary Committee's Decision, which upheld GAZT for the addition of an amount of (SAR 450,611) to Tax Base due to insufficient documents

despite the submission of all documents before the Primary Committee, whether the General Organization for Social Insurance's ("GOSI") certificate or the statements submitted by Branch of Bank (Taxpayer). In addition, the total wages and salaries charged to the accounts amounted to (SAR 17,312,060), including the wages subject to social insurance amounted to (SAR 8,906,231), while the non-subject wages for which the certified accountant's certificate was submitted amounted to (SAR 8,405,829). Also, these salaries include the social insurance amount that was registered as an expense in the general ledger of (SAR 620,046), which is less than the social insurance amount mentioned in GAZT's Reply of (SAR 630,844), which determines that expenses were not charged other than the amount stated in GOSI certificate. Moreover, the amount of (SAR 1,081,455) mentioned in GAZT's Reply resulted from the comparison between the amount submitted by Taxpayer and that stated in GOSI certificate, which is (SAR 630,844), resulting in a difference of (SAR 450,611) added by GAZT, as it represents the monthly insurance premium that the computer calculates according to the monthly salaries subject to Social Insurance Law, which includes the employer's share and the employee's share.

3. Item (Insurance Expenses of 2007):

Taxpayer objects to the Primary Committee's Decision, which upheld GAZT for the non-deduction of the expenses of the item in question for failure to meet the requirements stipulated in Article (9.8) of the Implementing Regulations of Income Tax Law, as Taxpayer contends that these expenses are related to the Social Insurance Organization of Kingdom of Bahrain ("SIO"), whereby the Bahraini employee seconded to the Bank's Branch in the Kingdom of Saudi Arabia can maintain his job and pension later upon his return to Bahrain and retirement. Additionally, these expenses are paid within the Kingdom of Saudi Arabia into a private account in (..... Commercial Bank), where they are remitted to SIO pursuant to "The Unified Law of Insurance Protection Extension to GCC Member States Citizens Working in other GCC Member State." Moreover, Taxpayer has submitted a letter issued by GOSI addressed to a Saudi company, indicating that SIO was requested to pay the social insurance amount for a Bahraini employee working in the Kingdom of Saudi Arabia.

4. Item (Withholding Tax on Interest Paid to Foreign Banks):

Taxpayer objects to the Primary Committee's Decision, which upheld GAZT for the imposition of a withholding tax on these amounts for failure to submit a statement of these transactions certified by the Saudi Arabian Monetary Authority ("SAMA") pursuant to the Ministerial Decision No. (1776) of 18/05/1435 AH, as Taxpayer contends that these amounts mentioned in Tax Assessment on which GAZT imposed the withholding tax do not represent loan returns or commissions but rather are regular bank expenses. In addition, the Primary Committee did not consider the supplementary memorandum submitted by Taxpayer during the hearing, in which it stated that the "Convention of Double Tax Avoidance between the Kingdom and France" exempts these transactions from being subject to tax, as the Branch of Bank in Bahrain is considered a resident party for tax purposes in France since the Bank's head office is located in France. Moreover, GAZT confirmed in its Letter No. (...) dated 29/05/1437 AH that the income resulting from interest obtained by the Branch of Bank in Bahrain from a source within the Kingdom of Saudi Arabia is not subject to tax in the Kingdom of Saudi Arabia pursuant to the provisions of Article (7) of the said Convention.

5. Item (Late Payment Fines on Withholding Tax):

Taxpayer objects to the Primary Committee's Decision for the imposition of late payment fines, as Taxpayer contends that these fines are related to a substantive disagreement over the validity of imposing withholding tax on these expenses and



requests that no late payment fine be imposed except from the date of issuance of the final Decision on the dispute in question.

Since the Department decided opening of pleadings, Taxpayer submitted a supplementary memorandum on 02/04/1442 AH, in which Taxpayer stated that it maintains its statements mentioned previously in its statement of appeal.

On 23/05/1442 AH, GAZT submitted a Rejoinder, in which GAZT responded to Taxpayer's appeal, stating that it adheres to the validity and soundness of its procedures in addressing the contested items, and requests to uphold the Primary Committee's Decision for the Grounds stated therein, which upheld the validity of GAZT's Assessment. GAZT added that claims raised by Taxpayer are consistent with the earlier submissions, which GAZT responded to at that time.

The Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Taxpayer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

As for Taxpayer's appeal regarding item (Statute of Limitations), the Department, having taken cognizance of Taxpayer's appeal, the documents included in Case file, and the appealed Decision, found that: since Article (65.1) of Income Tax Law has entitled GAZT to "make or amend a Tax Assessment within five (5) years of the deadline specified for filing Tax Returns for the taxable year, or at any time, upon the written consent of Taxpayer;" and since the facts of the appealed Decision has established that Taxpayer had submitted its objection to a number of items related to Zakat Assessment for the years on which GAZT issued its Assessment after the lapse of the statutory deadline during which it is permitted to issue an Assessment on Taxpayer, which the Department concludes by Majority that Taxpayer did not exercise its right to object to the Tax Assessment after the lapse of the five (5) years stipulated in the Income Tax Law; and since such a plea is considered formal plea and not related to Public Order, which determines that Taxpayer should have presented such a plea before the Primary Committee that initially considered the subject of the dispute; and since the appealed Decision did not address that plea in its Grounds or reasons; and since Taxpayer's Reply nor its supplementary memorandum included any reference to its previous submission of that plea to the Primary Committee despite being given a sufficient time to do so; and since Article (186) of Law of Civil Procedure stipulates: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion;" Therefore, the Department satisfies to disregard the item in question by Majority.

As for Taxpayer's appeal regarding item (Social Insurance of 2008), which includes its objection to the Primary Committee's Decision for the addition of the item in question to Tax Base, while GAZT argued that the profits of 2008 were adjusted by a portion of the overcharged social insurance to the accounts and that it calculated the social insurance according to the percentages approved by the Law, and added overcharged amounts to the year profit in application of the provisions of Article (9.1/C) of the Implementing Regulations of Income Tax Law. The Department, having considered the viewpoint of parties to Appeal and the Grounds on which the Primary Committee based its Decision, found that, since GAZT has taken the wire transfer information to GOSI into consideration its procedure, and the source of its information was not the Tax Return or



the financial statements in which Taxpayer claims that the expense charged to its accounts is the amount reached by GAZT without an increase; and since the Primary Committee based its Decision to dismiss Taxpayer's objection on the insufficiency of the documents without stating the documents that Taxpayer should have submitted thereto, which determines validity of Taxpayer's appeal regarding the soundness of social insurance for the year in question, as it GAZT failed to prove that Taxpayer had charged the amount to its financial statements or included it in its Tax Return, which is not affected by GAZT claim of its consideration on the wire transfer, which usually includes both Taxpayer's share and the employee's share; Therefore, the Department satisfies to accept Taxpayer's appeal by Majority and reverse the appealed Decision as to conclusion it had in this regard.

As for Taxpayer's appeal regarding item (Insurance Expenses of 2007), which includes its objection to the Primary Committee's Decision, which upheld GAZT for the non-deduction of the expenses of the item in question, wherein Taxpayer affirms that these expenses are related to SIO, that enables the Bahraini employee seconded to the Bank's Branch in the Kingdom of Saudi Arabia to maintain his job and pension later upon his return to Bahrain and retirement, and that they are paid within the Kingdom of Saudi Arabia into a private account in (..... Commercial Bank), where they are remitted to SIO pursuant to "The Unified Law of Insurance Protection Extension to GCC Member States Citizens Working in other GCC Member State," while GAZT argued that these expenses represent the value of social insurance for Bahraini employees working at the Kingdom's branch and are not among the expenses that must be deducted as stipulated in Article (9.8) of the Implementing Regulations of Income Tax Law.

The Department, having taken cognizance of Taxpayer's appeal, the documents included in Case file, and the appealed Decision, and having referred to The Unified Law of Insurance Protection Extension to GCC Member States Citizens Working in other GCC Member State promulgated by Royal Decree No. (M/63) dated 26/11/1426 AH, found that, since the amounts paid for social insurance for Bahraini employees working in Taxpayer's branch within the Kingdom of Saudi Arabia are considered deductible expenses in accordance with the provisions of the Regulations on which GAZT based its Decision, as a result of meeting the conditions stipulated by the said Unified Law, and thus the consistency of the relevant provisions included in Implementing Regulations of Income Tax Law with those included in the Unified Law in effect during the taxable year in question, in determining the permissibility of deducting these amounts on the basis that they are a contribution from the employer to employee; Therefore, the Department satisfies to accept Taxpayer's appeal by Majority and reverse the appealed Decision as to conclusion it had in this regard.

As for Taxpayer's appeal regarding item (Withholding Tax on Interest Paid to Foreign Banks), which includes its objection to the Primary Committee's Decision, which upheld GAZT for the imposition of a withholding tax on these amounts, wherein Taxpayer stated that these amounts do not represent loan returns or commissions but rather are regular bank expenses, and that the Primary Committee did not consider the supplementary memorandum submitted by Taxpayer during the hearing, in which it stated that the "Convention of Double Tax Avoidance between the Kingdom and France" exempts these transactions from being subject to tax, as the Branch of Bank in Bahrain is considered a resident party for tax purposes in France since the Bank's head office is located in France. Moreover, GAZT confirmed in its Letter No. (...) dated 29/05/1437 AH that the income resulting from interest obtained by the Branch of Bank in Bahrain from a source within the Kingdom of Saudi Arabia is not subject to tax in the Kingdom of Saudi Arabia pursuant to the provisions of Article (7) of the said Convention, while GAZT argued that these interests are paid to Bank in Bahrain, not to a bank in France, and the provisions of the said Convention do not apply thereto.



The Department, having taken cognizance of Taxpayer's appeal, the documents included in Case file, and having referred to the appealed Decision on the item in question, found that since the Committee did not address Taxpayer's primary request that the amount calculated by GAZT be subjected to the said Convention; and since the appealed Decision has ignored the consideration of the said Convention, but rather considered only the Ministerial Decision regarding the period required to subject the deposited amounts to withholding tax; and since the appealed Decision has failed to address the subject of dispute, which is the extent of application of that Convention on interest paid to foreign banks; Therefore, the Department satisfies to abolish the appealed Decision regarding the item in question and refer the Case to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh for reconsideration for failure to adjudicate Taxpayer's primary request within the appealed Decision, which renders the dispute unresolved as concluded in the wording of the appealed Decision.

As for Taxpayer's appeal regarding item (Late Payment Fines on Withholding Tax), since the Department has abolished the Decision regarding item (Withholding Tax on Interest Paid to Foreign Banks), under which the Primary Committee imposed the late payment fine in question; Therefore, the Department satisfies to abolish the appealed Decision regarding the item in question and refer the Case to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh for reconsideration in light of conclusion it reaches regarding the extent of application of the "Convention of Double Tax Avoidance between the Kingdom and France" on interest paid to foreign banks.

Decision

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

First: In Form:

Accept Taxpayer's (Branch of Bank, C.R. No., TIN No.) appeal, against Decision No. (30) of 1437 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Disregard Taxpayer's appeal by Majority regarding item (Statute of Limitations) for the Grounds stated herein.
2. Accept Taxpayer's appeal by Majority regarding item (Social Insurance of 2008) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Accept Taxpayer's appeal by Majority regarding item (Insurance Expenses of 2007) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Abolish the appealed Decision regarding item (Withholding Tax on Interest Paid to Foreign Banks) and refer the Case to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh for reconsideration, for the Grounds stated herein.
5. Abolish the appealed Decision regarding item (Late Payment Fines on Withholding Tax) and refer the Case to the Second Department for Determination of Income Tax Violations and Disputes in Riyadh for reconsideration, in light of conclusion it reaches regarding the extent of application of the "Convention of Double Tax Avoidance between the Kingdom and France" on interest paid to foreign banks, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-1)
Delivered in Appeal No. (I-1484-2018)

Principle No. 240

Taxpayer cannot be charged with the Estimated Assessment if it submitted its Tax Return based on regular accounts without an objection from GAZT within a reasonable time after submitting those Returns. Accordingly, the fine for late payment of the tax differences resulting from the Estimated Assessment is calculated from the date of that Assessment that was not known to Taxpayer on the date of submitting its Tax Returns, which is consistent with the relevant Sharia and statutory, such as the Sharia rule that stipulates: “Taxpayer is not legally obligated except to carry out an action that is possible, within its capacity, and known thereto that ensure its compliance.”

Facts:

On Tuesday, 27/05/1439 AH, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, in accordance with Paragraph (B) of Article (67) of Income Tax Law, promulgated under Royal Decree No. (M/1) of 15/01/1425 AH, as amended under Royal Decree No. (M/113) of 02/11/1438 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 27/05/1439 AH, by Institution, C.R. No. (“Taxpayer”); against Decision No. (12) of 20/04/1438 AH delivered by the Primary Committee for Zakat and Tax Objections in Riyadh in Case No. (I-2018-1484), filed by Taxpayer against General Authority of Zakat and Tax (“GAZT”). The appealed Decision ruled as follows:

First: In Form:

Accept Taxpayer’s objection (..... Institution) in form for the Grounds stated in the Decision.

Second: On Merits:

1. Dismiss Taxpayer’s objection to item (Estimated Tax of 15%).
2. Dismiss Taxpayer’s objection to item (Fine for Failure of Submission of Tax Return of 2009).
3. Dismiss Taxpayer’s objection to item (Concealment Fine).
4. Dismiss Taxpayer’s objection to item (Late Payment Fine).

Since Taxpayer (..... Institution) was dissatisfied with this Decision; it submitted a statement of appeal summarized as follows:

1. Item (Estimated Tax of 15%):

The Institution “Taxpayer” clarifies that it had been operating for seven (7) years with regular documents, records, and bonds, which were destroyed after its commercial registration was cancelled and its lease contract was expired. As a result, the Institution was closed, the employees were deported, and the property was handed over to its owner. In addition, GAZT’s request came late, as it requested the documents four (4) months after the Institution was closed, which is an administrative mistake on GAZT’s part, as it should have requested these documents at the time the letter of the

commercial registration's cancellation of the Institution and its last Tax Return were delivered to GAZT, at which point it would have been possible to obtain these records and documents.

In addition, GAZT's failure to follow up on the Institution during these years is also considered an administrative mistake, as it did not make any unannounced visits to follow up on the seriousness of the work within the Institution, whereby the documents were existed and the accountant was present. Moreover, every year the Institution received a certificate proving payment of the annual tax, under which the commercial register and license of the Institution were renewed. Accordingly, GAZT, in order to calculate the Tax Base fairly, should have conducted an unannounced field inspection to follow up on the seriousness of the work within the Institution and should not have waited all that time to request the documents, as they were present and could have been examined and discussed with the accountant so that they would be legal evidence for the financial event that is being measured and registered. The Institution concluded by adhering to the validity of its statements and rejecting all GAZT's allegations.

2. **Item (Fine for Failure of Submission of Tax Return of 2009):**

GAZT claimed that Taxpayer did not comply with Article (60/A, B, D, F) of Income Tax Law, and as a result, GAZT imposed a fine of (1%) of the total revenues for violating Article (60/A), which stipulates: "Every Taxpayer required to file a declaration shall file it in the prescribed form, include its identification number, and it shall pay the tax due thereon to the Department," while Article (60/B) of the same Law stipulates: "The Tax declaration shall be filed within 120 days following the end of the taxable year for which the declaration was made." Taxpayer clarifies that it has submitted the Tax Return within the statutory deadline and according to the approved form, and there is no tax due thereon, as Tax Return submitted to GAZT did not include any revenues (a short fiscal year), representing three (3) months from 07/09/2009 to 31/12/2009 AD, and that the date of 09/07/2009 was the date of issuance of Taxpayer's license; hence, there were no revenues, work, or employees (incorporation stage).

In addition, Tax Returns of 2010 and 2011 were submitted in the same form and with the same Tax Identification Number ("TIN"), so why GAZT accepted these Tax Returns and charged Taxpayer of the same and provided thereof with certificates of payment? Taxpayer concluded by adhering to its view and requested abolishment of the appealed Decision and GAZT's Decision.

3. **Item (Concealment Fine):**

GAZT claimed that Taxpayer has submitted accounts that do not exist, while Taxpayer clarifies that all the accounts and Tax Returns submitted were regular, as they were submitted by a certified accountant and legal firm, and their tax was paid annually and without delay. In addition, GAZT could have conducted an unannounced field inspection and perused all Taxpayer documents and accounts if it had any doubt or lack of credibility of any documents submitted thereto during those seven (7) years, as Taxpayer did not hide any information, nor did it work in any field other than its field, or did evade the annual tax payment. Moreover, the accounting office with which Taxpayer deals and issues its financial statements refuses to work without reliable official documents.

On Wednesday, 04/06/1441 AH, corresponding to 29/01/2020 AD, the Department held its session to consider the appeal. Having called parties to Case, Mr., holder of Iqama ID No., in his capacity as the Owner of Institution. GAZT's Representative did not appear at the session.

Having asked Appellant "Taxpayer" regarding his appeal against the Decision in question contrary to his previous statements presented in this regard, he replied that the submitted



memorandum contains the reasons for appealing the Decision in question. Taxpayer affirmed that the receipt of Zakat Assessment Certification means the completion of any items related to the Zakat Year subject to the Assessment for which the said Certification was issued by GAZT; hence, there is no valid reason for raising a Revised Assessment and making an Estimated Assessment, nor a binding one to keep documents proving the integrity of Taxpayer's position throughout the years preceding the issuance of the said Certification. Also, if GAZT had any comments on these Assessments, it should have been submitted before the Institution closure. Moreover, the fine imposed for lack of submission of Tax Return of 2009 is contrary to reality, given that Taxpayer had submitted the Tax Return to GAZT's branch in Riyadh.

Having asked Taxpayer whether he had further requests, he replied by requesting abolishment of the fines resulting from the Revised Assessments ruled by the appealed Decision. Therefore, the Department has decided to close the transcript of the hearing and to continue consideration of the Case and the issuance of a Decision thereafter.

The Department has requested GAZT to respond to Taxpayer's memorandum, wherein GAZT submitted a Reply, a summary of which included that it rejects Taxpayer's reasons for objecting the Estimated Tax Assessment on the Grounds that it exercised its right guaranteed by the Law to make an Estimated Assessment in the absence of information, documents, or papers that confirm the validity of Taxpayer's Tax Return, which GAZT carried out in Taxpayer's case, especially after noticing the absence of accounting books and records to verify Taxpayer's Tax Returns.

- As for the fines for concealment and delay in submitting Tax Return of 2009, as well as the fine for late payment of the tax due after its calculation, they were consistent with the correct application of the Law in these cases.
- As for lack of submission of Tax Return of 2009, Taxpayer did not submit a valid document proving the submission of Tax Return within the statutory prescribed deadline, which indicates Taxpayer's failure to submit its Tax Return in the correct form.

Moreover, GAZT supported its view by presenting Decisions issued by the Appellate Committees, as well as a ruling issued by the Board of Grievances, which demonstrated the validity and soundness of GAZT's procedure.

The Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended by Royal Order No. (M/113) of 02/11/1438 AH, and its Implementing Regulations issued by Minister of Finance Decision No. (1535) of 11/06/1425 AH, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, has decided that the appeal is accepted in form for being filed by a party having capacity within the statutory period, in accordance with the provisions of Article (66) of Income Tax Law.

On Merits:

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that:

- **As for item (Estimated Tax of 15%):**
Since Taxpayer's objection was centered on GAZT's exercising its right to make the Assessment on an estimated basis; and since it is established that GAZT has exercised its right, which is guaranteed by the Law to make an Estimated Assessment in the event



of uncertainty of information, documents, or papers submitted by Taxpayer along with its Tax Return; and since Taxpayer has stated before the Primary Committee that it had destroyed its documents and books after ceasing to practice the activity; and since such a plea does not prevent GAZT from making the Estimated Assessment, and that Taxpayer has been excessive in destroying its books that it was required to keep, especially since the Law of Commercial Books enacted in 1409 AH obliges Taxpayer to “keep the books provided for in this Law and the correspondence and documents referred to in Article 6 for at least 10 years” in order to be refutes GAZT’s claims regarding the invalidity of the information and data contained therein; Therefore, the Department satisfies to determine that Taxpayer’s plea regarding the item in question is groundless of any face or law, and by extension, to dismiss Taxpayer’s appeal and uphold the appealed Decision as to conclusion it had in this regard.

- **As for item (Fine for Failure of Submission of Tax Return of 2009):**

Since Taxpayer’s objection was centered on the extent of GAZT’s right to impose the fine in question, wherein Taxpayer claimed that it had submitted its Tax Return for the year in question within the statutory prescribed period, while GAZT argued that Taxpayer has failed to submit a valid document proving the submission of Tax Return within the said statutory period; and since the burden of proof the submission of Tax Return by Taxpayer for the year in question after the lapse of the statutory prescribed period lies on the party (GAZT) receiving that Tax Return, as it is not acceptable to request proof of innocence from Taxpayer while GAZT is Tax Claimant, as it is bears the burden of proving that it received Tax Return after the lapse of the statutory prescribed period, considering that it is the party before which such a procedure is carried out; and since GAZT has failed to provide evidence supporting its claim for the imposition of the fine in question; Therefore, the Department satisfies to accept Taxpayer’s appeal and reverse the appealed Decision as to conclusion it had in this regard.

- **As for item (Concealment Fine):**

Since Taxpayer’s objection was centered on its claim that it did not engage in any behavior related to concealing the tax due or the nature of its activity, while GAZT argued that Taxpayer’s destruction of its books and accounting records resulted in establishing its commitment of the wrongful act of concealing the data and the true nature of activities that result in the correct Assessment should be made, which led GAZT to make an Estimated Assessment and impose the concealment fine accordingly; and since Taxpayer’s destruction of its books and accounting records has occurred after its cessation of activity and cancelation of commercial register, which does not establish the certainty of the existence of an intent by Taxpayer to conceal its books and accounting records; and since there was no dispute regarding Taxpayer’s failure to pay the tax on items included in its Tax Returns in question at the time of their submission; and since such evidence strengthens the aspect of the absence of Taxpayer’s intent regarding the existence of the criminal act of concealment; and since GAZT’s statements were general in this regard without attributing a clear specific act that can be charged against Taxpayer and enables thereof to present its pleas, which entails that Taxpayer is presumed innocent until proven guilty under compelling evidence that can be relied upon to support that claim; Therefore, the Department satisfies to accept Taxpayer’s appeal and reverse the appealed Decision for item in question.

- **As for item (Late Payment Fine):**

Since Taxpayer’s objection was centered on the fines imposed thereon that were ruled by the appealed Decision, including the late payment fine stated in its wording, wherein



Taxpayer claimed that there is no justification for imposing such a fine since it had submitted its Tax Returns and paid the tax due thereon on time by virtue of GAZT's Tax Certification, while GAZT argued that the Estimated Assessment showed a difference between the tax paid under Returns and the tax due under its Estimated Assessment; and since the fine for late payment of the tax difference cannot be imposed on Taxpayer, since it can only be charged with fines after knowing the true nature of the Estimated Assessment that took place after Taxpayer's submission of several Tax Returns based on regular accounts without an objection from GAZT within a reasonable time after submitting those Returns; and since the reason for imposing the fine in question is the existence of a tax difference resulting from the Estimated Assessment made by GAZT, which differed from Tax Returns submitted by Taxpayer pursuant to its regular accounts and on which it paid the tax due; Therefore, the Department satisfies to decide that the due date of the tax difference resulting from the Estimated Assessment is the date of that Estimated Assessment, which was not known to Taxpayer on the date of submitting its Returns, the tax rate, or its Base, in application of Article (68/1/b) of the Implementing Regulations of the Income Tax Law, which stipulates: "... (b) Delay in payment of due tax as per the Department's assessment," as such an approach is consistent with the relevant Sharia and statutory, such as the Sharia rule that stipulates: "Taxpayer is not legally obligated except to carry out an action that is possible, within its capacity, and known thereto that ensure its compliance;" which determines that GAZT is not entitled to impose a fine for failure to pay the difference in the tax due pursuant to Tax Assessment as of the statutory deadline for submitting Tax Returns for the years in question, but rather from the date of informing Taxpayer of its Estimated Assessment; and since aforementioned is not affected by GAZT's inferencing to Article (77/A) of Income Tax Law, as the purpose of this Article regarding the subject of dispute is that the late payment fine is calculated from the tax due date, and that it did not state that the imposition of the fine is determined by the date of submitting Tax Returns, since that this date cannot be determined independently from Article (68.1/B) of Implementing Regulations of Income Tax Law as previously stated; and since the evidence submitted by GAZT, represented in a ruling issued by Board of Grievances to support its claim for rejecting Taxpayer's requests does not affect the conclusion of this Decision, as such evidence was not related to the adjudication of the subject of appeal, but rather the aim of its submission was to postpone consideration of the subject of appeal, on the Grounds that the Case was filed by Plaintiff "Taxpayer" against the appeal Decision prematurely before the Board of Grievances, which at the time was the competent authority to consider appeals against Decisions issued by the Appellate Tax Committee.

Decision

First: In Form:

Accept Taxpayer's (..... Institution, C.R. No., Owned by Mr., holder of National, Iqama ID No.) appeal.

Second: On Merits:

- Dismiss Taxpayer's appeal on item (Estimated Tax of 15%) and uphold the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
- Accept Taxpayer's appeal on item (Fine for Failure of Submission of Tax Return of 2009) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



- Accept Taxpayer's appeal on item (Concealment Fine) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
- Dismiss Taxpayer's appeal on item (Late Payment Fine) and amend the appealed Decision by calculating the late payment fine from the date of informing Taxpayer of its Estimated Assessment to the date of payment, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-22)
Delivered in Appeal No. (I-1481-2018)

Principle No. 241

Taxpayer who is subject to Income Tax Law is not required to pay the tax due based on the Decision of the Tax Dispute and Violation Committee as a requirement for accepting its appeal against that Decision.

Facts:

First:

Uphold General Authority of Zakat and Tax's ("GAZT") Decision for dismissing Taxpayer's (..... Institution) objection to Tax Assessment of 01/01/2013 to 04/01/2015 AD.

Since Taxpayer (..... Institution) was dissatisfied with this Decision, it submitted a statement of appeal summarized as follows:

Taxpayer objects to GAZT's Tax Assessment regarding all amounts included in Tax Return of (SAR 169,237), as GAZT has made its Assessment on an estimated basis without considering the sales contracts signed with the Saudi Investor, according to which the foreign investor did not make profits as a result of that sale.

On Tuesday, 17/06/1441 AH, corresponding to 11/02/2020 AD, the Department held its session to consider the Case. Having called parties to Case, Mr., holder of National ID No., appeared in his capacity as Taxpayer's Attorney; and Mr./Ms. and Mr./Ms., appeared in their capacity as GAZT's Representatives by virtue of Authorization No., dated 19/05/1441 AH.

Having asked Taxpayer's Attorney regarding the payment of the tax due under the appealed Decision and the date of receipt thereof, he replied that payment had not been made as that the ownership of his client had been transferred to another person for encountering financial difficulties that prevented his client from paying the tax due. As for the date of receipt of the appealed Decision, he replied that he would provide the Department with the documents proving the date of receipt.

Having asked GAZT's Representatives whether they had any evidence of the date of receipt of the appealed Decision based on the documents they had proving the receipt of the same by Taxpayer, they replied that they would check with GAZT's Administrative Communication Department and request the date of receipt of the appealed Decision by following up on the same through their communication with Saudi Post and clarifying the date of receipt of the appealed Decision by Taxpayer, if any.

Grounds

The Department, having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended by Royal Order No. (M/113) of 02/11/1438 AH, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of



11/06/1425 AH, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, has decided that the appeal is accepted in form for being filed by a party having capacity within the statutory period, meeting the formal requirement stipulated in Income Tax Law and its Implementing Regulations.

On Merits:

The Department, having taken cognizance of Taxpayer's appeal and the appealed Decision, found that, since this Department has not find a document establishing the existence of a specific date for informing Taxpayer of the appealed Decision and its receipt of the same, therefore, the date of Taxpayer's objection to the appealed Decision shall be the date on which Taxpayer was informed and received that Decision; and since Royal Order No. (26040) of 21/04/1441 AH enacted to approve the Tax Dispute and Violation Committee Procedures, has stipulated: "The Dispute and Appellate Committees shall consider the Tax Assessments for which a final settlement has not been reached with the General Authority of Zakat and Tax and for which no final rulings have been issued;" and since the provisions of Income Tax Law were no longer obligatory on Taxpayer to pay the tax amount in order to meet the condition of considering the subject of its objection to the appealed Decision as stated in Article (66) of Income Tax Law, as amended; and since these Procedures were devoid of any provision on the necessity of paying the tax amount before considering the subject of the submitted appeal; Therefore, the Department satisfies to accept Taxpayer's appeal against the Decision in question; and since the Department has established that the formal statutory requirements to consider the appeal filed against the Decision in question have been met as previously stated; and since Taxpayer's appeal was based on its objection to the total amount claimed; and since the appealed Decision included particulars, whose amounts were not mentioned in the Assessment that determined the amount of the tax due, which is (SAR 167,793.70), in addition to an amount of a late payment fine whose connection to that amount was not specified and whose subject was not clarified; and since the total amount of tax due based on the Assessment that Taxpayer was informed of does not make the same fully aware of the particulars of that amount, which result in preventing Taxpayer from exercising its right to object to GAZT's Assessment for any reasons it may have that would lead Taxpayer to do so before the Primary Committee issuing the Decision; and since Primary Committee has decided to dismiss Taxpayer's objection in form due to failure to pay the uncontested items, its Decision, in the circumstances stated, did not encompass the facts of the Case and ignored the ambiguity and brevity that were shown in GAZT's Assessment, which made Taxpayer think that the amount due was related only to the amount of capital gains for which it was required to pay tax; and since the determination of the dispute and its point of disagreement requires that the Primary Committee's Decision be comprehensive of its facts to enable the same for adjudication; and since the Decision in question was factually unfounded regarding the Assessment's surrounding circumstances and state, and Taxpayer's objection thereto; Therefore, and in view of the foregoing, the Department decided to abolish the appealed Decision and refer the Case to the First Department for Determination of Income Tax Violations and Disputes in Dammam for reconsideration after informing Taxpayer of the details of the tax amounts due and enabling the same to exercise its right to file an objection thereto.

Decision

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

First: In Form:

Accept Taxpayer's (..... Institution, C.R. No.) appeal against Decision No. (32) of 28/12/1438 AH delivered by the Primary Committee for Zakat and Tax Objections Dammam, in form.

**Second: On Merits:**

Abolish the appealed Decision and refer the Case to the First Department for Determination of Income Tax Violations and Disputes in Dammam for reconsideration after informing Taxpayer in the manner specified by the Law, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-22)
Delivered in Appeal No. (I-
1481-2018)

Principle No. 242

The Assessment issued by GAZT to Taxpayer must include the details that led to the entitlement to the amount claimed by Taxpayer, the determination of the tax amounts due thereunder, and details of any fines attached thereto, whereby Taxpayer can file any objections or present defenses it has regarding that Assessment, which will enable the competent committee charged with examining the objection to issue the correct Decision.

Facts:

First:

Uphold General Authority of Zakat and Tax's ("GAZT") Decision for dismissing Taxpayer's (..... Institution) objection to Tax Assessment of 01/01/2013 to 04/01/2015 AD.

Since Taxpayer (..... Institution) was dissatisfied with this Decision, it submitted a statement of appeal summarized as follows:

Taxpayer objects to GAZT's Tax Assessment regarding all amounts included in Tax Return of (SAR 169,237), as GAZT has made its Assessment on an estimated basis without considering the sales contracts signed with the Saudi Investor, according to which the foreign investor did not make profits as a result of that sale.

On Tuesday, 17/06/1441 AH, corresponding to 11/02/2020 AD, the Department held its session to consider the Case. Having called parties to Case, Mr., holder of National ID No., appeared in his capacity as Taxpayer's Attorney; and Mr./Ms. and Mr./Ms., appeared in their capacity as GAZT's Representatives by virtue of Authorization No., dated 19/05/1441 AH.

Having asked Taxpayer's Attorney regarding the payment of the tax due under the appealed Decision and the date of receipt thereof, he replied that payment had not been made as that the ownership of his client had been transferred to another person for encountering financial difficulties that prevented his client from paying the tax due. As for the date of receipt of the appealed Decision, he replied that he would provide the Department with the documents proving the date of receipt.

Having asked GAZT's Representatives whether they had any evidence of the date of receipt of the appealed Decision based on the documents they had proving the receipt of the same by Taxpayer, they replied that they would check with GAZT's Administrative Communication Department and request the date of receipt of the appealed Decision by following up on the same through their communication with Saudi Post and clarifying the date of receipt of the appealed Decision by Taxpayer, if any.

Grounds



The Department, having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended by Royal Order No. (M/113) of 02/11/1438 AH, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, has decided that the appeal is accepted in form for being filed by a party having capacity within the statutory period, meeting the formal requirement stipulated in Income Tax Law and its Implementing Regulations.

On Merits:

The Department, having taken cognizance of Taxpayer's appeal and the appealed Decision, found that, since this Department has not find a document establishing the existence of a specific date for informing Taxpayer of the appealed Decision and its receipt of the same, therefore, the date of Taxpayer's objection to the appealed Decision shall be the date on which Taxpayer was informed and received that Decision; and since Royal Order No. (26040) of 21/04/1441 AH enacted to approve the Tax Dispute and Violation Committee Procedures, has stipulated: "The Dispute and Appellate Committees shall consider the Tax Assessments for which a final settlement has not been reached with the General Authority of Zakat and Tax and for which no final rulings have been issued;" and since the provisions of Income Tax Law were no longer obligatory on Taxpayer to pay the tax amount in order to meet the condition of considering the subject of its objection to the appealed Decision as stated in Article (66) of Income Tax Law, as amended; and since these Procedures were devoid of any provision on the necessity of paying the tax amount before considering the subject of the submitted appeal; Therefore, the Department satisfies to accept Taxpayer's appeal against the Decision in question; and since the Department has established that the formal statutory requirements to consider the appeal filed against the Decision in question have been met as previously stated; and since Taxpayer's appeal was based on its objection to the total amount claimed; and since the appealed Decision included particulars, whose amounts were not mentioned in the Assessment that determined the amount of the tax due, which is (SAR 167,793.70), in addition to an amount of a late payment fine whose connection to that amount was not specified and whose subject was not clarified; and since the total amount of tax due based on the Assessment that Taxpayer was informed of does not make the same fully aware of the particulars of that amount, which result in preventing Taxpayer from exercising its right to object to GAZT's Assessment for any reasons it may have that would lead Taxpayer to do so before the Primary Committee issuing the Decision; and since Primary Committee has decided to dismiss Taxpayer's objection in form due to failure to pay the uncontested items, its Decision, in the circumstances stated, did not encompass the facts of the Case and ignored the ambiguity and brevity that were shown in GAZT's Assessment, which made Taxpayer think that the amount due was related only to the amount of capital gains for which it was required to pay tax; and since the determination of the dispute and its point of disagreement requires that the Primary Committee's Decision be comprehensive of its facts to enable the same for adjudication; and since the Decision in question was factually unfounded regarding the Assessment's surrounding circumstances and state, and Taxpayer's objection thereto; Therefore, and in view of the foregoing, the Department decided to abolish the appealed Decision and refer the Case to the First Department for Determination of Income Tax Violations and Disputes in Dammam for reconsideration after informing Taxpayer of the details of the tax amounts due and enabling the same to exercise its right to file an objection thereto.

Decision

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

First: In Form:



Accept Taxpayer's (..... Institution, C.R. No.) appeal against Decision No. (32) of 28/12/1438 AH delivered by the Primary Committee for Zakat and Tax Objections Dammam.

Second: On Merits:

Abolish the appealed Decision and refer the Case to the First Department for Determination of Income Tax Violations and Disputes in Dammam for reconsideration after informing Taxpayer in the manner specified by the Law, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-43)
Delivered in Appeal No. (I-1668-2018)

Principle No. 243

Interest on loans paid by a foreign company registered within the Kingdom to non-resident companies (partners and similar other than the head office or the owning entity) is considered a deductible expense if proven by documents.

Facts:

On Thursday, 19/08/1442 AH, corresponding to 04/01/2021 AD, the First Appellate Department for Income Tax Violations and Disputes formed under Royal Decree No. (65474) of 23/12/1439 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 08/01/1439 AH, by Company ("Taxpayer"), against Decision No. (11/33) of 1438 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (.....) of 01/07/1436 AH, and Objection No. (.....) of 16/03/1436 AH, in connection with Tax Assessment of 2009 and 2010 AD, filed by Taxpayer against General Authority of Zakat and Tax ("GAZT"). The appealed Decision ruled as follows:

First: In Form:

Accept Taxpayer's Objection No. (.....) of 01/07/1436 AH, and Objection No. (.....) of 16/03/1436 AH.

Second: On Merits

1. Uphold GAZT's Decision regarding item (Calculation and Adjustment of Company's "Taxpayer" Net Profit with Offshore Procurement Differences of 2009 and 2010).
2. Uphold GAZT's Decision regarding item (Adjustment of Company's "Taxpayer" Net Profit with Financial Expenses of 2009 and 2010).
3. Resolution of dispute on item (Depreciation Differences of 2009 and 2010) by Taxpayer's acceptance of GAZT's view.
4. Resolution of dispute on item (Unrealized Foreign Currency Losses of 2010) by Taxpayer's acceptance of GAZT's view.
5. Uphold GAZT's Decision regarding item (Imposition of Late Payment Fine of 2009 and 2010) for the conclusion reached in this Decision.

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

1. Item (Calculation and Adjustment of Company's Net Profit with Offshore Procurement Differences of 2009 and 2010):

Taxpayer objects to the Primary Committee's Decision for upholding GAZT in adjusting Taxpayer's net profit with item (Unapproved Financial Expenses of 2009 and 2010), as Taxpayer contends that the Primary Committee's Decision was incorrect in considering Customs Clearances as the basis for determining the cost of the offshore procurement and also considering Customs Declaration as the supporting document for determining that cost, without any regard to the invoices for the

offshore procurement submitted to Saudi Customs. Additionally, the basis for determining the cost of the offshore procurement is through suppliers' invoices, not the Customs Clearances, and that the Customs Clearances registered in the name of the distributor of (..... Trading Company) pertain to Taxpayer's offshore procurement supported by the invoices of the foreign suppliers and submitted to Saudi Customs at that time, as they were issued in the name of Taxpayer. Moreover, the Primary Committee was provided with detailed statements of the offshore procurement registered in Taxpayer's accounts for the two years in question. Furthermore, the Primary Committee based its Decision on the response of (..... Company), when it denied that it had imported on Taxpayer's behalf, which is not acceptable legitimately and lawfully, as the said company is in a dispute with Taxpayer in several cases.

2. Item (Adjustment of Company's Net Profit with Financial Expenses of 2009 and 2010):

Taxpayer objects to the Primary Committee's Decision for upholding GAZT in adjusting the Taxpayer's net profit with item (Unapproved Financial Expenses of 2009 and 2010), wherein Taxpayer adheres to its right to deduct the interest costs amounting to (SAR 504,555) of 2009, and an amount of (SAR 2,487,401) of 2010, as the interest on the loans charged to Taxpayer's accounts represents interests it incurred and were not paid to its partner, as the parties mentioned by GAZT namely (..... Company, ... Company, ... Company, and Company), are not partners to Taxpayer. In addition, Article (10) of Implementing Regulations of Income Tax Law applies only to branches of foreign companies operating within the Kingdom and does not apply to the Company's "Taxpayer" case, as its legal entity is "Limited Liability Company," which does not change the fact that all beneficiaries from these interests fall under the legal entity of a single head office, as the criterion for accepting or rejecting these interests for tax purposes depends on whether these interests are related to and necessary to carry out the activity. Moreover, the Primary Committee also upheld GAZT for rejecting the interest expenses paid on loans, considering that they are not considered deductible expenses and that beneficiaries from these interests are not lending entities, such as banks, and are not authorized to do so.

3. Item (Imposition of Late Payment Fine of 2009 and 2010):

Taxpayer objects to the Primary Committee's Decision for upholding GAZT in imposing a late payment fine for the two years in question, wherein Taxpayer contends that the provisions of Article (68.3) of Implementing Regulations of Income Tax Law, on which the Primary Committee based its Decision, do not apply to Taxpayer's case since it applies to cases of Estimated Assessment, while Taxpayer is charged by virtue of audited and approved regular accounts. In addition, there is a difference of viewpoints between Taxpayer and GAZT regarding the items on which a late payment fine was imposed, as the tax has not become final for a late payment fine to be imposed thereon, pursuant to Article (71.2) of Implementing Regulations of Income Tax Law, and that there is an actual dispute between Taxpayer and GAZT and the obligation to pay the tax due has not yet become final.

On 24/03/1442 AH, corresponding to 09/11/2020 AD, since the Department decided opening of pleadings, it addressed GAZT to respond to Taxpayer's statement of appeal. **On 08/07/1442 AH, corresponding to 19/02/2021 AD**, GAZT submitted a Rejoinder to Taxpayer's statement of appeal regarding the contested items, which included the following:

1. Item (Offshore Procurement Differences of 2009 and 2010):

GAZT clarifies that the net profit had been adjusted by item (Import Differences) through the difference between offshore procurement according to Taxpayer's Tax Return and the imports included in Saudi Customs Declaration pursuant to GAZT's

Circular No. (09/2030) of 15/04/1430 AH. Also, Taxpayer's claim that Saudi Customs had ceased its imports during the period from December 2009 until mid-February 2012, and that the imports were made through the distributor of (..... Company), is incorrect, as it contradicts Taxpayer's import statement of 2010. Moreover, GAZT has contacted the said distributor to clarify the value of the imports, and he responded with invalidity of Taxpayer's allegations and that he had never imported on its behalf. Therefore, GAZT adheres to the validity and soundness of its procedure regarding the item in question.

2. Item (Adjustment of Company's Net Profit with Financial Expenses of 2009 and 2010):

GAZT clarifies that the entities to which the financial expenses were paid, regardless of their legal entity, and from which Taxpayer obtained the loan, are not financing entities such as banks and are not authorized to practice financing or lending activities in order for interest to be paid thereto, as they are a main branch of the Company "Taxpayer" or a partner thereof; hence, these expenses are not of a deductible nature pursuant to Article (10) of Implementing Regulations of Income Tax Law.

3. Item (Late Payment Fine):

GAZT clarifies that it imposed a late payment fine of (1%) pursuant to Article (77/A) of Income Tax Law, and that Taxpayer's claim that the calculation of the fine in question should be from the date of issuance of a Decision, whether it was preliminary or appellate, in the event that the dispute over imposing the tax is related to a substantive or difference in viewpoints between parties to Case, would encourage Taxpayers not to commit to paying taxes and fines on time and to object to the same for no reason until they are delayed as long as possible. GAZT added that the beginning date of the calculation of the fine in question is from the due date of the tax, which is the statutory date for submitting Tax Returns.

On 30/03/1442 AH, corresponding to 15/11/2020 AD, the Department requested Taxpayer whether it would like to submit any additional submissions to its appeal on the Primary Committee's Decision in question within the specified period or to be satisfied with its earlier submissions. The period elapsed without any further submissions from Taxpayer.

The Department, during its session held on 09/07/1442 AH, corresponding to 21/02/2021 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Taxpayer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

As for Taxpayer's appeal regarding item (Calculation and Adjustment of Company's Net Profit with Offshore Procurement Differences of 2009 and 2010), which includes its objection to the Primary Committee's Decision for upholding GAZT in adjusting Taxpayer's net profit with item (Import Differences), wherein Taxpayer requested deduction of the offshore procurement differences based on Tax Returns it had submitted, on the Grounds that the Customs Clearances registered in the name of the distributor of (..... Company) pertain to Taxpayer's offshore procurement supported by the invoices of the foreign suppliers and submitted to Saudi Customs in Taxpayer's name, while GAZT argued that it had processed these differences pursuant to GAZT's Circular



No. (09/2030) of 15/04/1430 AH, which states: “Taxpayer is charged with import differences that exceed or fall short of Customs Declaration in its Tax Return.”

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, as well as the agreement entered into with (..... Trading Company), found that, since the said agreement has shown that the parties hereto have agreed to appoint (..... Company) as an exclusive agent for Taxpayer, which is considered solid evidence that strengthens the aspect of the import by (..... Company) for the years in question, which also does not prevent the same from carrying out imports by itself, in light of the absence of any evidence from GAZT that refutes the said agreement; and since the aforementioned is not affected by the Grounds on which the Primary Committee based its Decision that the letter addressed to (..... Company) stated that it had not previously imported on Taxpayer’s behalf and disclaimed its responsibility for any obligations, as such a letter contradicts the letters issued by (..... Company) and addressed to Saudi Customs in requesting the release of shipments arriving in Taxpayer’s name and approving for a period of two years as of 01/06/1430 AH until 01/06/1432 AH; Therefore, the Department satisfies to accept Taxpayer’s appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Taxpayer’s appeal regarding item (Adjustment of Company’s Net Profit with Financial Expenses of 2009 and 2010), which includes its objection to the Primary Committee’s Decision for upholding GAZT in adjusting the Taxpayer’s net profit, wherein Taxpayer requested deduction of the interest costs in question on the ground that the interest on the loans charged to Taxpayer’s accounts represents interests it incurred and were not paid to its partner, and that Article (10) of Implementing Regulations of Income Tax Law applies only to branches of foreign companies operating within the Kingdom and does not apply to the Company’s “Taxpayer” case, as its legal entity is “Limited Liability Company,” while GAZT argued that these expenses are not of a deductible nature pursuant to Article (10) of Implementing Regulations of Income Tax Law.

The Department, having taken cognizance of documents included in Case file and Taxpayer’s Articles of Association and financial statements, found that, since returns on loans are considered deductible expenses if they are proven as actual expenses and supported by documents; and since Taxpayer’s legal entity is a “Limited Liability Company” registered in the Kingdom; and since Taxpayer has paid the returns on loans to non-resident partners and not to the head office, and also paid the withholding tax on that interest paid pursuant to the supporting documents, which renders that interest is of deductible nature for being proven by documents; Therefore, the Department satisfies to accept Taxpayer’s appeal and reverse the appealed Decision as to conclusion it had in this regard.

As for Taxpayer’s appeal regarding item (Imposition of Late Payment Fine of 2009 and 2010), which includes its objection to the Primary Committee’s Decision for upholding GAZT in imposing a late payment fine for the two years in question, wherein Taxpayer requested abolishment of the fine in question resulting from the tax differences arising from the contested items, due to the existence of a difference in viewpoints between Taxpayer and GAZT, and that the disputed amount is not due until the adjudication of the appeal pursuant as stated by Law; hence, the calculation period of the late payment fine in question should not begin until the disputed amount becomes due from a legal perspective by completing the objection and appeal procedures, while GAZT argued that it had imposed the fine pursuant to Article (77/A) of Income Tax Law.

The Department, having taken cognizance of documents included in Case file, found that, since it has decided to accept Taxpayer’s appeal on items (Adjustment of Company’s Net Profit with Financial Expenses of 2009 and 2010) and (Offshore Procurement Differences of 2009 and 2010), which necessitates not imposing a late payment fine on the differences



in of those two items; Therefore, the Department satisfies to accept Taxpayer's appeal and reverse the appealed Decision as to conclusion it had in this regard.

Decision

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

First: In Form:

Accept Taxpayer's (..... Company, C.R. No., TIN No.) appeal against Decision No. (11/33) of 1438 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept Taxpayer's appeal on item (Calculation and Adjustment of Company's Net Profit with Offshore Procurement Differences of 2009 and 2010) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Accept Taxpayer's appeal on item (Adjustment of Company's Net Profit with Financial Expenses of 2009 and 2010) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Accept Taxpayer's appeal on item (Imposition of Late Payment Fine of 2009 and 2010) and reverse the appealed Decision as to conclusion it had in this regard, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-76)
Delivered in Appeal No.
(IW-1696-2018)

Principle No. 244

A late payment fine is required when the dispute is not of a technical nature or is not due to a disagreement over the interpretation of relevant tax regulations or is not due to a disagreement over the interpretation of relevant tax regulations

Facts:

On Tuesday, 22/09/1442 AH, corresponding to 04/05/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 6/6/1438 AH by/ (...) Company against Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (7) of 1438 AH, issued in Case No. (25/35) concerning tax assessment case for the years 2005 to 2009 AD, filed by the Appellant against GAZT. The primary Decision included the following rulings:

First: In form:

Accept the objection submitted by Zakat Payer/ ... Company regarding zakat and tax assessment for the years 2005 to 2009 on procedural Grounds based on the justifications provided in the Decision.

Second: On merits:

Reject Zakat Payer's objection to the item regarding disallowance of deduction of confirmed tax losses by GAZT for the years 2004 to 2007 against taxable income for the year 2009 for the reasons stated in the Decision.

Reject Taxpayer's objection regarding the disallowance of withholding tax paid on foreign insurance premiums from the income tax for 2009 AD, for the merits stated in the Decision.

Reject Taxpayer's objection regarding the withholding tax on profits transferred to the headquarters for 2009 AD, for the merits stated in the Decision.

Reject Taxpayer's objection regarding late payment fines, for the merits stated in the Decision.

Dissatisfied with this Decision, Plaintiff (... Company) submitted a statement of appeal summarized as follows:

Taxpayer's appeal, regarding (Disallowance of deducting tax losses confirmed by GAZT from 2004 to 2007 AD against taxable income for the subsequent years), lies in Taxpayer's objection to the committee's Decision in support of GAZT's calculation of this item. Taxpayer asserts that the carried-forward tax losses, amounting to SAR (7,590,469) for the years 2004 to 2007 AD, are confirmed losses as per GAZT's assessment for those years and disagrees with GAZT and the committee's view, reflected in its Decision, that these are not operational losses, contending instead that they indeed qualify as operational losses. As evidence, Taxpayer argues that these losses reflect administrative costs necessary for



conducting business operations and capitalizing on commercial opportunities, such as expenses incurred for bidding and securing contracts. These administrative expenses, incurred during the specified years, represent operational expenses paid by Taxpayer for business purposes, which are permissible under Article (12) of the Income Tax Law and Paragraph (1) of Article (9) of the Implementing Regulations of the same Law. Furthermore, Taxpayer claims that these expenses are substantiated by the required documentation, as specified in its statement of appeal. In response to the committee's rationale that the losses incurred from 2004 to 2007 AD do not qualify as operational losses due to the lack of revenue during those years, Taxpayer argues this is incorrect, as the criterion for deductible expenses for tax purposes is that they must be "wholly" business-related, and that administrative expenses may be deducted regardless of whether the company generated revenue in the relevant years and asserts that disregarding approved expenses solely due to the absence of revenue is not justified. Since these losses are considered realized and qualify as operational losses, Taxpayer concludes its objection on this item by affirming the necessity of deducting the carried-forward losses from 2004 to 2007 AD against confirmed taxable profits in subsequent years. Taxpayer relies on Article (21/a) of the Income Tax Law, which states "A net operating loss may be carried forward to the taxable year following the year in which the loss is incurred. The carried forward loss shall be deducted from the tax base of following taxable years until the cumulative loss is fully offset. The Regulations shall specify the maximum limits which may be deducted annually" and also relies on Article (11) of the Implementing Regulations of the same Law, which states "A taxpayer may carry forward adjusted operational losses to the taxable years following the loss year, by reducing the following years' profits until the cumulative loss is fully offset, without being limited to a specified period, provided that the maximum deduction allowed in each taxable year does not exceed (25%) of the annual profit based on the taxpayer's return". Taxpayer's argument is based on the observation that the law addresses this issue in the context of tax return, yet it lacks clarification for situations where there are tax losses as per the tax return. Once GAZT's assessment is applied, the tax loss as per the tax return is transformed into taxable income as per the assessment. Moreover, Taxpayer believes that the laws and regulations were not intended to differentiate between two taxpayers merely based on one declaring a loss and the other a profit.

Taxpayer's appeal, regarding (Non-deduction of withholding tax paid on foreign insurance premiums from the income tax for 2009 AD), lies in Taxpayer's objection to the Primary Committee's Decision, which upheld GAZT's rejection of Taxpayer's request to deduct the withholding tax paid on foreign insurance premiums from the income tax for 2009 AD. Taxpayer emphasizes its right to deduct the withholding tax, amounting to SAR (32,400), from the income tax base for 2009 AD, as this tax was withheld on social insurance premiums paid abroad to the company's headquarters based on Paragraph (g) of Article (68) of the Income Tax Law. Taxpayer's reasoning is that, since GAZT considered the amount paid to the headquarters as income for the branch (Appellant) and did not allow the same as a deductible expense, it must necessarily permit the deduction of the withholding tax to prevent double taxation on the same amount.

Taxpayer's appeal, regarding (Reject Taxpayer's objection to the withholding tax on profits transferred to the headquarters for 2009 AD), lies in Taxpayer's objection to the Primary Committee's Decision, which upheld GAZT's imposition of withholding tax on such profits. Taxpayer asserts that this tax is not valid, as the profits in question were actually utilized to offset the company's accumulated losses from previous years and should not be interpreted as actual profit transfers to the headquarters. Consequently, Taxpayer requests that withholding tax not be imposed on such profits.

Taxpayer's appeal, regarding (Late Payment Fines), lies in Taxpayer's objection to the Primary Committee's Decision, which upheld GAZT's imposition of late payment fines on the unpaid tax differences related to withholding tax and income tax. Taxpayer asserts



that the imposition of these fines is unjustified, as the tax differences for which the fines were imposed remain a subject of technical dispute between Taxpayer and GAZT and further states that it acted in good faith when submitting the tax return within the statutory periods and paid the taxes owed. It argues that late payment fines should not be imposed on the tax liabilities assessed by GAZT in its amended assessments due to errors and differences of opinion between Taxpayer and GAZT, based on Paragraph (a) of Article (77) of the Income Tax Law, which states that late payment fines shall be imposed from the date the tax is considered final and these tax differences have not yet become final due to an ongoing serious dispute.

The Department decided to open the pleadings, GAZT submitted a reply memorandum dated 10/04/1442 AH, corresponding to 25/11/2020 AD, in response to Appellant's memorandum concerning the contested items. GAZT, regarding "Disallowance of tax loss deductions for subsequent years", responded that, upon reviewing the tax assessment, the objection file, and the financial statements, it was evident that there were no revenues for the years 2004 to 2007 AD and it was also clear that the losses for which Taxpayer seeks a deduction are non-operational losses. Therefore, these losses were not deducted based on Article (21) of the Tax Law and Article (11) of the Implementing Regulations of the Income Tax Law. Therefore, GAZT maintains the validity and correctness of its actions. GAZT, regarding the appeal on the issue of (Non-deduction of withholding tax paid on foreign insurance premiums from the income tax for 2009 AD), responded that withholding tax was imposed on foreign insurance premiums in accordance with the provisions of Article (63) of the Implementing Regulations of the Income Tax Law. Moreover, GAZT, concerning Taxpayer's request to deduct the withholding tax paid on foreign insurance premiums, clarified that the provisions of Paragraph (g) of Article (68) of the Tax Law, which Taxpayer referenced, do not apply to its case, as the withholding tax paid was not deducted from Taxpayer but rather from the foreign insured companies and the mentioned article pertains to the deduction of withholding tax that has been withheld from Taxpayer on amounts that are included in Taxpayer's revenues and subject to income tax, not on unapproved expenses. GAZT, in relation to the appeal on the issue of (Reject Taxpayer's objection to the withholding tax on profits transferred to the headquarters for 2009 AD), stated that it subjected these profits to withholding tax based on the provisions of Article (68) of the Income Tax Law and the withholding tax was imposed because the financial statements showed that the profits were closed in the headquarters' account, which constitutes a payment event, thereby necessitating the imposition of withholding tax based on Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law. GAZT, concerning the appeal on (Late Payment Fine), responded that late payment fines were imposed on the unpaid tax differences related to withholding tax and income tax in accordance with Article (77) of the Income Tax Law.

On 19/3/1442 AH, corresponding to 4/11/2020 AD, the Department requested Taxpayer to submit any additional information regarding its appeal against the Decision under review, within the deadline granted by the Department or alternatively, to rely on the information already provided in its memorandum of appeal. The specified period lapsed without Taxpayer submitting any additional information.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions.



Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, concerning Zakat Payer's Appeal on the item of "disallowance of deducting the confirmed tax losses by GAZT for the years 2004 to 2007 against taxable income for subsequent years," it appears that the Appeal centers around Zakat Payer's request to deduct the carried-forward losses for the years 2004 to 2007 against the confirmed taxable profits for subsequent years. Zakat Payer argues that the condition for allowing expense deductions for tax purposes is that these expenses were incurred for business purposes and that they are operational expenses that were paid. However, GAZT maintains that the losses Zakat Payer seeks to deduct are non-operational losses, and therefore, they were not allowed under Article (21) of the Income Tax Law and Article (11) of Implementing Regulations thereof. Having carefully considered the arguments presented by both parties to the appeal, and given that the Primary Committee based its Decision on the Grounds that the disputed losses were not operational due to Taxpayer's lack of revenue, it is established that costs incurred by a taxpayer in the course of their business activities and aimed at generating revenue are, from an accounting standpoint, considered operational costs, regardless of whether revenue is actually realized. Since the law does not provide a specific definition of operating losses, nor does it set a minimum threshold for revenue to be realized in order to classify excess expenses as operational losses, it follows that Taxpayer is entitled to deduct these losses against the profits of subsequent years. Consequently, this Department decided to accept Taxpayer's appeal and reverse the Decision delivered in this regard.

Taxpayer's appeal, regarding (Non-deduction of withholding tax paid on foreign insurance premiums from the income tax for 2009 AD), lies in Taxpayer's request to deduct the withholding tax amounting to SAR (32,400), paid to the headquarters abroad for social insurance, from the income tax base. Taxpayer argues that failure to deduct the aforementioned amount would result in double taxation on the same income, in accordance with the provisions of Article (68), Paragraph (g) of the Income Tax Law. However, GAZT contends that withholding tax was imposed on the foreign insurance premiums in accordance with Article (63) of the Implementing Regulations of the Income Tax Law and further argues that the provisions of Article (68) of the Tax Law, which Taxpayer referenced, do not apply to Taxpayer's case, as the withholding tax paid was not deducted from Taxpayer but rather from the foreign insured companies. Having carefully considered the subject of the appeal, and given that the insurance premiums paid do not constitute income for the headquarters but rather for independent third parties, namely the insurance funds to which these disputed amounts were paid, and given that the Department did not observe any requirement for correction or further comment based on the evidence provided, this Department decided that the arguments presented have not had any impact on the outcome of the primary Decision delivered in this regard. Accordingly, the Department concluded to dismiss Taxpayer's appeal and uphold the Decision delivered in this regard.

Taxpayer's appeal, regarding (Rejection of Taxpayer's objection to the withholding tax on profits transferred to the headquarters for 2009 AD) lies in Taxpayer's request to exempt the said transferred profits from withholding tax for 2009AD, as the profits were utilized to offset accumulated losses from previous years. However, GAZT views the closure of these profits in the headquarters' account constitutes a payment event, thereby necessitating the imposition of withholding tax. Furthermore, it has been ascertained that these profits were recorded in the headquarters' account and this act of recording is considered tantamount to payment. The Department, upon careful consideration of the arguments presented by both parties to the appeal, and given that Taxpayer files its returns based on statutory accounts, and GAZT failed to prove that these profits were indeed remitted to the headquarters, in accordance with Article (68) of the Income Tax Law,

which mandates the occurrence of an actual payment event to trigger the withholding tax, found that the primary Decision's reference to recording the profits in the headquarters' account constitutes payment is not upheld, as such a record does not constitute an actual or deemed payment of profits. Rather, it is an accounting procedure similar to recording annual profits within retained earnings as part of equity. Consequently, this Department resolved to accept Taxpayer's appeal and overturn the Decision delivered in this regard.

Taxpayer's appeal, regarding (Late Payment Fine), lies in Taxpayer's request to waive late payment fines on additional income tax and withholding tax, arguing that the late payment fines should only be calculated after the issuance of the final Decision. However, GAZT maintains the validity of its Decision in accordance with Article (77) of the Income Tax Law. Since the Department decided to accept Zakat Payer's Appeal on the item of disallowance of deducting the confirmed tax losses for the years 2004 to 2007 against taxable income for 2009, and the item of withholding tax on profits transferred to the head office for 2009, the Department concludes that the fines associated with these items are void, as the underlying tax liabilities have been dismissed. Therefore, the Department overturns the primary Decision regarding this item. As for the item regarding disallowance of deducting the withholding tax paid on insurance payments made abroad from the income tax for 2009, for which the Department has decided to reject Zakat Payer's Appeal, and since the dispute over this item does not constitute a technical disagreement or an issue of interpreting relevant tax laws, the Department is convinced that late payment fines shall be imposed from the date Zakat Payer became aware, or shall have been aware, of the tax due. This implies that Zakat Payer was presumed to know about the tax liability from the date it was due according to the law. Therefore, the Department concludes to reject Zakat Payer's Appeal concerning the late payment fines related to this item and upholds the primary Decision regarding this matter.

Decision

First: Accept, in form, the appeal filed by Zakat Payer/..... Company, C.R. No. (...), TIN No. (...), against Decision No. (7) of 1438 AH of the Second Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the item of "disallowance of deducting the confirmed tax losses for the years 2004 to 2007 against taxable income for subsequent years," and overturn the primary Decision in this regard, in accordance with the reasons and Grounds outlined in this Decision.
2. Dismiss Taxpayer's appeal, regarding (Disallowance of withholding tax paid on foreign insurance premiums from income tax for 2009 AD), and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
3. Accept Taxpayer's appeal, regarding (Rejection of Taxpayer's objection to the withholding tax on profits transferred to headquarters for 2009 AD), and reverse the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Taxpayer's appeal, regarding (Late Payment Fine) concerning the items for which Taxpayer's appeal was accepted, overturn the primary Decision delivered in this regard, and confirm validity of the fines for the items where Taxpayer's appeal was dismissed, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-100)
Delivered in Appeal No.
(IW-16278-2020)

Principle No. 245

The obligation to pay capital gains tax resulting from a partner's exit from the company is solely borne by the seller and the purchaser and the company is not jointly liable for the payment of capital gains tax due to the partner's exit.

Facts:

First: In Form:

Accept the case filed by ... Plant, C.R No. (...), in form.

Second: On Merits

Cancel Defendant's Decision regarding "Tax Calculation of Capital Gains".

Since the aforementioned Decision was not accepted by Zakat, Tax and Customs Authority (ZATCA), it presented a statement of appeal to the Department, summarized as follows:

ZATCA emphasizes that the Department that delivered the Decision did not address the Grounds for accepting the Case in form. ZATCA clarified in its memoranda to the Primary Committee that it rejected Taxpayer's objection in form due to failure of payment the unchallenged withholding tax, based on provisions of Paragraph (b) of Article (66) of the Income Tax Law. Furthermore, ZATCA confirms that it rejected the objection on merits, as the cost basis was calculated in accordance with provisions of Paragraph (d) of Article (9) of the Income Tax Law, which states that the cost basis of an asset purchased, produced, or manufactured by Taxpayer is the amount paid by Taxpayer for the asset, either in cash or in kind, during the acquisition process. Therefore, the cost basis used to determine capital gains is the share of the exiting partners in the paid-in capital. Based on the explanation provided above, the cost basis cannot be equated with the equity of the partners as assumed by Taxpayer's chartered accountant in its objection, since the equity referred to as SAR (33,923,011) is the book value of the company, which is equivalent to the net assets of the company. Simultaneously, the book value is defined as the paid-in capital at incorporation plus reserves and retained earnings, if any. Additionally, ZATCA noted that the Department that delivered the Decision erred in relying on the provisions of Article (39) of the Income Tax Law, as it pertains specifically to the cost basis in partnerships, whereas the legal entity of Taxpayer is a limited liability company.

As per Taxpayer's memorandum dated 05/11/1441 AH, corresponding to 25/06/2020 AD, responding to ZATCA's appeal, it affirmed that the company did not object to ZATCA's assessment of its accounts for 2014 AD, which included a withholding tax amount. Taxpayer also argued, regarding the assessment of capital gains for the exiting partners, that this was not an assessment on the company's accounts, but rather pertains solely to partners. Furthermore, ZATCA rejected the objection in form claiming that it was submitted by an unauthorized party and the company is not jointly liable for the taxes owed by the exiting partners. On merits, Taxpayer responded by stating that ZATCA failed



to consider that the share sale agreement stipulated that “The shares were sold with all their rights and obligations”. Therefore, the amount received by the withdrawing partners is in exchange for waiving all their rights in the company, which was included in the sale price according to the financial statements. Taxpayer emphasizes that the provisions cited by ZATCA in Article (9) of the Income Tax Law and Article (16) of the relevant Implementing Regulations pertain to the procedures for disposing of assets in the absence of statutory accounts, which does not apply to Taxpayer.

Grounds



Upon reviewing Case documents and statement of appeal submitted by ZATCA, the Department found that conditions of appeal 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 statutory prescribed period.

As on Merits, ZATCA’s appeal, regarding “Tax calculation of capital gains arising from the exit of certain partners from the company for 2014 AD”, lies in ZATCA’s request to uphold its method of calculating the cost basis that results in tax liability. On the other hand, Taxpayer argues that ZATCA’s calculation is incorrect and requests the affirmation of the primary Decision delivered in this regard. The Department, upon reviewing the case file, including ZATCA’s statement of appeal and Taxpayer’s Reply, finds that Taxpayer is not obligated to pay capital gains tax resulting from the exit of the partners. The Department established that the sale agreement was finalized on 13/11/1435 AH, demonstrating that Taxpayer’s obligation to pay is negated based on Article (16) of the Implementing Regulations of the Income Tax Law, which requires the selling partner to notify ZATCA and pay the capital gains tax arising from the sale in solidarity with the purchaser. This provision was enacted under Ministerial Decision No. (1776) dated 18/05/1435 AH and the sale was concluded after the amendment of the relevant article in the Implementing Regulations, which restricted the obligation to pay to the seller and purchaser only, without imposing joint liability on the company for the capital gains tax. Therefore, the Department concludes that ZATCA does not have the right to compel Taxpayer to pay the tax and ZATCA’s assessment against Taxpayer is incorrect. Therefore, the Department dismisses ZATCA’s appeal and upholds the primary Decision based on its conclusion and the reasons provided by this Department for dismissing ZATCA’s appeal.

Decision

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

First: Accept appeal in form filed by ZATCA against Decision No. (IWD-2020-32) of the First Department for Determination of Income Tax Violations and Disputes in Dammam.

Second: On Merits:

Dismiss ZATCA’s appeal and uphold the primary Decision based on its conclusion and the reasons provided by this Department for dismissing ZATCA’s appeal.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-113)
Delivered in Appeal No.
(IW-1753-2020)

Principle No. 246

The chartered accountant's certification of the company's expenses serves as prima facie evidence that the company incurred such expenses and that they are deductible for tax purposes.

Facts:

On Thursday, 29/10/1442 AH, corresponding to 10/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 18/08/1437 AH by/ (...) Company against Decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (9) of 1437 AH, issued regarding Objection No. (111/3) concerning tax and zakat assessment for 2008 AD, filed by the Appellant against ZATCA. The primary Decision included the following rulings:

First: In Form:

Accepting Zakat payer's objection in form, according to the reasoning of the Decision.

Second: On Merits

Confirm settlement of the dispute regarding project provisions upon Taxpayer's agreement to GAZT's calculation method.

1. Dismiss Taxpayer's objection regarding non-deduction of travel expenses, for the merits stated in the Decision.
2. Dismiss Taxpayer's objection regarding non-deduction of undocumented employee salaries and wages, for the merits stated in the Decision.
3. Dismiss Taxpayer's objection regarding non-deduction of project expenses, for the merits stated in the Decision.
4. Uphold Taxpayer's objection regarding the withholding tax on salaries and wages paid to the headquarters, for the merits stated in the Decision.
5. Regarding Fines:
 - a. Reject Taxpayer's objection to the calculation of late payment fines on items (2,3,4), for the merits stated in the Decision.
 - b. Nullify imposition of the late payment fine on the amounts transferred to the headquarters, for the merits stated in the Decision.

As this Decision was not accepted by Zakat Payer (... Company), Zakat Payer submitted a Statement of Appeal, which included the following:

Taxpayer challenges the Primary Committee's Decision on three items, including (Exclusion of Travel Expenses), (Exclusion of Salaries and Wages), and (Exclusion of Project Cost), where the Primary Committee upheld ZATCA's actions on the Grounds of the absence of supporting documents for these expenses. Taxpayer asserts the validity of these expenses and claims to have provided all the supporting documents, including copies

of debit notes and confirmations from the auditors. Consequently, Taxpayer requests reversal of the primary Decision and acceptance of these expenses.

Whereas the Department decided to open the pleadings and the case file includes a memorandum of reply dated 25/07/1439 AH, in which ZATCA responded to Taxpayer's appeal regarding the disputed items, wherein ZATCA stated that it had requested Taxpayer to provide supporting documents for these items. However, Taxpayer failed to do so. Moreover, ZATCA confirmed in a supplementary memorandum dated 17/08/1439 AH that Taxpayer failed to provide all the required documents and that the documents submitted by Taxpayer were partially in English, whereas Arabic is the official language according to the Basic Law of Governance. Additionally, ZATCA's rejection of Taxpayer's expenses is based on Article 58(b) of the Income Tax Law, which grants ZATCA the right to refuse to recognize any expense if Taxpayer fails to substantiate thereof.

On Thursday 19/08/1442 AH corresponding to 01/04/2021, the Department decided to hold a 10-day e-hearing. During that period, Taxpayer submitted several documents, including a translated memorandum of understanding and a translated certificate for some costs, which have been added to the case file. However, ZATCA did not provide any additional information beyond what it had previously submitted.

On 24/10/1442 AH corresponding to 05/06/2020 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds



After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

As on Merits, the Department, regarding (Exclusion of Travel Expenses), (Exclusion of Salaries and Wages), and (Exclusion of Project Cost), and upon reviewing the subject of the dispute and the documents provided by Taxpayer, found that the dispute is documentation-related. Given that Taxpayer submitted a certification issued by (...) Firm Chartered Accountants, accompanied by a certified translation, which verifies Taxpayer's incurrence and payment of these expenses to the headquarters, it is evident that Taxpayer is entitled to deduct the travel expenses specified in the chartered accountant's report, amounting to SAR (1,073,612), deduct the salaries and wages specified in the aforementioned report, amounting to SAR (9,901,872), and deduct the project costs, amounting to SAR (756,790) from Taxpayer's tax base.

Decision

Based on the foregoing, and taking into account the aforementioned reasons, the Department decided the following:

First: Accept the appeal filed by Taxpayer/(...) Company), CR No. (...), TIN No. (...), in form against Decision No. (9) of 1437 AH of the Third Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Accept Taxpayer's appeal, regarding (Exclusion of Travel Expenses) item, to deduct travel expenses outlined in the chartered accountant's report amounting to SAR (1,073,612) only, in accordance with Grounds and merits mentioned herein.



2. Accept Taxpayer's appeal, regarding (Exclusion of Salaries and Wages) item, to deduct salaries and expenses outlined in the chartered accountant's report amounting to SAR (9,901,872) only, in accordance with Grounds and merits mentioned herein.
3. Accept Taxpayer's appeal, regarding (Exclusion of Project Costs) item, to deduct the project costs amounting to SAR (756,790) only from the tax base, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-132)
Delivered in Appeal No.
(ZIW-1646-2020)

Principle No. 247

Social insurance certificates shall be considered prima facie evidence of the amounts paid to GOSI for tax purposes.

Facts:

On Tuesday, 19/11/1442 AH, corresponding to 29/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 12/05/1438 AH by/ ... Company against Decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (6) of 1438 AH, issued in Case No. (8/37), regarding zakat and tax assessment for the years 2010 to 2012, filed by the Appellant against Zakat, Tax and Customs Authority (ZATCA). The primary Decision ruled as follows:

First: In Form:

Accept, the objection submitted by ... Company regarding zakat assessment for the years 2010 to 2012 on procedural Grounds.

Second: On Merits

1. Reject Zakat Payer's objection regarding the item of social insurance.
2. Reject Zakat Payer's objection regarding the request to deduct school expenses from zakat base for the years 2010 to 2012.
3. The dispute between ZATCA and Zakat Payer concerning provisions added to zakat base for the year 2010 has been resolved.
4. Uphold Zakat Payer's objection to deduct the amounts of SAR (7,830) for 2011 and SAR (87,252) for 2012 from the retained earnings balance, in accordance with ZATCA's assessment.
5. Deduct the net value of fixed assets from the zakat base, while adding all sources of financing.
6. Reject Zakat Payer's objection regarding calculation of withholding tax for the years 2010 to 2012.
7. Accept Zakat Payer's objection regarding non-imposition of a late payment fine on items upheld by the Committee, while the objection to the calculation of late payment fines on items upheld by ZATCA is rejected.

As this Decision was not accepted by Zakat Payer (... Company), Zakat Payer submitted a Statement of Appeal, which included the following:

Regarding the "Social Insurance" item, Zakat Payer bases the Appeal on having paid social insurance amounts monthly and regularly to the General Organization for Social Insurance for the years 2010 to 2012, according to its regulations in this regard, and with supporting documents. Zakat Payer asserts disagreement with ZATCA's method of calculating the social insurance difference. Regarding the "School Expenses" item, Zakat Payer confirms



having paid the value of school expenses for the years 2010 to 2012 and requests deduction of these expenses from the zakat base for these years. Regarding the "Saudi Partner's Share in Retained Earnings" item, Zakat Payer bases the appeal on the fact that the Saudi partner's share in retained earnings was subject to different amounts than in the zakat declaration for the years 2011 and 2012. The retained earnings in the zakat declaration for 2011 were SAR (45,060,641), while they were SAR (51,009,323) according to the assessment. For 2012, the retained earnings in the declaration were SAR (75,004,518), while the assessed retained earnings amounted to SAR (80,936,179). Zakat Payer asserts the right to include the retained earnings as reported in zakat declaration. Regarding the "Withholding Tax" item, Zakat Payer bases the appeal on the assertion that the company pays withholding taxes on a monthly and regular basis and submits both monthly and annual returns. ZATCA matched certain expense items with non-resident companies against the annual withholding tax form for the same year. It is well-known that withholding tax is calculated on a cash basis, while expenses recorded during the year are calculated on an accrual basis, and the withholding tax on those amounts may have been paid in subsequent years when the amounts were transferred to the company. Additionally, during the same year, withholding tax payments were made for amounts transferred to the same companies but with different amounts. Furthermore, some amounts are paid to entities that are not subject to withholding tax according to the Income Tax Law, as they do not constitute services for which withholding tax is applicable. Regarding the "Late Payment Fines" item, Zakat Payer asserts that the items for which the fines were imposed are subject to ZATCA's discretionary judgment, and different interpretations are possible. Moreover, the delay in zakat and tax assessment by ZATCA shall not result in penalizing Zakat Payer.

On Thursday, 26/08/1442 AH, corresponding to 08/04/2021 AD, the Department decided to hold a virtual hearing for a period of 10 days. During this time, Zakat Payer did not submit any additional information beyond what had already been provided. However, ZATCA submitted a memorandum responding to Zakat Payer's appeal on the disputed items. Regarding the (Social Insurance) item, ZATCA confirmed that it adjusted Zakat Payer's declaration to reflect the differences in social insurance expenses between the amounts recorded in the accounts and the social insurance certificate, based on the findings in the field audit report, which was signed by Zakat Payer's representatives. Additionally, Zakat Payer did not provide supporting documents for these discrepancies. Regarding the item of "School Expenses," ZATCA responded to Zakat Payer's Appeal by affirming that it had added back the school expenses to profit due to Zakat Payer's failure to provide supporting documents for the item as required under Paragraph (7) of the Implementing Regulations of Income Tax Law. As for the item of "Saudi Partner's Share in Retained Earnings," ZATCA stated that it calculated Saudi partner's share in retained earnings for the years 2011 and 2012 in the same manner applied to all Zakat Payers. The amount used from the Zakat provision was deducted from the opening Zakat balance of the year. Regarding the "Withholding Tax" item, ZATCA stated that it imposed withholding tax based on the documents provided by Zakat Payer during the field audit of its accounts, specifically for the items of "Technical and Advertising Services" and "Support and Operational Expenses." Upon reviewing these items, it was found that payments had been made to external parties for services, but withholding tax had not been paid on these amounts. Furthermore, Zakat Payer did not provide documents supporting its position to ZATCA. Regarding the "Late Payment fine" item, ZATCA affirmed the validity of its actions in applying the provisions of Article (77) of the Income Tax Law.

On 03/11/1442 AH, corresponding to 13/06/2021, after reviewing the Appeal briefs and responses, and examining the documents and records in case file, the Department determined that the case is ready for adjudication and issuance of a Decision on its merits.



Grounds



After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

As for the merits of case, it was found, regarding Zakat Payer's appeal against (Social Insurance) item, that the subject of the appeal lies in the deduction of this amount from Zakat Payer's zakat base, due to the payments made to GOSI, supported by the relevant documents. However, ZATCA contends that it added the difference between the amounts recorded in Zakat Payer's accounts and those indicated in the social insurance certificate to Zakat Payer's zakat base, due to the lack of supporting documents for this difference. Additionally, Zakat Payer signed the field inspection report, which included these amounts. Having perused subject of the dispute, and since ZATCA's actions were based on the social insurance certificate, Zakat Payer failed to provide justifications for the discrepancies between the amounts they declared and those reflected in the social insurance certificate, the field inspection report did not include any objections or reservations from Zakat Payer regarding its contents, and this Department determined that the conclusion reached by the Committee that delivered the contested Decision, as well as Zakat Payer's arguments that did not affect the outcome of the contested Decision, this Department concludes to dismiss Zakat Payer's appeal and uphold the primary Decision concerning this item, supported by its reasons as well as the reasons stated herein.

Regarding Zakat Payer's appeal on the "School Expenses" item, the appeal is based on Zakat Payer's request to deduct the value of this item, as they claim to have paid these school expenses for the years 2010 to 2012. However, ZATCA asserts that Zakat Payer did not provide supporting documents for this claim. Having perused the subject of the dispute and the position taken by the Committee that delivered the Decision, and given that the audited financial statements indicated Zakat Payer's incurrence of these expenses, and considering that audited financial statements constitute sufficient evidence to support the recognition of such expenses unless contradicted by evidence that can support a departure from such statements, and given that no evidence was presented to this department contradicting the information contained in those statements, this Department concludes to accept Zakat Payer's appeal concerning the zakat aspect of this item. As for the tax aspect related to this item, the regulations require Zakat Payer to provide documentary evidence proving the incurrence of the claimed expenses, and since Zakat Payer failed to provide supporting documentation for its claim in accordance with the Tax Law, the Department concludes to dismiss Zakat Payer's appeal and uphold the primary Decision delivered in this regard.

Zakat Payer's appeal, regarding (Saudi Partner's Share in Retained Earnings) item lies in its request to include the retained earnings as reported in the zakat declaration and to cancel ZATCA's actions regarding this item. However, ZATCA contends that it calculated the Saudi partner's share in the retained earnings for 2011 and 2012 AD using the same method applied to all zakat payers, whereby the utilization of the zakat provision was deducted from the zakat opening balance. Having perused the subject of the dispute and given that ZATCA failed to provide a detailed explanation on how it calculated the partner's share, considering that the balance of retained earnings is affected by any transfers made, and since the Department could not determine the reason behind ZATCA's linkage of zakat provision (which is an account within the company's liabilities) to the retained earnings account (which is an account under shareholders' equity), this Department concludes to accept Zakat Payer's declaration, as no evidence was presented for contradiction.



Consequently, the Department concludes to accept Zakat Payer's appeal and overturn the primary Decision delivered in this regard.

Regarding Zakat Payer's Appeal on the "Withholding Tax" item, the appeal is based on Zakat Payer's request to cancel the withholding tax imposed, arguing that the expenses are accrued but payment has not been made, and that part of the services provided by a non-resident entity is not subject to withholding tax. ZATCA, however, maintains that based on the field audit report, it was found that payments were made to non-resident entities, and withholding tax had not been paid on those amounts. Upon reviewing the matter of dispute, the Department notes that the default rule is that a non-resident is subject to tax on any amount they receive from any source within the Kingdom. ZATCA confirmed, through the analytical data provided by Zakat Payer during the field audit of their accounts for the items of (technical and advertising services, and support and operational expenses), that withholding tax was due and had not been paid. The primary Decision included the related amounts, and Zakat Payer did not provide evidence in the appeal to prove that the withholding tax was paid or to demonstrate that the amounts were not subject to tax. Furthermore, Zakat Payer did not deny that these payments, subject to withholding tax, had indeed been made. The Department did not observe any Grounds for reconsideration or further comment based on the evidence presented. Therefore, the Department, by majority, concludes that the information provided does not impact the outcome of the primary Decision regarding this item. Consequently, the Department decided to reject Zakat Payer's Appeal and uphold the primary Decision on this matter.

Zakat Payer's appeal, regarding (Late Payment Fine) item, lies in its request to cancel the late payment fine on the Grounds that it is unwarranted, given the serious dispute concerning the items in question. Zakat Payer also argues that ZATCA delayed the assessment process, resulting in a delay in resolving the value of the items. However, ZATCA contends that it imposed the fine in accordance with the provisions of Article (77) of the Income Tax Law. Having perused the subject of the dispute and given that the fine is contingent upon the acceptance or dismissal of the related item, the Department decides to cancel the fines imposed on the items for which Zakat Payer's appeal was accepted, as the fine is canceled with the invalidation of its underlying basis and validity of the fines imposed on the items for which Zakat Payer's appeal was dismissed. Consequently, the fine should be imposed on the differences for this item if Zakat Payer failed to pay, starting from the relevant statutory due date.

Decision

Based on the foregoing, and taking into account the aforementioned reasons, the Department decided the following:

First: Accept the appeal filed by Zakat Payer/(...) Company), TIN No. (...), in form against Decision No. (6) of 1438 AH of the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Reject Zakat Payer's Appeal regarding the "Social Insurance" item, and uphold the primary Decision in this regard, based on the reasons and justifications outlined in this Decision.
2. Accept Zakat Payer's Appeal regarding the "School Expenses" item in regards of zakat aspect, and reject it for the tax aspect, based on the reasons and justifications outlined in this Decision.
3. Accept Zakat Payer's Appeal regarding the "Saudi Partner's Share in Retained Earnings" item, and overturn the primary Decision in this regard, based on the reasons and justifications outlined in this Decision.



4. Reject, by majority, Zakat Payer's Appeal regarding the "Withholding Tax" item, and uphold the primary Decision in this regard, based on the reasons and justifications outlined in this Decision.
5. Affirm validity of the fines imposed for the items where Zakat Payer's appeal was not accepted, starting from their legal due date, and cancel the fines for the items where Zakat Payer's appeal was accepted, based on the reasons and justifications outlined in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-135)
Delivered in Appeal No.
(IW-1729-2018)

Principle No. 248

Expenses charged to Taxpayer's tax base in the form of services rendered by a third party require the submission of the necessary supporting documentation to justify their deduction from the tax base. To substantiate this, it must be demonstrated that the service-providing company is registered with ZATCA, as it will declare these services as revenue in its return submitted to ZATCA, thereby supporting the legitimacy of the charge to the taxpayer receiving the service.

Facts:

On Tuesday, 19/11/1442 AH, corresponding to 29/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 19/03/1437 AH by/ (...) Company against Decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (1) of 1437 AH, issued in Case No. (25/35) concerning tax assessment for the years 2005 to 2009 AD, filed by the Appellant against ZATCA. The primary Decision included the following rulings:

First: Accept the objection in form.

Second: On Merits:

5. Support GAZT's position on adding the revenue difference for 2006 AD.
6. Support GAZT's position on disallowing the deduction of carried forward losses for 2007 and 2008 AD.
7. Support Taxpayer's position on the non-imposition of withholding tax on amounts paid to ... Company and ... Company for 2005 AD.
8. Support GAZT's position on excluding the amounts charged by ... Company.
9. Support GAZT's position on excluding bank charges for 2007 AD.
10. Support GAZT's position on excluding the depreciation difference for the years 2005 to 2009 AD.
11. Confirm settlement of the dispute in favor of Taxpayer upon GAZT's agreement of its position.
12. Support GAZT's position on imposing withholding tax on the net income after tax deduction for 2005 and 2006 AD.
13. Support GAZT's position on imposing withholding tax on the interest charged by the headquarters.
14. Support GAZT's position on imposing withholding tax on the technical service expenses for the years 2005 to 2009 AD.
15. Support GAZT's position on imposing a fine for the failure to submit a return for 2008 AD.



16. Support GAZT's position on imposing a late payment fine on Taxpayer regarding the items for which the committee upheld GAZT's stance.

Since the aforementioned Decision was not accepted by Taxpayer (... Co.), it presented a statement of appeal, summarized as follows:

Taxpayer, regarding (Exclusion of Charged Amounts and Service Costs from ... Company for the years 2005 to 2009 AD), challenges the Primary Committee's Decision upheld ZATCA's position in excluding the amounts from ... due to the lack of supporting documents and also asserts that ... Company is an independent entity from ... Company. Service costs provided by ... Company to ... Company are recorded in the books of ... Company, while the same service costs are recorded as expenses in the books of ... Company. Taxpayer emphasizes that it presented the supporting documents for the costs and service expenses recharged by ... Company for the years 2005 to 2009 AD. Taxpayer, regarding (Exclusion of technical service costs obtained from ... Company amounting to SAR 570,758 for 2007 AD), bases its appeal on the assertion that ... Company provided various technical services to it and emphasizes that the expenses for these services are deductible, as they represent legitimate business expenses supported by the necessary documentation. Taxpayer, regarding (Exclusion of Depreciation Difference for the years 2005 to 2009 AD), affirms the presence of additions to fixed assets for 2005 AD, noting that this error affected the depreciation calculation for 2005 AD and subsequent years and requests a correction of the material error in accordance with the correct calculation based on the financial statements. Moreover, Taxpayer, regarding (Imposition of withholding tax on net income after tax calculation for the years 2005 AD amounting to SAR (4,487,984) and 2006 AD amounting to SAR (3,428,101)), bases its appeal on the assertion that the branch did not transfer any profits, indicating the absence of a payment event that would require withholding tax, and emphasizes that the inclusion of profits in the accounts of the headquarters does not imply that the profits were settled against other items in the account. Taxpayer, regarding (Imposition of withholding tax on the interest charged by the headquarters against payments to ... for 2008 AD amounting to SAR (2,595,545)), bases its appeal on the assertion that the imposition of withholding tax on these interest amounts is incorrect because the bank charges incurred by the branch represent costs related to financing the branch through a consortium of several banks, including two local Saudi banks and another bank in Finland. Therefore, Taxpayer contends that these amounts pertaining to the local Saudi banks should not be subject to withholding tax. Taxpayer, regarding (Imposition of withholding tax on the expenses listed in Statement No. (3) of tax returns for the years 2005, 2007, 2008, and 2009 AD), asserts that the imposition of withholding tax on these expenses is incorrect, as there is no actual payment, noting that the withholding tax is only applicable upon actual payment. Furthermore, the amounts declared in Statement No. (3) were recorded in relation to the supply of materials, not for services; therefore, they should not be subject to withholding tax. Taxpayer, regarding (Imposition of a late submission fine on the amended tax returns for the years 2005, 2008, and 2009 AD), basis its objection on the fact that it submitted the tax return for the year ending December 31, 2008, on April 29, 2009, which is within 120 days from the end of the fiscal year, in accordance with Paragraph (b) of Article (60) of the Income Tax Law. Taxpayer, regarding (Imposition of a late payment fine on the tax obligation resulting from GAZT's actions), bases its appeal on the premise that the fines mentioned in Article (76) of the Income Tax Law relate to delays in tax payment and are not applicable to tax assessments. Furthermore, the difference in tax that resulted in the late payment fine was due to differing views between Taxpayer and ZATCA, which preclude the imposition of a late payment fine according to the Income Tax Law. Taxpayer, regarding non-deduction of carried forward losses for the years 2007 and 2008 AD, amounting to SAR (50,814,870) and SAR (109,396,197), respectively, requests the deduction of the aforesaid carried forward losses from 2009 profits, compared with the taxable profits confirmed by



ZATCA, in accordance with the provisions of Article (11) of the Implementing Regulations of the Income Tax Law.

The Department decided to open the pleadings and the case files included a memorandum dated 8/8/1439 AH in which ZATCA responded to Taxpayer's appeal regarding the disputed items. In its response concerning the item of amounts charged from ... ZATCA stated that Taxpayer failed to provide any supporting documents for the deduction during field inspection. ZATCA, regarding (Bank charges amounting to SAR (570,758) for 2007 AD and the corresponding tax of SAR (114,152), responded that it had approved the item of banking services for all years supported by external documentation in the name of the company, except for the amount of SAR (570,758) for 2007 AD, as it was not supported by external documentation compared to other years. ZATCA, regarding (Exclusion of Depreciation Differences), responded that during the review of Statement No. (4) included in the company's tax returns for the years 2005 to 2009 AD, a material error was observed in the filling of the fields in Statement No. (4) for all years. As a result, Statement No. (4) for the years 2005 to 2009 AD was refilled based on the information provided in the company's audited financial statements correctly, leading to the mentioned differences, which increased the profits. ZATCA, regarding (Imposition of withholding tax on net income after tax deduction), responded that it subjected the profits for the years 2005 and 2006 AD, which were closed in the accounts of the headquarters, to a withholding tax rate of 5% in accordance with Article (68) of the Income Tax Law, because withholding tax is due when a payment or a similar event occurs, such as offsetting or settling accounts, where the date of settlement is considered the date of payment. ZATCA, regarding (Imposition of withholding tax on the interest charged by the headquarters), responded that the amounts subjected to withholding tax in accordance with Article (68) of the Income Tax Law and Article (63) of the relevant Implementing Regulations are payments made from a resident to a non-resident entity (the headquarters) for the service of collecting receivables amounting to SAR (1,574,000,000), which the headquarters fulfilled through its agreement with the mentioned bank consortium. This liability ultimately assigned to the headquarters. ZATCA, concerning (Withholding Tax on the Technical Service Amount), stated that it imposed a tax rate of 5% on the value of these services pursuant to Article (68) of the Income Tax Law, as the amounts were charged to the accounts under the heading of technical services, and we have not found confirmation of the company's objection that these amounts have not yet been paid to non-resident entities and that they are merely accrued expenses. ZATCA, regarding (Late Submission Fine for 2008 Tax Return Amounting to SAR (20,000)), responded that Taxpayer submitted settlements (amended tax return) after the statutory deadlines, which ZATCA considered during the assessment and which nullified the effects of the previous returns. ZATCA, concerning (Late payment fine on the additional tax obligation resulting from ZATCA's actions), responded that it imposed the fine for the years 2005 and 2006 AD based on the provisions of Article (7) of the Income Tax Law and Article (68) of the relevant Implementing Regulations. For the year 2009 AD, however, a fine was imposed for the failure to submit a return in accordance with Article (76) of the Income Tax Law.

On Thursday, 12/08/1442 AH corresponding to 25/03/2021 AD, the Department decided to hold a 10-day e-hearing. However, the period elapsed without either party to the appeal submitting any additional arguments.

The Department, on 16/09/1442 AH, corresponding to 28/04/2021 AD, decided to communicate with Taxpayer and request the submission of the contents of Attachments No. (6) and (8) referenced in the statement of appeal. Since Taxpayer's objection pertains to a material error in calculating the additions to fixed assets for 2005 AD, which affected the depreciation calculations for subsequent years, the Department requested Taxpayer provide supporting documents for its claim, along with the reasons for the error and how it reached the correct amount. Taxpayer also pointed out in its appeal regarding the

withholding tax on the technical services amount that the amount consists of three components: one is an outstanding amount that has not been paid, the second is for the supply of goods, and the third is paid to a resident entity. Taxpayer referred to a detailed breakdown of these amounts in the attached appendix (2/15) to its appeal. Since the Department did not find this appendix with the appeal, it requested Taxpayer to provide all supporting documents for its claim, detailing the amounts related to the three disputed components. The Department also decided to request ZATCA to provide the field inspection reports related to the appealed assessment, provided that the required document should be submitted within one month from that date. The Department, on 08/10/1442 AH, corresponding to 20/05/2020 AD, received the field inspection report from ZATCA, while the specified period elapsed without a response from Taxpayer.

The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on 24/10/1442 AH corresponding to 05/06/2021 AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final Decision.

Grounds



Upon reviewing Case documents and statement of appeal submitted by Taxpayer, the Department found that conditions of appeal 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 statutory prescribed period.

As for the merits of case, the Department, regarding (Exclusion of the charged amounts and service costs from ... Company Ltd. For 2005 to AD), found that the essence of the appeal lies in Taxpayer's request to deduct such expenses based on the existence of supporting documents for their deduction, while ZATCA believes that the documents provided by Taxpayer are insufficient. The Department, upon reviewing the subject of the dispute, noted that the disagreement between the two parties is document-based and later examined the field inspection report dated 07/03/1432 AH and found that Taxpayer provided the supporting documents for the disputed expenses, as indicated in the report, and confirmed by ZATCA's representative. ZATCA, in its response to Taxpayer's appeal, did not refute Taxpayer's appeal regarding field inspection. Additionally, ... Company Ltd. is a company registered with ZATCA, and therefore, the expenses charged by Taxpayer from this company represent revenues that were declared in the returns submitted to ZATCA or they were excluded from the company's expenses. Since ZATCA did not contest Taxpayer's returns for that company, and since no evidence was presented to the Department that contradicts Taxpayer's assertions in its statement of appeal, this Department concluded to accept Taxpayer's appeal and overturn the primary Decision delivered in this regard.

it was found, regarding (Exclusion of technical service costs obtained from ... Company amounting to SAR 570,758 for 2007 AD), that the appeal lies in Taxpayer's objection to ZATCA's action in excluding these expenses despite the submission of supporting documents. However, ZATCA believes that the documents provided by Taxpayer are insufficient. The Department, upon examining the subject of the dispute, found that the dispute is document-based on merits and also observed, upon reviewing the field inspection report dated 07/03/1432 AH, that Taxpayer provided the supporting documents for the disputed expenses, as indicated in the report, and confirmed by ZATCA's representative. ZATCA, in its response to Taxpayer's appeal, did not refute Taxpayer's appeal regarding field inspection. Additionally, ... Company Ltd. is a company registered with ZATCA, and therefore, the expenses charged by Taxpayer from this company represent revenues that were declared in the returns submitted to ZATCA or

they were excluded from the company's expenses. Since ZATCA did not contest Taxpayer's returns for that company, and since no evidence was presented to the Department that contradicts Taxpayer's assertions in its statement of appeal, this Department concluded to accept Taxpayer's appeal and overturn the primary Decision delivered in this regard.

It was found, regarding (Exclusion of Depreciation Difference for the years 2005 to 2009 AD), that the appeal lies in Taxpayer's rejection to the Primary Objection Committee's Decision that upheld ZATCA's exclusion of depreciation differences for the years in question, in accordance with the Income Tax Law and its Implementing Regulations. Taxpayer contends that there is an error in ZATCA's calculation of fixed assets for 2005 AD, which affected the depreciation calculation for the preceding years. Conversely, ZATCA insists on accuracy and correctness of its procedure regarding this item. Having perused the subject of the dispute, and given that the Department determined that Taxpayer's claim required supporting evidence to be deemed valid, Taxpayer was contacted to substantiate the amount of assets it claimed, which contradicted ZATCA's assertions, and the Department did not receive a response from Taxpayer that verifies the existence of a material error in the calculation of fixed asset additions for 2005 AD, leading to failure to verify the validity of Taxpayer's claim, the Department concluded to dismiss Taxpayer's appeal and uphold the primary Decision in this regard.

The appeal, regarding (Imposition of withholding tax on net income after tax calculation), lies in Taxpayer's objection to the Primary Objection Committee's Decision that upheld ZATCA's action of imposing a withholding tax of 5% on profits transferred to the headquarters, in accordance with the Income Tax Law, its regulations, and established practices of ZATCA and previous committee Decisions, regardless of whether the payment was actual or deemed. Taxpayer contends that the branch did not transfer any profits to the head office, asserting that the amounts transferred were for the purchase of machinery and equipment, while also indicating that the branch has accumulated losses. Having perused the subject of the dispute, and given that the appeal concerns ZATCA's imposition of withholding tax on the net income, assuming that it represents dividends to the head office, since it is legally established that withholding tax is triggered by the occurrence of a payment event, ZATCA's action is based on an assumption that lacks substantial evidence to prove the occurrence of such a payment, Taxpayer submits its returns according to statutory accounts that allow for tracking payment transactions, and ZATCA conducted a filed inspection of Taxpayer and did not establish that a payment event occurred, as well as ZATCA's argument, supported by the Primary Committee, that the date of entry or registration in the books constitutes payment is not explicitly supported by the provisions of the law, this Department concluded to accept Taxpayer's appeal and overturn the primary Decision.

The essence of the appeal, regarding (Imposition of withholding tax on interest charged from the headquarters for payments to the Saudi banks consortium for 2008 AD), lies in Taxpayer's objection to the Primary Objection Committee's Decision that upheld ZATCA's action of imposing a 5% withholding tax on the interest charged from the headquarters, in accordance with Article (68) of the Income Tax Law and Article (63) of its Implementing Regulations. Taxpayer argues that the headquarters did not generate any revenues according to the documents attached to its statement of appeal. Having perused the subject of the dispute, and given that core of the transaction involved the headquarters paying interest on behalf of Taxpayer, which was not directly paid to the headquarters, and since Taxpayer clarified in its appeal that the amount in question was paid to both local and foreign banks, with the portion attributable to foreign banks amounting to SAR (14.9 million), ZATCA reviewed Taxpayer's appeal and did not deny Taxpayer's assertion regarding the disputed payments made to local and foreign banks and the Department did not find any evidence contradicting Taxpayer's assertions, the Department concluded to



amend the Decision to subject the financing charges related to the amount paid to a foreign bank, totaling SAR (14.9 million), to withholding tax.

The appeal, regarding (Imposition of withholding tax on expenses listed in Statement No. (3) of the tax returns for the years 2005, 2007, 2008, and 2009 AD), focuses on Taxpayer's request to contest the imposition of withholding tax on such expenses, asserting that there was no actual payment, and that withholding tax applies only upon actual payment. Taxpayer

further noted that the amounts declared in Statement No. (3) were recorded against the supply of goods, not services. In contrast, ZATCA contends that these amounts were recorded under the category of technical services, which necessitates the imposition of withholding tax. Having perused the subject of the dispute, and given that the Primary Committee based its Decision on the premise that the amount subjected to tax by ZATCA was not reflected in the accrued expenses shown in the financial statements, ZATCA did not respond to Taxpayer's objection concerning the details of the components of the disputed amount, and since ZATCA had previously conducted a field inspection of Taxpayer without raising this issue at that time, emphasizing Taxpayer's claim regarding the withholding tax on the technical services amount, and there was no evidence contradicting Taxpayer's assertions, the Department concluded to accept Taxpayer's appeal and overturn the primary Decision delivered in this regard.

The appeal, regarding (Late payment fine on the amended tax returns for the years 2005 to 2009 AD), lies in Taxpayer's request to cancel the late payment fine for 2008 AD, arguing that it submitted the return within the statutory deadline. However, ZATCA contends that Taxpayer delayed its submission based on the date of the amended assessment. The Department, upon reviewing the documents submitted by Taxpayer, acknowledges its right to amend the return within ten years according to the provisions of Article (59) of the Implementing Regulations without imposing a late payment fine due to the amendment made after the original return statutory submission period. Conversely, ZATCA maintains that submitting the amended assessment after the expiration of the statutory deadline constitutes a cancellation of the original return, thereby resulting in the amended return being considered submitted after the statutory period, which necessitates imposing a fine for failure of submission as prescribed by law. Upon further consideration of the matter, the Department noted that ZATCA's basis for imposing the fine is due to Taxpayer's amendment of a previously submitted return. Given that fines, under the regulations, are considered penalties, and that no penalty can be imposed unless explicitly stipulated by law or regulation, and given that the Tax Law does not stipulate this particular fine, and given that the majority of the Department concluded that, according to the provisions of the Tax Law, an amendment or correction is not considered a substitute for the original return but rather a correction of the original return, unless substantial amendments are involved that could not be considered mere corrections due to their nature or scope, in which case it would be considered a new return, which has not been proven before this Department nor argued by ZATCA, the Department, by majority vote, determined that imposition of a late payment fine for the amended return is invalid since it was submitted initially within the statutory period. Therefore, the Department decided to accept Taxpayer's appeal regarding its failure to submit the return for 2008 AD and dismiss the other years as the primary Decision did not address thereof.

Taxpayer's appeal, regarding (Late payment fine on tax differences), lies in its request to cancel the late payment fine imposed on the tax differences identified by ZATCA, as these differences are a subject of legitimate dispute between Taxpayer and ZATCA. On the other hand, ZATCA maintains its stance on the validity of the fine pursuant to the Income Tax Law. Having perused the subject of the dispute and given that the fine is contingent upon the acceptance or dismissal of the related item, the Department decides to cancel the fines imposed on the items for which Taxpayer's appeal was accepted, as the fine is canceled



with the invalidation of its underlying basis. Since the Department, regarding (Exclusion of Depreciation Differences), decided to dismiss Taxpayer's appeal regarding this item, it consequently resolves to dismiss its appeal regarding the relevant late payment fine as well. Consequently, the fine should be imposed on the differences for this item if Taxpayer fails to pay, starting from the relevant statutory due date.

The appeal, regarding (Deduction of Carried-Forward Losses for 2007 and 2008 AD), lies in Taxpayer's request to deduct the carried-forward losses for 2007 and 2008 AD from 2009 profits, in accordance with Article (11) of the Implementing Regulations of the Income Tax Law. However, ZATCA maintains that there were no profits in 2009, according to Taxpayer's return, to allow for the deduction of such losses. The Department, upon reviewing Taxpayer's appeal on this item, finds that the appeal is based on the request to deduct carried-forward losses from 2009 profits, relying on the tax assessment conducted by ZATCA that showed Taxpayer had realized profits in 2009 AD, contrary to Taxpayer's return, which reported losses for that year. As stipulated in Article (11) of the Implementing Regulations, Taxpayer's right to deduct losses from previous years is contingent upon having annual profits, as reflected in Taxpayer's return. Since Taxpayer's return demonstrated losses, it does not have the right to deduct previous losses based on the profits indicated by the tax assessment. Accordingly, the Department decided to dismiss Taxpayer's appeal and uphold the primary Decision, supported by its reasons as well as the reasons stated herein.

Decision

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Operative Part of the Decision

First: Accept the appeal filed by Taxpayer/..., TIN No. (...), in form against Decision No. (1) of 1437 AH of the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Accept Taxpayer's appeal regarding the item (Exclusion of the charged amounts and service costs from ... Company for the years 2005 to 2009 AD) and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
2. Accept Taxpayer's appeal regarding the item (Exclusion of technical service costs obtained from ... Company amounting to SAR (570,758) for 2007 AD) and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
3. Dismiss Taxpayer's appeal regarding the item (Exclusion of Depreciation Difference for the years 2005 to 2009 AD) and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Taxpayer's appeal regarding the item (Imposition of withholding tax on net income after tax calculation) and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
5. Amend the primary Decision regarding (Imposition of withholding tax on interest charged from the headquarters for payments to the Saudi banks consortium for 2008 AD), by ruling that the financing costs related to the amount paid to a foreign bank, totaling SAR (149 million), are subject to withholding tax, in accordance with Grounds and merits mentioned herein.
6. Accept Taxpayer's appeal regarding the item (Imposition of withholding tax on the expenses listed in Statement No. (3) of tax returns for the years 2005, 2007, 2008, and 2009 AD) and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.



1. Regarding (Late Payment Fines on the Amended Tax Returns for the years 2005 to 2009 AD):
 - a. Accept Taxpayer's appeal for 2008 AD by majority and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein. B. Dismiss Taxpayer's appeal for the other years, in accordance with Grounds and merits mentioned herein.
2. Accept Taxpayer's appeal regarding (Late payment fine on tax differences) for the items for which the appeal was accepted, confirm validity of the fine imposed from its due statutory date for the tax differences in (Exclusion of Depreciation Differences), in accordance with Grounds and merits mentioned herein, dismiss Taxpayer's appeal regarding (Deduction of Carried-Forward Losses for 2007 and 2008 AD), and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-74)
Delivered in Appeal No.
(I-1886-2018)

Principle No. 249

The estimated profit on ancillary services in supply contracts is calculated, if not specified in the supply agreements (value of such services), based on estimating a percentage of the supply value for each ancillary service.

Facts:

On Wednesday 28/01/1442 AH corresponding to 16/09/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened in Riyadh to consider the appeal filed on 22/07/1440 AH, corresponding to 28/03/2019 AD, by ... Company against the Decision No. (32) of the year 1439 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Case No. (39/32) filed by the Appellant against GAZT. The primary Decision ruled as follows:

First: Accept the objection submitted by (...) Company regarding the tax assessment for the years 2007 to 2013 AD in form.

Second: On Merits:

1. Dismiss the objection submitted by Taxpayer regarding ZATCA's amendment of tax returns for 2007 and 2008 AD after a lapse of five years.
2. Dismiss the objection submitted by Taxpayer regarding the imposition of tax liabilities.
3. Dismiss the objection submitted by Taxpayer regarding the imposition of a late payment fine at a rate of 1% for every thirty days of delay.

Since this Decision was not accepted by the Plaintiff (... Company), it filed a statement of appeal to the Department, providing the following summary:

Taxpayer, regarding ZATCA's amendment of tax returns for 2007 and 2008 AD, challenges the ruling of the Decision supporting ZATCA's amendment of tax assessments for the two relevant years based on the premise that such assessments should not be modified after the expiration of five years from the date of submission of the return within the statutory period. Since these amendments were made after this period, they should not be taken into consideration, and the original tax assessments, as submitted in the returns, should remain in effect. The mere notification by ZATCA to Taxpayer within the prescribed period for amendments to the assessments for inquiries and information requests does not affect the calculation of the five-year period, which should start from the date of submission of the assessment within the statutory period and extend until ZATCA's notification of the final assessment. Taxpayer further contends that the ongoing requests for information and ZATCA's continued correspondence with Taxpayer regarding the assessments in order to issue a final assessment do not alter the fact that the prescribed period for ZATCA to either accept Taxpayer's assessment based on its return



or make amendments and notify Taxpayer of the final assessment is only valid if the final assessment is made within the time statutory period. Accordingly, Taxpayer asserts that ZATCA's notification of the final assessment for those years after the expiration of the five-year period is not a valid action in accordance with law and also requests that this objection regarding the assessment for 2007 and 2008 AD should not be limited solely to these two years, as indicated in the Decision's ruling, given that it was notified of the final assessments made for the years 2007 to 2010 AD after the amendments and inquiries made by Taxpayer beyond the five-year statutory period, specifically the final assessment for 2010 AD, which was filed in April 2011 AD, was not issued until January 2017 AD.

Taxpayer, regarding tax liabilities item, believes that no tax obligation should be imposed for the years 2007 to 2013 AD based on the fact that the registration of the technical and scientific office of ... Company in the United States was for the purpose of providing technical and scientific support to customers and distributors of ... Company in the Kingdom of Saudi Arabia, implying that the office does not engage in any profit-generating activities. Taxpayer further contends that the company only declared expenses incurred for providing technical and scientific services charged to the headquarters account, which is substantiated by the license issued by SAGIA, which explicitly states that the office is not permitted to execute contracts or engage in any business activities. Therefore, the imposition of taxes on contracts related to supply agreements between the headquarters and its distributor in the Kingdom, as stated in the primary Decision, is unfounded. It is the result of a misunderstanding by both the Committee and ZATCA regarding the nature of the office's activities, which are solely focused on providing technical and scientific support to customers and distributors in the Kingdom, including price lists, data, product pricing booklets, assisting with market surveys, and sales promotion plans. As a result, ... in KSA did not issue any service invoices to distributors, nor did it receive any payments for this support. The misunderstanding arose from the assumption that the office was engaged in revenue-generating business activities, whereas the fact is that the office's function is purely technical, providing support to assist customers without any profit being generated from these activities. This point is also confirmed by the notes in the audited financial statements, which explicitly state that Taxpayer does not engage in any revenue-generating activities and the only support provided to the distributor of the headquarters' products is through the technical and scientific support office in ... in KSA. Therefore, there are no activities associated with the supply contracts that would warrant the imposition of taxes on the basis that technical services were provided to the distributor in connection with the relevant supply contract.

Taxpayer, regarding the imposition of a late payment fine at a rate of 1% for every thirty days of delay, challenges its imposition based on the premise that the tax liability itself does not exist, as argued by Taxpayer's appeal against Item (Second) of the appealed Decision. Additionally, Taxpayer asserts that it submitted its returns in a timely manner; even assuming the income tax was correctly imposed, the dispute between ... in KSA and ZATCA is genuine, given the lack of clarity regarding the imposition of the tax as perceived by ZATCA. Therefore, such fines should only be calculated from the date on which the objection and appeal procedures regarding the tax liability itself are resolved. Taxpayer further argues that Decisions of the Tax Appeal Committee in many cases of dispute confirm that a late payment fine should only be imposed after issuance of a final Decision confirming ZATCA's right to collect the tax. This position is supported by Paragraph (d), Item (2), Article (71) of the Implementing Regulations, which states that the tax liability becomes final upon the issuance of a final judicial ruling affirming the existence of such liability. Therefore, it is improper for ZATCA to impose any late payment fines under the Income Tax Law before the issuance of a final judgment confirming the tax liability. However, ZATCA failed to take this into account when notifying Taxpayer of the final



assessment, which was upheld by the Primary Committee, and subsequently imposing the disputed late payment fines.

The Department requested ZATCA to respond to Appellant's memorandum of appeal regarding the contested items within ten (10) days of the request delivered to ZATCA on 07/09/1441 AH, corresponding to 30/04/2020 AD. However, the Department did not receive a response from ZATCA regarding the request to address Taxpayer Company's statement of appeal for the items contested by Taxpayer in relation to ZATCA's assessment after expiration of the granted deadline and without any explanation for the delay. Considering that an appeal reverts the case to the state it was in at the time of the appeal, the Department must rely on ZATCA's statements and responses contained in the primary Decision regarding the contested items when determining ZATCA's position towards the Appellee.

The Department, having reviewed the statement of appeal as well as the documents contained in the case file, established that the case was ripe for adjudication and delivery of its Decision.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

As for the merits of case, the Department, having reviewed the case file and its contents, as well as the statement of appeal and considered the overall arguments presented by the Appellant, determined the following:

1. Taxpayer's appeal, regarding the first contested item (ZATCA's Amendment of Tax Returns for 2007 and 2008 AD), on this item was based on the previously mentioned summary of its appeal. It was established through the Department's examination of the case file and the facts outlined in the primary Decision when the Primary Committee reviewed the dispute concerning the item in question that ZATCA conducted the final assessment after inquiring and requesting information from Taxpayer, exceeding the five-year period from the statutory deadline for submitting each return for the years 2007 to 2010 AD. The purpose behind the legislator's stipulation of a timeframe within which ZATCA can conduct the final assessment, without extending beyond that period, is to ensure the stability of the financial and legal positions of taxpayers and ZATCA. ZATCA's right to exercise what the regulation grants in conducting the final assessment, after requesting inquiries and information from the taxpayer to reach that assessment in its final form, is tied to the five-year period defined by the law, which begins after the deadline for submitting the return. Based on the foregoing, the legislator granted ZATCA the opportunity to review the assessment and inquire with the taxpayer within five years calculated from the statutory period within which the taxpayer is required to submit the tax return for the fiscal year covered by the assessment. The principle underlying the treatment of tax returns submitted by taxpayers as final and binding is that a taxpayer's return represents a true and accurate reflection of its tax obligations before ZATCA and given that ZATCA has the right to inquire and review in order to approve or modify the assessment within that timeframe, it is not permissible under law provisions for ZATCA to exceed this period without notifying the taxpayer of the amended assessment, as asserting otherwise would render the provision that specifies the five-year period for ZATCA to conduct reviews and inquiries in order to issue the final assessment meaningless, implying that ZATCA could extend the period of issuing the final assessment and obligate the taxpayer based on the argument that any action taken

by ZATCA before the expiration of those five years would extend its right to review and inquire until the issuance of its final assessment. The Tax Law has limited this period, taking into account that five years is sufficient for ZATCA to clarify its position on approving the assessment or making amendments as it deems fit without exceeding the stipulated five-year period, calculated from the date set for submitting tax returns by the taxpayer. It was established that ZATCA did not notify Taxpayer of the final assessment until after expiry of the five-year period from the date Taxpayer submitted the return, as outlined in the facts of the Decision. It was also confirmed that Taxpayer requested to include its objection regarding ZATCA's amendment of the tax assessments along with its failure of notification of the finality of those assessments after the amendment for the years 2007 to 2010 AD. Given that the primary Decision only addressed the matter concerning 2007 and 2008 AD and considering that the Department concluded to accept Taxpayer's appeal based on the returns submitted for 2007 and 2008 AD and did not uphold ZATCA's position in conducting amendments and issuing the final assessment after the legally prescribed period for making such amendments to Taxpayer's assessment, Taxpayer emphasized its request in the appeal to include its objection for the remaining years (2009 and 2010 AD) and it was established from Taxpayer's statements before the Primary Committee that it was notified of the final assessment for 2010 AD until 2017 AD, and considering the absence of any evidence to refute this testimony, the Department decided to accept Taxpayer's appeal, determine the assessment based on the returns submitted to ZATCA for the years 2007 to 2010 AD, and overturn the primary Decision regarding this item.

2. Taxpayer's appeal, regarding tax liabilities item, was summarized as previously mentioned herein and since that the primary Decision concluded that there was a basis for imposing tax on Taxpayer after the committee that delivered the Decision determined that Taxpayer represents a branch of the headquarters providing technical and scientific services to agents and distributors of the main office products and given that these technical and scientific activities were, in reality, associated with the supply contracts made between the distributor in the Kingdom and the headquarters, and the value of these services was not explicitly detailed for those contracts, the committee that delivered the Decision concluded to approve ZATCA's action of imposing tax on these contracts associated with the supply agreements, as stated in the appealed Decision. Appellant argued that there was a misunderstanding of the nature of the technical office's work, claiming that it was not revenue-generating business and, therefore, did not yield a profit from its activities in the Kingdom; rather, it was merely providing assistance to clients and distributors in the Kingdom. However, this argument does not negate the basis for imposing tax on the contracts between the headquarters and the distributor in the Kingdom for which the office provided technical support. Additionally, relying on Taxpayer's position that tax should not be imposed based on the license issued by SAGIA, which states that the office activities in ... Company in KSA do not permit it to engage in business activities, does not hold, as this license restricts the branch registered with ZATCA from conducting business activities when it independently engages in sales or any other activity that would violate the terms of the license permitting the office's presence in the Kingdom. Such a matter is unrelated to the applicability of the provisions of the Tax Law and its Implementing Regulations, as long as the facts that establish the tax have been met, as stipulated by the provisions of the Tax Law provisions and its Implementing Regulations, and given that Taxpayer's obligation to pay the tax imposed is established, considering that the office provides scientific and technical services related to the supply agreements between the distributor in the Kingdom and the headquarters, and since the law accompanied by provisions of regulations stipulate the imposition of tax based on the



estimated profit from the services associated with supply contracts, which were not separately specified in the supply contract by determining the value owed under those agreements associated with the supply contracts, ZATCA's approach to estimating the tax based on the primary Decision is the correct course of action, consistent with the proper application of the law concerning the services provided by the office to support the distributor and clients in the Kingdom, given its obligation to the supply contract signed by the distributor and the headquarters. This conclusion is not affected by Taxpayer's claim that it did not receive any compensation for the services rendered and that these services were intended to assist the distributor and clients in the Kingdom, nor by the assertion that there are no invoices or documents proving revenue from the activity carried out by the office. Provisions of the law and its Implementing Regulations settled this matter, as the provision stipulates the calculation of estimated profit if the supply agreements do not include clear independent amounts for the accompanying services. Given the circumstances as described, the estimation of those profits from the accompanying services aligns with law provisions. It is also unreasonable to provide such services to clients without being accounted for as part of the estimated costs in the supply agreement, as this is a fundamental aspect of business transactions where all costs are accounted for during the contracting process. Therefore, it is not acceptable to argue against the imposition of tax on the services related to the contract by claiming that no compensation was received for them, as Appellant contends in its statements. Based on the foregoing, the Department concluded to dismiss Taxpayer's appeal and uphold the primary Decision regarding the imposition of tax on the services associated with the supply agreements, as detailed previously.

However, since this Department concluded that ZATCA does not have the authority to conduct Taxpayer's final assessment for the years 2007 to 2010 AD and that the information provided in Taxpayer's return should be considered the basis for the final assessment for those years, imposition of tax on the ancillary services should be associated with the years 2011 to 2013 AD.

3. Taxpayer's appeal, regarding the imposition of a late payment fine at a rate of 1% for every thirty days of delay, was based on the Grounds previously outlined when reviewing the summary of its appeal. Since the dispute between ZATCA and Taxpayer regarding the payment of tax on the ancillary services related to the supply agreements, as detailed in the second item hereof and as stated in the factual narrative of the primary Decision in this regard is acknowledged and given that the principle of good faith is established when considering the statements of taxpayers based on their returns, and the existence of the license issued by SAGIA may create ambiguity regarding the obligation to pay tax on the ancillary services under the supply agreements, especially considering that this license states that the office is not permitted to engage in any profit-seeking activities, this situation allows for the possibility that Taxpayer may have doubts regarding its obligation to pay the tax imposed. Since doubt is interpreted in favor of Taxpayer, the imposition of a late payment fine for the tax liability should only be calculated from the date Taxpayer's obligation was confirmed. Consequently, this implies that late payment fines for the tax imposed on Taxpayer for the services associated with the supply contract, as stipulated by this Decision, should be calculated only for the years 2011 to 2013 AD, taking effect from the date Taxpayer was notified of the issuance hereof, which concludes the dispute regarding the tax obligation and the starting date set for imposing the late payment fine for failing to pay should be defined accordingly. This conclusion aligns with the sound reasoning behind the legislator's intent in imposing late payment fines to incentivize taxpayers to fulfill their statutory obligation to pay taxes once they are aware thereof and when the amounts due are confirmed. This



approach is not tied to ZATCA's practice of calculating fines from the date of filing tax returns, despite its delay in notifying taxpayers of their final assessments, which includes the imposition of late payment fines on outstanding taxes, especially when there is a genuine dispute between Taxpayer and ZATCA concerning the applicability of the fine on Taxpayer, as determined by the underlying facts and circumstances. Given that the dispute in this case centered on the tax applicability fundamentally involves Taxpayer and ZATCA, it falls into the category of genuine disputes, as detailed in the contested items hereof. Therefore, the Department concluded that the imposition of the late payment fine should be limited to the tax due for the years 2011 to 2013 AD and to calculate the fine imposed from the date Taxpayer was notified of the appealed Decision that resolved the dispute.

Decision

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

First: Accept the appeal in form filed by Taxpayer/(...) Company, TIN No. (...), against Decision No. (32) of 1439 AH issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Accept Taxpayer's appeal regarding ZATCA's amendment of tax returns for 2007 and 2008 AD, overturn the primary Decision delivered in this regard, and determine the binding assessment on Taxpayer based on its returns submitted for the years 2007 to 2010 AD, in accordance with Grounds and merits mentioned herein.
2. Dismiss Taxpayer's appeal regarding the imposition of tax liabilities and amend the relevant primary Decision determining the imposition of tax for the years 2011 to 2013, excluding any other years, in accordance with Grounds and merits mentioned herein.
3. Regarding the imposition of a late payment fine at a rate of 1% for every thirty days of delay:
 - A. Accept Taxpayer's appeal regarding the non-imposition of late payment fines for the years 2007 to 2010 AD on the Grounds that the original liability for these fines lapsed, in accordance with Grounds and merits mentioned herein.
 - B. Dismiss Taxpayer's appeal regarding late payment fines for the years 2011 to 2013 AD and determine their calculation from the date Taxpayer was notified hereof, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

**Decision No. (IR-2020-74)
Delivered in Appeal No. (I-1886-2018)**

Principle No. 250

Where a taxpayer is uncertain as to whether their activities are subject to tax, such doubt shall be resolved in its favor. Consequently, any late payment fines due on taxes arising from these activities shall only accrue from the final date of assessment and the resolution of any disputes with ZATCA, which in this case is the date the taxpayer was notified of the appealed Decision that resolved the dispute.

Facts:

On Wednesday 28/01/1442 AH corresponding to 16/09/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened in Riyadh to consider the appeal filed on 22/07/1440 AH, corresponding to 28/03/2019 AD, by ... Company against the Decision No. (32) of the year 1439 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Case No. (39/32) filed by the Appellant against GAZT. The primary Decision ruled as follows:

First: Accept the objection submitted by (...) Company regarding the tax assessment for the years 2007 to 2013 AD in form.

Second: On Merits:

1. Dismiss the objection submitted by Taxpayer regarding ZATCA's amendment of tax returns for 2007 and 2008 AD after a lapse of five years.
2. Dismiss the objection submitted by Taxpayer regarding the imposition of tax liabilities.
3. Dismiss the objection submitted by Taxpayer regarding the imposition of a late payment fine at a rate of 1% for every thirty days of delay.

Since this Decision was not accepted by the Plaintiff (... Company), it filed a statement of appeal to the Department, providing the following summary:

Taxpayer, regarding ZATCA's amendment of tax returns for 2007 and 2008 AD, challenges the ruling of the Decision supporting ZATCA's amendment of tax assessments for the two relevant years based on the premise that such assessments should not be modified after the expiration of five years from the date of submission of the return within the statutory period. Since these amendments were made after this period, they should not be taken into consideration, and the original tax assessments, as submitted in the returns, should remain in effect. The mere notification by ZATCA to Taxpayer within the prescribed period for amendments to the assessments for inquiries and information requests does not affect the calculation of the five-year period, which should start from the date of submission of the assessment within the statutory period and extend until ZATCA's notification of the final assessment. Taxpayer further contends that the ongoing requests for information and ZATCA's continued correspondence with Taxpayer



regarding the assessments in order to issue a final assessment do not alter the fact that the prescribed period for ZATCA to either accept Taxpayer's assessment based on its return or make amendments and notify Taxpayer of the final assessment is only valid if the final assessment is made within the time statutory period. Accordingly, Taxpayer asserts that ZATCA's notification of the final assessment for those years after the expiration of the five-year period is not a valid action in accordance with law and also requests that this objection regarding the assessment for 2007 and 2008 AD should not be limited solely to these two years, as indicated in the Decision's ruling, given that it was notified of the final assessments made for the years 2007 to 2010 AD after the amendments and inquiries made by Taxpayer beyond the five-year statutory period, specifically the final assessment for 2010 AD, which was filed in April 2011 AD, was not issued until January 2017 AD.

Taxpayer, regarding tax liabilities item, believes that no tax obligation should be imposed for the years 2007 to 2013 AD based on the fact that the registration of the technical and scientific office of ... Company in the United States was for the purpose of providing technical and scientific support to customers and distributors of ... Company in the Kingdom of Saudi Arabia, implying that the office does not engage in any profit-generating activities. Taxpayer further contends that the company only declared expenses incurred for providing technical and scientific services charged to the headquarters account, which is substantiated by the license issued by SAGIA, which explicitly states that the office is not permitted to execute contracts or engage in any business activities. Therefore, the imposition of taxes on contracts related to supply agreements between the headquarters and its distributor in the Kingdom, as stated in the primary Decision, is unfounded. It is the result of a misunderstanding by both the Committee and ZATCA regarding the nature of the office's activities, which are solely focused on providing technical and scientific support to customers and distributors in the Kingdom, including price lists, data, product pricing booklets, assisting with market surveys, and sales promotion plans. As a result, ... in KSA did not issue any service invoices to distributors, nor did it receive any payments for this support. The misunderstanding arose from the assumption that the office was engaged in revenue-generating business activities, whereas the fact is that the office's function is purely technical, providing support to assist customers without any profit being generated from these activities. This point is also confirmed by the notes in the audited financial statements, which explicitly state that Taxpayer does not engage in any revenue-generating activities and the only support provided to the distributor of the headquarters' products is through the technical and scientific support office in ... in KSA. Therefore, there are no activities associated with the supply contracts that would warrant the imposition of taxes on the basis that technical services were provided to the distributor in connection with the relevant supply contract.

Taxpayer, regarding the imposition of a late payment fine at a rate of 1% for every thirty days of delay, challenges its imposition based on the premise that the tax liability itself does not exist, as argued by Taxpayer's appeal against Item (Second) of the appealed Decision. Additionally, Taxpayer asserts that it submitted its returns in a timely manner; even assuming the income tax was correctly imposed, the dispute between ... in KSA and ZATCA is genuine, given the lack of clarity regarding the imposition of the tax as perceived by ZATCA. Therefore, such fines should only be calculated from the date on which the objection and appeal procedures regarding the tax liability itself are resolved. Taxpayer further argues that Decisions of the Tax Appeal Committee in many cases of dispute confirm that a late payment fine should only be imposed after issuance of a final Decision confirming ZATCA's right to collect the tax. This position is supported by Paragraph (d), Item (2), Article (71) of the Implementing Regulations, which states that the tax liability becomes final upon the issuance of a final judicial ruling affirming the existence of such liability. Therefore, it is improper for ZATCA to impose any late payment fines under the Income Tax Law before the issuance of a final judgment confirming the tax liability.



However, ZATCA failed to take this into account when notifying Taxpayer of the final assessment, which was upheld by the Primary Committee, and subsequently imposing the disputed late payment fines.

The Department requested ZATCA to respond to Appellant's memorandum of appeal regarding the contested items within ten (10) days of the request delivered to ZATCA on 07/09/1441 AH, corresponding to 30/04/2020 AD. However, the Department did not receive a response from ZATCA regarding the request to address Taxpayer Company's statement of appeal for the items contested by Taxpayer in relation to ZATCA's assessment after expiration of the granted deadline and without any explanation for the delay. Considering that an appeal reverts the case to the state it was in at the time of the appeal, the Department must rely on ZATCA's statements and responses contained in the primary Decision regarding the contested items when determining ZATCA's position towards the Appellee.

The Department, having reviewed the statement of appeal as well as the documents contained in the case file, established that the case was ripe for adjudication and delivery of its Decision.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

As for the merits of case, the Department, having reviewed the case file and its contents, as well as the statement of appeal and considered the overall arguments presented by the Appellant, determined the following:

Taxpayer's appeal, regarding the first contested item (ZATCA's Amendment of Tax Returns for 2007 and 2008 AD), on this item was based on the previously mentioned summary of its appeal. It was established through the Department's examination of the case file and the facts outlined in the primary Decision when the Primary Committee reviewed the dispute concerning the item in question that ZATCA conducted the final assessment after inquiring and requesting information from Taxpayer, exceeding the five-year period from the statutory deadline for submitting each return for the years 2007 to 2010 AD. The purpose behind the legislator's stipulation of a timeframe within which ZATCA can conduct the final assessment, without extending beyond that period, is to ensure the stability of the financial and legal positions of taxpayers and ZATCA. ZATCA's right to exercise what the regulation grants in conducting the final assessment, after requesting inquiries and information from the taxpayer to reach that assessment in its final form, is tied to the five-year period defined by the law, which begins after the deadline for submitting the return. Based on the foregoing, the legislator granted ZATCA the opportunity to review the assessment and inquire with the taxpayer within five years calculated from the statutory period within which the taxpayer is required to submit the tax return for the fiscal year covered by the assessment. The principle underlying the treatment of tax returns submitted by taxpayers as final and binding is that a taxpayer's return represents a true and accurate reflection of its tax obligations before ZATCA and given that ZATCA has the right to inquire and review in order to approve or modify the assessment within that timeframe, it is not permissible under law provisions for ZATCA to exceed this period without notifying the taxpayer of the amended assessment, as asserting otherwise would render the provision that specifies the five-year period for ZATCA to conduct reviews and inquiries in order to issue the final assessment meaningless, implying that ZATCA could extend the period of issuing the final assessment and obligate the taxpayer based on the argument that any action taken by ZATCA before



the expiration of those five years would extend its right to review and inquire until the issuance of its final assessment. The Tax Law has limited this period, taking into account that five years is sufficient for ZATCA to clarify its position on approving the assessment or making amendments as it deems fit without exceeding the stipulated five-year period, calculated from the date set for submitting tax returns by the taxpayer. It was established that ZATCA did not notify Taxpayer of the final assessment until after expiry of the five-year period from the date Taxpayer submitted the return, as outlined in the facts of the Decision. It was also confirmed that Taxpayer requested to include its objection regarding ZATCA's amendment of the tax assessments along with its failure of notification of the finality of those assessments after the amendment for the years 2007 to 2010 AD. Given that the primary Decision only addressed the matter concerning 2007 and 2008 AD and considering that the Department concluded to accept Taxpayer's appeal based on the returns submitted for 2007 and 2008 AD and did not uphold ZATCA's position in conducting amendments and issuing the final assessment after the legally prescribed period for making such amendments to Taxpayer's assessment, Taxpayer emphasized its request in the appeal to include its objection for the remaining years (2009 and 2010 AD) and it was established from Taxpayer's statements before the Primary Committee that it was notified of the final assessment for 2010 AD until 2017 AD, and considering the absence of any evidence to refute this testimony, the Department decided to accept Taxpayer's appeal, determine the assessment based on the returns submitted to ZATCA for the years 2007 to 2010 AD, and overturn the primary Decision regarding this item.

Taxpayer's appeal, regarding tax liabilities item, was summarized as previously mentioned herein and since that the primary Decision concluded that there was a basis for imposing tax on Taxpayer after the committee that delivered the Decision determined that Taxpayer represents a branch of the headquarters providing technical and scientific services to agents and distributors of the main office products and given that these technical and scientific activities were, in reality, associated with the supply contracts made between the distributor in the Kingdom and the headquarters, and the value of these services was not explicitly detailed for those contracts, the committee that delivered the Decision concluded to approve ZATCA's action of imposing tax on these contracts associated with the supply agreements, as stated in the appealed Decision. Appellant argued that there was a misunderstanding of the nature of the technical office's work, claiming that it was not revenue-generating business and, therefore, did not yield a profit from its activities in the Kingdom; rather, it was merely providing assistance to clients and distributors in the Kingdom. However, this argument does not negate the basis for imposing tax on the contracts between the headquarters and the distributor in the Kingdom for which the office provided technical support. Additionally, relying on Taxpayer's position that tax should not be imposed based on the license issued by SAGIA, which states that the office activities in ... Company in KSA do not permit it to engage in business activities, does not hold, as this license restricts the branch registered with ZATCA from conducting business activities when it independently engages in sales or any other activity that would violate the terms of the license permitting the office's presence in the Kingdom. Such a matter is unrelated to the applicability of the provisions of the Tax Law and its Implementing Regulations, as long as the facts that establish the tax have been met, as stipulated by the provisions of the Tax Law provisions and its Implementing Regulations, and given that Taxpayer's obligation to pay the tax imposed is established, considering that the office provides scientific and technical services related to the supply agreements between the distributor in the Kingdom and the headquarters, and since the law accompanied by provisions of regulations stipulate the imposition of tax based on the estimated profit from the services associated with supply contracts, which were not separately specified in the supply contract by determining the value owed under those agreements associated with the supply contracts, ZATCA's approach to estimating the tax based on the primary Decision



is the correct course of action, consistent with the proper application of the law concerning the services provided by the office to support the distributor and clients in the Kingdom, given its obligation to the supply contract signed by the distributor and the headquarters. This conclusion is not affected by Taxpayer's claim that it did not receive any compensation for the services rendered and that these services were intended to assist the distributor and clients in the Kingdom, nor by the assertion that there are no invoices or documents proving revenue from the activity carried out by the office. Provisions of the law and its Implementing Regulations settled this matter, as the provision stipulates the calculation of estimated profit if the supply agreements do not include clear independent amounts for the accompanying services. Given the circumstances as described, the estimation of those profits from the accompanying services aligns with law provisions. It is also unreasonable to provide such services to clients without being accounted for as part of the estimated costs in the supply agreement, as this is a fundamental aspect of business transactions where all costs are accounted for during the contracting process. Therefore, it is not acceptable to argue against the imposition of tax on the services related to the contract by claiming that no compensation was received for them, as Appellant contends in its statements. Based on the foregoing, the Department concluded to dismiss Taxpayer's appeal and uphold the primary Decision regarding the imposition of tax on the services associated with the supply agreements, as detailed previously.

However, since this Department concluded that ZATCA does not have the authority to conduct Taxpayer's final assessment for the years 2007 to 2010 AD and that the information provided in Taxpayer's return should be considered the basis for the final assessment for those years, imposition of tax on the ancillary services should be associated with the years 2011 to 2013 AD.

Taxpayer's appeal, regarding the imposition of a late submission fine at a rate of 1% for every thirty days of delay, was based on the Grounds previously outlined when reviewing the summary of its appeal. Since the dispute between ZATCA and Taxpayer regarding the payment of tax on the ancillary services related to the supply agreements, as detailed in the second item hereof and as stated in the factual narrative of the primary Decision in this regard is acknowledged and given that the principle of good faith is established when considering the statements of taxpayers based on their returns, and the existence of the license issued by SAGIA may create ambiguity regarding the obligation to pay tax on the ancillary services under the supply agreements, especially considering that this license states that the office is not permitted to engage in any profit-seeking activities, this situation allows for the possibility that Taxpayer may have doubts regarding its obligation to pay the tax imposed. Since doubt is interpreted in favor of Taxpayer, the imposition of a late submission fine for the tax liability should only be calculated from the date Taxpayer's obligation was confirmed. Consequently, this implies that late submission fines for the tax imposed on Taxpayer for the services associated with the supply contract, as stipulated by this Decision, should be calculated only for the years 2011 to 2013 AD, taking effect from the date Taxpayer was notified of the issuance hereof, which concludes the dispute regarding the tax obligation and the starting date set for imposing the late submission fine for failing to pay should be defined accordingly. This conclusion aligns with the sound reasoning behind the legislator's intent in imposing late submission fines to incentivize taxpayers to fulfill their statutory obligation to pay taxes once they are aware thereof and when the amounts due are confirmed. This approach is not tied to ZATCA's practice of calculating fines from the date of filing tax returns, despite its delay in notifying taxpayers of their final assessments, which includes the imposition of late submission fines on outstanding taxes, especially when there is a genuine dispute between Taxpayer and ZATCA concerning the applicability of the fine on Taxpayer, as determined by the underlying facts and circumstances. Given that the dispute in this case centered on the tax applicability fundamentally involves Taxpayer and ZATCA, it falls into the category of



genuine disputes, as detailed in the contested items hereof. Therefore, the Department concluded that the imposition of the late submission fine should be limited to the tax due for the years 2011 to 2013 AD and to calculate the fine imposed from the date Taxpayer was notified of the appellate Decision that resolved the dispute.

Decision

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

First: Accept the appeal in form filed by Taxpayer/(...) Company, TIN No. (...), against Decision No. (32) of 1439 AH issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Accept Taxpayer's appeal regarding ZATCA's amendment of tax returns for 2007 and 2008 AD, overturn the primary Decision delivered in this regard, and determine the binding assessment on Taxpayer based on its returns submitted for the years 2007 to 2010 AD, in accordance with Grounds and merits mentioned herein.
2. Dismiss Taxpayer's appeal regarding the imposition of tax liabilities and amend the relevant primary Decision determining the imposition of tax for the years 2011 to 2013, excluding any other years, in accordance with Grounds and merits mentioned herein.
3. Regarding the imposition of a late payment fine at a rate of 1% for every thirty days of delay:
 - a. Accept Taxpayer's appeal regarding the non-imposition of late payment fines for the years 2007 to 2010 AD on the Grounds that the original liability for these fines lapsed, in accordance with Grounds and merits mentioned herein.
 - b. Dismiss Taxpayer's appeal regarding late payment fines for the years 2011 to 2013 AD and determine their calculation from the date Taxpayer was notified hereof, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-75)
Delivered in Appeal No. (I-1904-2018)

Principle No. 251

The assertion that the agreement, upon which the determination of the profit margin based on the branch's activities in the Kingdom is made, does not reflect the branch's independence, and thus should not be relied upon, does not negate the established principle that the taxpayer's returns should be accepted based on the information provided therein, relying on the audited financial statements from a licensed accounting firm.

Facts:

On Wednesday 28/01/1442 AH corresponding to 16/09/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened in Riyadh to consider the appeal filed on 16/01/1440 AH, corresponding to 26/09/2018 AD, by/ GAZT (Currently ZATCA) against the Decision No. (35) of the year 1439 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh issued in Objection No. (39/9) filed by the Appellant against the General Authority For Zakat and Tax (GAZT). The primary Decision ruled as follows:

First: Accept the objection submitted by the branch of (...) Company regarding the tax assessment for the years 2010 to 2014 AD.

Second: On Merits:

Accept Taxpayer's objection to GAZT's increase of the estimated profit percentage from total expenses from 7% to 20% for the years 2010 to 2014 AD for the merits stated in the Decision and correct the material errors related to the end-of-service gratuity provision in 2011 AD and the tax paid with fines in 2012 AD.

Since this Decision was not accepted by GAZT, it submitted a statement of appeal, summarized as follows:

GAZT's appeal lies in its objection to the outcome of the primary Decision, which did not adopt GAZT's estimation of profits by assessing Taxpayer arbitrarily at 20% instead of the 7% profit based on Taxpayer's return according to the agreement between the branch and the headquarters to estimate the profit margin for transactions conducted between clients and the headquarters through the branch, calculating those profits at that rate. This objection is founded on GAZT's concerns regarding the unreliability of that estimate, given that the agreement between both parties does not reflect Taxpayer's independence, as the branch is under the control of the headquarters, which dictates its will. Consequently, Taxpayer's return, which included adding 7% of total expenses and compensating it from the headquarters under that agreement, cannot be taken into consideration because the agreement does not, according to Paragraph (1/2) of Article (63) of the Tax Law, reflect the actual circumstances of Taxpayer's activities. This Article grants GAZT the right to



reclassify transactions whose form and substance do not reflect their true nature, as well as the right to assess taxes on Taxpayer using an estimated method based on the facts and circumstances related to Taxpayer, if it fails to submit its return on the date specified by law, fails to maintain accurate books and records, or fails to comply with the required format, model, and method in its books and records, as outlined in paragraphs (b) and (c) of the mentioned article.

Since Taxpayer's activity involves providing technical support services for the headquarters products, the legislator has set a minimum estimated profit margin of no less than 20%, as stipulated in Paragraph (4) of Article (16) of the Implementing Regulations and Item (5) of the table related to the calculation of estimated profit for such activities, which states that the relevant estimated profit should be determined based on the evidence, facts, or indicators related to Taxpayer's activity, its nature, and the surrounding circumstances, ensuring that it does not fall below the rates specified in the aforementioned table. Additionally, the field inspection conducted by GAZT was not intended to address the issue of the profit margin, upon which the Committee that delivered the Decision relied in confirming its Decision based on Taxpayer's statutory accounts. Rather, the purpose of that field inspection was to verify the execution of an agreement signed between the Ministry of Defense and the company's branch. GAZT concluded its appeal by requesting support for its position on the contested item and cancellation of the primary Decision, which had rejected the estimated profit calculation and instead relied on the profit percentage based on Taxpayer's return.

The Department requested Taxpayer to respond to GAZT's memorandum of appeal concerning the disputed item. In response, Taxpayer reiterated the statements made before the Primary Committee during the review of the dispute, asserting that GAZT had not provided any evidence or information indicating that the company's branch submitted incorrect information, failed to file its returns within the statutory period, or that the transactions between the branch and the headquarters violated the provisions of the Tax Law to justify GAZT's reliance on an estimated assessment in accordance with Article (63) of the Tax Law, especially the branch confirmed that there were no other revenues for the headquarters, and that the source of the branch revenues stemmed solely from the contract signed between it and the headquarters. Taxpayer also affirmed that all activities and operations were recorded in its accounts, and there was no indication of any concealment or tax evasion. Consequently, the branch asserts that the contested returns for the appealed years are accurate and consistent with the approved accounts. Therefore, GAZT should not resort to an estimated assessment as long as the branch maintains official and certified accounts. Furthermore, GAZT did not audit those accounts, as noted in the memorandum of appeal and the field inspection was for a different purpose. Thus, it is unreasonable not to rely on those certified accounts, given that GAZT did not present any objections that would prove the accounts' inaccuracy. In conclusion, the branch's response memorandum reiterated its objection to all discrepancies resulting from GAZT's assessment and the fines imposed based on that assessment. Additionally, it reiterated the request to correct the accounting errors included in the notice of the estimated assessment, ensuring that the errors in recording those figures are rectified in accordance with the accounts submitted by the branch, as confirmed by the appealed primary Decision.

The Department, having taken cognizance of statement of appeal and responds thereto, and having reviewed documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing Case documents and statement of appeal submitted by GAZT, the Department found that conditions of appeal 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 statutory prescribed period.

As for the merits of case, the Department, upon reviewing the Case file, including all documents, and the statement of appeal, and after careful consideration of the appeal, the supporting Grounds, and the company branch's response, as well as the findings and conclusions of the primary Decision, found that GAZT's demand to increase the estimated profit percentage from total expenses from 7% to 20% for the years 2010 to 2014 AD is based on the premise that Taxpayer submitted its return indicating that its income consists of adding a percentage (7%) to its total expenses on annual basis and being compensated by the headquarters in accordance with an agreement signed with the headquarters that specifies the profit margin for the branch's operations conducted through the headquarters. GAZT believes that this agreement lacks the principle of independence due to the headquarters' control over Decision-making, which justifies the GAZT's Decision to conduct an estimated assessment to determine profits as claimed by GAZT, without acknowledging that agreement. Furthermore, GAZT's claim of its right to make an estimated assessment, based on its assertion in the appeal that the Tax Law permits such an action, cannot be taken at face value, as this right is restricted by a series of conditions and circumstances under which such an estimated assessment can be resorted to, as stated in Article (63) of the Tax Law, including the failure of Taxpayer to submit its tax return on the date specified by law, or if it does not maintain accurate accounts and records, it does not adhere to the required format, model, and method in its records, or if it is unable to prove the accuracy of the information in the return. This is further emphasized in Paragraph (3) of Article (16) of the Implementing Regulations of the Income Tax Law, which outlines GAZT's right to conduct an estimated assessment as follows: (In order to enforce taxpayers' compliance with statutory requirements and curtail tax evasion, the Department may use tax assessment based on the taxpayer's relevant facts and circumstances, in the following cases:

- a. The taxpayer's non-filing of the return in due time. In case the taxpayer files its returns and audited financial statements which are based on books and proper records after the due date and prior to the Department's issuance of the assessment, the Department may accept and process the taxpayer's return according to standard procedures and subject to statutory penalties.)
- b. The taxpayer's failure to keep accurate books and records that truly reflect its transactions in the Kingdom
- c. The taxpayer's failure to prove the validity of the return's information by supporting documents ...etc.
- d. The taxpayer's failure to comply with the format, form and manner of books and records as required by the Law of Commercial Books.
- e. The taxpayer's failure to translate into Arabic books and records kept in a language other than Arabic within a time frame specified by the Department.)

Article (63) of the Income Tax Law, entitled "Procedures for Combating Tax Avoidance", includes a number of measures that the Appellant (GAZT) is authorized to undertake for the purpose of determining the tax. However, the Department, having reviewed the evidence presented by GAZT, found no substantial evidence or indication that the Appellee (Taxpayer) attempted to evade or reduce the tax. Given the established facts and documents of the Case. it is evident that the Appellee (Taxpayer) submitted certified statutory accounts audited by a licensed external auditor. Furthermore, Appellant's reliance on Paragraph (b) of Article (34) of the Income Tax Law, which states: (The Minister shall have the power to authorize certain other sectors to use estimated taxation to determine their tax base and rates in accordance with the Regulations) is not applicable to Taxpayer's situation, considering that Taxpayer submitted certified accounts, and GAZT conducted a field inspection without raising any objections regarding the accuracy of those accounts.



GAZT's claim that the purpose of the inspection was merely to verify Taxpayer's compliance with an agreement with the Ministry of Defense does not undermine this conclusion. GAZT had the right to inspect Taxpayer to substantiate its claim for justifying the use of estimated profits, should it have found discrepancies between Taxpayer's records and the submitted returns. Therefore, resorting to arbitrary estimation by discarding Taxpayer's accounts, which serve as the basis for the tax assessment, is unjustified, especially given that GAZT did not support its position in line with Paragraph 4 of Article 16 of the Implementing Regulations of the Income Tax Law, which allows for determining estimated net profit based on evidence, facts, or indicators related to Taxpayer's activity, its nature, and the surrounding circumstances. Since the appeal, in its entirety, merely listed the provisions of the law and regulations to justify the appropriateness of the estimated profit assessment procedure, the fundamental basis of these provisions was not in dispute. However, this right is contingent upon the requirement set forth by the legislator that, in cases where estimated assessment is to be applied, there must be evidence, facts, or indicators that justify disregarding Taxpayer's returns in order to exclude the same and estimate the profits accordingly for the assessment. The argument that the agreement, which determined the profit margin based on the branch's activities in the Kingdom and its relationship with the headquarters, does not reflect the branch's independence and, therefore, should not be relied upon, does not undermine this conclusion. Although this is true in principle and in fact that the branch follows the headquarters in its business management policy, this does not negate the apparent basis for accepting Taxpayer's returns based on the information provided in its return, relying on what is stated in its accounts audited by a licensed accounting firm. Since the memorandum of appeal did not present any evidence to discredit the accuracy or reliability of these accounts, the mere assertion that the branch lacked genuine independence cannot serve as a basis for concluding that its recorded accounts for its operations are unreliable. Therefore, it is unjustified to discard these accounts in favor of GAZT to discard these accounts and instead determine the profit through an estimated method for assessing Taxpayer. Based on the foregoing, the Department concluded to dismiss GAZT's appeal and uphold the primary Decision, which assessed Taxpayer based on its return. The Department also refused GAZT's request to assess Taxpayer's profits using the estimated method at a rate of 20%. Additionally, the Department also reaffirmed the primary Decision's finding that GAZT must correct the arithmetical errors mentioned in the facts and conclusions of the primary Decision should be adhered to when GAZT implements the operative part of this ruling.

Decision

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

First: Accept the appeal in form filed by GAZT against Decision No. (35) of 1439 AH issued by the First Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

Dismiss GAZT's appeal and uphold the primary Decision, which denied GAZT's request to increase the estimated profit percentage from 7% to 20% of expenses for the years 2010 to 2014 AD, for the reasons stated herein, and correct the material errors related to the end-of-service gratuity provision for 2011 AD and the tax paid with fines for 2012 AD, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-13)
Delivered in Appeal No. (W-1795-2018)

Principle No. 252

The commencement date for imposing late payment fines is determined by the date on which Taxpayer becomes aware of the exact amount owed under the Income Tax Law.

Facts:

On Sunday, 11/06/1442 AH, corresponding to 24/01/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 09/07/1439 AH by GAZT against Decision of the Second Primary Committee for Zakat and Tax Objections in Dammam, Decision No. (7) of 1439 AH, issued in Case No. (14) of 1438 AH filed by Candy Trading and Industry Company against GAZT. The primary Decision included the following rulings:

First: Accept the objection submitted by Taxpayer/... Company regarding the withholding tax imposed by GAZT in form.

Second: On Merits:

1. A. subject the amounts paid to ... Company for a royalty fee of \$60,000 to withholding tax at a rate of 15%.
B. subject the amounts paid to ... Company for technical services amounting to \$20,000 to withholding tax at a rate of 5%.
2. Demonstrate satisfaction with Taxpayer's payment of fines and non-imposition of any fines on tax differences arising from the calculation of withholding tax on royalties at a rate of 15%.

Since GAZT dissatisfied with this Decision, it submitted a statement of appeal to the Department summarized as follows:

GAZT, in addition to the arguments presented in its appealed Decision, clarifies that Taxpayer failed to calculate the withholding tax due on the royalties paid to Best Western in accordance with law provisions at a rate of 15% but rather calculated the same at a rate of 5%, thus violating the provisions of Article (68) of the Income Tax Law and Article (63) of its Implementing Regulations, which stipulate that the withholding tax rate on royalties is 15%. GAZT imposed a fine on such differences in accordance with provisions of Paragraph (a) of Article (77) of the law. GAZT further stated that Paragraph (c) of Article (76) of the Income Tax Law defines the unpaid tax as (The difference between the amount of tax due under this Law and the amount paid on the date specified by law ...), thus rendering GAZT's actions lawful as stated in its statement of appeal.

When the Department decided to open the pleadings, the Appellee was contacted via email on 14/09/1441 AH, corresponding to 07/05/2020 AD, to respond to the points raised in Appellant's memorandum. Appellant responded on 21/09/1441 AH, corresponding to 15/05/2020 AD, stating that all fines imposed on the unpaid withholding tax from the due



date until payment had been settled and requested the affirmation of the primary Decision as concluded.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing Case documents and statement of appeal submitted by GAZT, the Department found that conditions of appeal have been fulfilled in form in accordance with the 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 statutory prescribed period.

As for merits of the case, the Department, upon reviewing the case file, its contents, and the statement of appeal and upon careful consideration of the arguments presented by GAZT, found that the core of the appeal lies in Appellant's request to impose late payment fines on the differences in withholding tax that Appellee calculated at a rate of 5% on royalties instead of the required 15%. GAZT seeks to impose late payment fines after adjusting the withholding tax rate on royalties to 15% instead of 5%. On the other hand, Appellee argues that all fines due on the unpaid tax differences have been settled from the due date until payment and the only amount of withholding tax that was paid was SAR (15,000), along with the applicable fines amounting to SAR (8,250), bringing the total amount paid to SAR (23,250). Whereas it is evident from the facts established in the appealed primary Decision that Taxpayer incorrectly paid withholding tax at a rate of 5% on royalty services and 15% on technical services and whereas the correct procedure is to calculate a rate of 15% for royalties and 5% for technical services, and whereas it has been shown that GAZT's assessment related to the royalty item was erroneous, as Taxpayer was assessed according to Letter No. (...) dated 27/02/1437 AH, with a withholding tax rate of 5% calculated on all amounts paid to non-residents, totaling \$80,000, which Taxpayer paid along with the applicable fines. Subsequently, GAZT corrected its assessment by subjecting the amounts paid as royalties to a 15% rate instead of 5%. Taxpayer's payment of the amount claimed by GAZT demonstrates its compliance with tax obligations upon becoming aware thereof, as evidenced by the payment of a 5% withholding tax on all amounts paid after being requested by GAZT. However, GAZT's amended assessment caused confusion for Taxpayer due to the discrepancy in the result compared to the original assessment, which Taxpayer had also settled. Taxpayer has paid all taxes due and fines stated in the original assessment. Moreover, the amended assessment by GAZT involved a procedural change, in addition to the Primary Committee's determination that the entire amount due was not classified as royalties. Whereas, after careful consideration of the rules governing the imposition of the disputed fine, the Department concluded that the commencement date for imposing such a fine is determined by the date on which Taxpayer becomes aware, or should have been aware, of the exact amounts due under the Tax Law. Consequently, it was determined that the imposition of late payment fines on the unpaid withholding tax was not justified. Therefore, the Department decided to dismiss GAZT's appeal and uphold the primary Decision delivered in this regard.

Decision

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

First: Accept the appeal in form filed by GAZT against Decision No. (7) of 1439 AH issued by the Primary Committee for Zakat and Tax Objections in Dammam.



Second: On Merits: Dismiss the appeal filed by GAZT regarding (Late Payment Fine) item and uphold the primary Decision delivered in this regard.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-225)
Delivered in Appeal No. (I-33635-2020)

Principle No. 253

If Taxpayer receives the final certificate from GAZT confirming the submission of tax returns and payment of the due tax, GAZT's right to make or modify the assessment is forfeited after the expiration of the statutory period for GAZT's entitlement to make or amend the assessment.

Facts:

All praise is due to Allah alone, and peace and blessings be upon him after whom there is no other Prophet.

On Tuesday, 08/09/1442 AH, corresponding to 20/04/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 09/03/2020 AD by/ GAZT against Decision of the First Department for the Determination of Income Tax Violations and Disputes in Riyadh, Decision No. (IR2) issued regarding Case No. (I-18-2018). The primary Decision included the following rulings:

First:

1. Cancel Defendant's Decision/ GAZT regarding the tax assessment for Plaintiff/ ... Est. for Contracting (CR No. ...) for the years 1429 AH to 1432 AH.
2. Dismiss the objection filed by Plaintiff/ ... Est. for Contracting (CR No. ...) against the tax assessment conducted by Defendant/ GAZT for the years 1433 AH to 1436 AH.

Second:

1. Cancel Defendant's Decision/ GAZT regarding the estimated assessment of Plaintiff/ ... Est. for Contracting (CR No. ...) and disregard its accounts for the years 1429 AH to 1432 AH.
2. Dismiss the objection filed by Plaintiff/ ... Est. for Contracting (CR No. ...) regarding the disregard of its accounts and the estimated assessment conducted by Defendant/ GAZT for the years 1433 AH to 1436 AH.

Third:

1. Cancel Defendant's Decision/ GAZT regarding the imposition of a concealment fine on Plaintiff/ ... Est. for Contracting (CR No. ...) for the years 1429 AH to 1432 AH.
2. Dismiss the objection filed by Plaintiff/ ... Est. for Contracting (CR No. ...) regarding the concealment fine imposed by Defendant/ GAZT for the years 1433 AH to 1436 AH and amend the fine calculation to be 25% of the unpaid tax difference rather than the amount assessed by Defendant.
3. Cancel Defendant's Decision/ GAZT regarding the imposition of a fine for non-filing on Plaintiff/ ... Est. for Contracting (CR No. ...) for the years 1429 AH to 1432 AH.

Fourth:

- Dismiss the objection filed by Plaintiff/ ... Est. for Contracting (CR No. ...) regarding the amounts that it previously paid.

Since the aforementioned Decision was not accepted by the Appellant (ZATCA), it presented a statement of appeal to the Department, summarized as follows:

ZATCA clarifies that the appealed Decision contains inconsistencies in certain clauses. While the Department's Decision regarding the tax assessment for the years 1429 AH to 1432 AH concluded that ZATCA had no right to conduct assessments for the years in question, the Department that delivered the Decision, on the other hand, concurred with ZATCA, specifically in Paragraph (Second/2), of its Decision on the estimated assessment of the institution for the years 1433 AH to 1436 AH, due to Taxpayer's failure to submit the required documents and the lack of document retention. Moreover, ZATCA states that, in accordance with Paragraph (b/5) of Article (77) of the Income Tax Law and as confirmed by the Department that delivered the Decision, specifically Item (Third/2), the Department upheld ZATCA's imposition of a concealment fine for the years 1433 AH to 1436 AH at a rate of 25% of the unpaid tax difference, which constitutes an acknowledgment by the Department that there was tax evasion through Taxpayer's concealment of the institution's documents and records for all years. Therefore, the provision applicable to the years 1429 AH to 1432 AH regarding the statutory period for tax assessment is outlined in Paragraph (b) of Article (65) of the Income Tax Law. ZATCA also clarified that it had requested Taxpayer to provide trial balances and certain detailed documents related to the submitted and that Taxpayer, upon its Letter No. (...) dated 25/10/1438 AH, indicated that there were no accounting records or trial balances. ZATCA further clarified that it requests documents from a taxpayer when such documentation is required by its return and Taxpayer violated provisions of Paragraph (a) of Article (58) of the Income Tax Law and Article (8) of the Commercial Books Law, failing to meet the legal requirements for record-keeping. Therefore, ZATCA proceeded with the assessment and estimated assessment according to Paragraph (3) of Article (57) and Paragraph (3/b-c) of Article (16) of the Implementing Regulations of the Income Tax Law. ZATCA's actions were further supported by the Appellate Decision No. (1309) of 1434 AH. ZATCA further demonstrated that all the appealed items pertain to a single matter: establishing ZATCA's right to conduct tax assessments for the years 1429 AH to 1432 AH in accordance with Paragraph (b) of Article (65) of the Income Tax Law. Consequently, this establishes ZATCA's right to conduct an estimated assessment within a ten-year period and to impose late submission fines, concealment fines, and fines for failure to submit returns for the years 1429 AH to 1432 AH. Based on the foregoing, ZATCA requests cancellation of the appealed Decision with regard to the following items:

1. Cancel Defendant's Decision/ GAZT regarding the tax assessment for Plaintiff/ ... Est. for the years 1429 AH to 1432 AH.
2. Cancel Defendant's Decision/ GAZT regarding the estimated assessment of Plaintiff/ ... Est. and disregard its accounts for the years 1429 AH to 1432 AH.
3. Cancel Defendant's Decision/ GAZT regarding the imposition of a concealment fine on Plaintiff/ ... Est. for the years 1429 AH to 1432 AH.
4. Cancel Defendant's Decision/ GAZT regarding the imposition of a fine for failure to submit the tax return on Plaintiff/ ... Est. for the years 1429 AH to 1432 AH.

On Tuesday, 26/11/1442 AH corresponding to 06/07/2021 AD, the Department decided to hold a 10-day e-hearing. However, the period elapsed without either party to the appeal submitting any additional arguments.

On Wednesday, 03/01/1443 AH, corresponding to 11/08/2021 AD, the Department, having taken cognizance of memoranda of appeal and responds thereto, and having reviewed documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.



Grounds



Upon reviewing Case documents and statement of appeal submitted by ZATCA, the Department found that conditions of appeal 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 statutory prescribed period.

As for the merits of case, and considering ZATCA's appeal to (Tax Assessment) item, the Department, upon reviewing the Case file, determined that ZATCA's right to conduct tax assessments expires five years from the final due date for filing the return. Since it was established that ZATCA conducted the tax assessment for the years in dispute on 28/4/1439 AH, while the statutory period ended on 28/6/1438 AH, it is evident that ZATCA conducted the assessment after the expiration of the statutory period. Consequently, its right to conduct a tax assessment for those years is extinguished pursuant to Paragraph (b) of Article (65) of the Income Tax Law. ZATCA's claim that it is entitled to conduct a tax assessment within ten years from the end of the prescribed period for filing the tax return based on Paragraph (b) of Article (65) of the Income Tax Law cannot be accepted in absolute terms, as this right is limited to cases where Taxpayer's submitted return is proven to be incomplete or inaccurate with the intent of tax evasion. Since ZATCA failed to provide any material evidence to demonstrate that Taxpayer's return was incomplete or inaccurate with the intent of tax evasion, the Department concludes that ZATCA does not have the right to conduct these assessments due to the expiration of the five-year statutory period from the submission due date. The Department finds the conclusion reached in the appealed Decision to be correct and thus concludes with the affirmation of the primary Decision regarding this item.

The Department, regarding ZATCA's appeal to (Discarding Accounts), upon reviewing the case file, concluded in the first item that the statutory period for ZATCA's right to conduct or amend the assessment for the disputed years 1429 AH to 1432 AH had expired. Consequently, Taxpayer's return is considered final, which means it is not permissible to discard Taxpayer's accounts for these years. While the failure to keep records necessitates an estimated assessment, ZATCA is not entitled to conduct or amend the assessment after the expiration of the statutory five-year period unless tax evasion is proven. Since the Department did not observe any requirement for correction or further comment based on the evidence provided, it concluded that the information provided does not affect the outcome of the appealed Decision delivered in this regard. Accordingly, the Department decided to dismiss ZATCA's appeal and uphold the Decision delivered in this regard.

The Department, regarding ZATCA's appeal to (Fines for failure to submit tax returns and concealment), upon reviewing the case file, concluded in the first item that the statutory period for ZATCA's right to conduct or amend the assessment for the disputed years 1429 AH to 1432 AH had expired. Consequently, Taxpayer's return is considered final, which results in the cancellation of the fine for these years as the basis for the fine ceased to exist. Since the legislator linked the concealment fine to cases of intentional tax evasion and ZATCA failed to provide evidence to substantiate such tax evasion, this Department ascertained the correctness of the conclusion reached in the appealed Decision, the reasons given in support of that Decision are sufficient to affirm it and the defenses presented do not impact the outcome of the Decision, this Department concludes to uphold the appealed Decision delivered in this regard.

The Department, regarding ZATCA's appeal to (Paid Amounts), upon reviewing the case file, found that Taxpayer received ZATCA's final certificate confirming the submission of returns and payment of the due tax and concluded in the first item that the statutory period for ZATCA's right to conduct or amend the assessment for the disputed years 1429 AH to 1432 AH had expired, rendering Taxpayer's return final. This Department, upon careful



consideration of the subject matter of the dispute, the Decision issued, and the reasons upon which it was based, finds the conclusion reached in the appealed Decision to be correct, the reasons given in support of that Decision are sufficient to affirm it and the defenses presented do not impact the outcome of the Decision, concludes to uphold the Decision delivered in this regard

Decision

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

First: Accept appeal in form filed by ZATCA against Decision No. (IR2) of the First Department for Determination of Income Tax Violations and Disputes in Riyadh.

Second: On Merits:

1. Dismiss ZATCA's appeal regarding the item (Tax Assessment) and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
2. Dismiss ZATCA's appeal regarding the item (Discarding Accounts) and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
3. Dismiss ZATCA's appeal regarding the item (Fines for failure to submit tax returns and concealment) and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
4. Dismiss ZATCA's appeal regarding the item (Paid Amounts) and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-135)
Delivered in Appeal No.
(IW-1729-2018)

Principle No. 254

The correction and adjustment, in light of the provisions of the Tax Law, are not considered as substitute for the original return but rather a correction of the original return, unless substantial adjustments are involved that could not be considered mere corrections due to their nature or scope, in which case it would be considered a new return. In such cases, the late submission fine does not apply to the adjustment of the initially submitted tax return within the statutory period.

Principle No. 255

Carried-forward losses are not deducted for tax purposes from taxable profits of the tax year resulting from ZATCA's adjustment of Taxpayer's original return, which initially reported losses. Article 11 of the Implementing Regulations of the Income Tax Law entitles Taxpayer to deduct previous years' losses from the annual profit reported in subsequent years, based on Taxpayer's return.

Facts:

On Tuesday, 19/11/1442 AH, corresponding to 29/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 19/03/1437 AH by/ (...) Company against Decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (1) of 1437 AH, issued in Case No. (25/35) concerning tax assessment for the years 2005 to 2009 AD, filed by the Appellant against ZATCA. The primary Decision included the following rulings:

First: Accept the objection in form.

Second: On Merits:

1. Support GAZT's position on adding the revenue difference for 2006 AD.
2. Support GAZT's position on disallowing the deduction of carried forward losses for 2007 and 2008 AD.
3. Support Taxpayer's position on the non-imposition of withholding tax on amounts paid to ... Company and ... Company For 2005 AD.
4. Support GAZT's position on excluding the amounts charged by ... Company.
5. Support GAZT's position on excluding bank charges for 2007 AD.
6. Support GAZT's position on excluding the depreciation difference for the years 2005 to 2009 AD.
7. Confirm settlement of the dispute in favor of Taxpayer upon GAZT's agreement of its position.



8. Support GAZT's position on imposing withholding tax on the net income after tax deduction for 2005 and 2006 AD.
9. Support GAZT's position on imposing withholding tax on the interest charged by the headquarters.
10. Support GAZT's position on imposing withholding tax on the technical service expenses for the years 2005 to 2009 AD.
11. Support GAZT's position on imposing a fine for the failure to submit a return for 2008 AD.
12. Support GAZT's position on imposing a late payment fine on Taxpayer regarding the items for which the committee upheld GAZT's stance.

Since the aforementioned Decision was not accepted by Taxpayer (...), it presented a statement of appeal, summarized as follows:

Taxpayer, regarding (Exclusion of Charged Amounts and Service Costs from ... Company for the years 2005 to 2009 AD), challenges the Primary Committee's Decision upheld ZATCA's position in excluding the amounts from ... due to the lack of supporting documents and also asserts that ... Company is an independent entity from ... Company. Service costs provided by ... Company to ... Company are recorded in the books of ... Company, while the same service costs are recorded as expenses in the books of ... Company. Taxpayer emphasizes that it presented the supporting documents for the costs and service expenses recharged by ... Company for the years 2005 to 2009 AD. Taxpayer, regarding (Exclusion of technical service costs obtained from ... Company amounting to SAR 570,758 for 2007 AD), bases its appeal on the assertion that ... Company provided various technical services to it and emphasizes that the expenses for these services are deductible, as they represent legitimate business expenses supported by the necessary documentation. Taxpayer, regarding (Exclusion of Depreciation Difference for the years 2005 to 2009 AD), affirms the presence of additions to fixed assets for 2005 AD, noting that this error affected the depreciation calculation for 2005 AD and subsequent years and requests a correction of the material error in accordance with the correct calculation based on the financial statements. Moreover, Taxpayer, regarding (Imposition of withholding tax on net income after tax calculation for the years 2005 AD amounting to SAR (4,487,984) and 2006 AD amounting to SAR (3,428,101)), bases its appeal on the assertion that the branch did not transfer any profits, indicating the absence of a payment event that would require withholding tax, and emphasizes that the inclusion of profits in the accounts of the headquarters does not imply that the profits were settled against other items in the account. Taxpayer, regarding (Imposition of withholding tax on the interest charged by the headquarters against payments to ... for 2008 AD amounting to SAR (2,595,545)), bases its appeal on the assertion that the imposition of withholding tax on these interest amounts is incorrect because the bank charges incurred by the branch represent costs related to financing the branch through a consortium of several banks, including two local Saudi banks and another bank in Finland. Therefore, Taxpayer contends that these amounts pertaining to the local Saudi banks should not be subject to withholding tax. Taxpayer, regarding (Imposition of withholding tax on the expenses listed in Statement No. (3) of tax returns for the years 2005, 2007, 2008, and 2009 AD), asserts that the imposition of withholding tax on these expenses is incorrect, as there is no actual payment, noting that the withholding tax is only applicable upon actual payment. Furthermore, the amounts declared in Statement No. (3) were recorded in relation to the supply of materials, not for services; therefore, they should not be subject to withholding tax. Taxpayer, regarding (Imposition of a late submission fine on the amended tax returns for the years 2005, 2008, and 2009 AD), basis its objection on the fact that it submitted the tax return for the year ending December 31, 2008, on April 29, 2009, which is within 120 days from the end of the fiscal year, in accordance with Paragraph (b) of Article (60) of the Income Tax Law. Taxpayer, regarding (Imposition of a late payment fine on the tax obligation resulting from



GAZT's actions), bases its appeal on the premise that the fines mentioned in Article (76) of the Income Tax Law relate to delays in tax payment and are not applicable to tax assessments. Furthermore, the difference in tax that resulted in the late payment fine was due to differing views between Taxpayer and ZATCA, which preclude the imposition of a late payment fine according to the Income Tax Law. Taxpayer, regarding non-deduction of carried forward losses for the years 2007 and 2008 AD, amounting to SAR (50,814,870) and SAR (109,396,197), respectively, requests the deduction of the aforesaid carried forward losses from 2009 profits, compared with the taxable profits confirmed by ZATCA, in accordance with the provisions of Article (11) of the Implementing Regulations of the Income Tax Law.

The Department decided to open the pleadings and the case files included a memorandum dated 8/8/1439 AH in which ZATCA responded to Taxpayer's appeal regarding the disputed items. In its response concerning the item of amounts charged from ... ZATCA stated that Taxpayer failed to provide any supporting documents for the deduction during field inspection. ZATCA, regarding (Bank charges amounting to SAR (570,758) for 2007 AD and the corresponding tax of SAR (114,152), responded that it had approved the item of banking services for all years supported by external documentation in the name of the company, except for the amount of SAR (570,758) for 2007 AD, as it was not supported by external documentation compared to other years. ZATCA, regarding (Exclusion of Depreciation Differences), responded that during the review of Statement No. (4) included in the company's tax returns for the years 2005 to 2009 AD, a material error was observed in the filling of the fields in Statement No. (4) for all years. As a result, Statement No. (4) for the years 2005 to 2009 AD was refilled based on the information provided in the company's audited financial statements correctly, leading to the mentioned differences, which increased the profits. ZATCA, regarding (Imposition of withholding tax on net income after tax deduction), responded that it subjected the profits for the years 2005 and 2006 AD, which were closed in the accounts of the headquarters, to a withholding tax rate of 5% in accordance with Article (68) of the Income Tax Law, because withholding tax is due when a payment or a similar event occurs, such as offsetting or settling accounts, where the date of settlement is considered the date of payment. ZATCA, regarding (Imposition of withholding tax on the interest charged by the headquarters), responded that the amounts subjected to withholding tax in accordance with Article (68) of the Income Tax Law and Article (63) of the relevant Implementing Regulations are payments made from a resident to a non-resident entity (the headquarters) for the service of collecting receivables amounting to SAR (1,574,000,000), which the headquarters fulfilled through its agreement with the mentioned bank consortium. This liability ultimately assigned to the headquarters. ZATCA, concerning (Withholding Tax on the Technical Service Amount), stated that it imposed a tax rate of 5% on the value of these services pursuant to Article (68) of the Income Tax Law, as the amounts were charged to the accounts under the heading of technical services, and we have not found confirmation of the company's objection that these amounts have not yet been paid to non-resident entities and that they are merely accrued expenses. ZATCA, regarding (Late Submission Fine for 2008 Tax Return Amounting to SAR (20,000)), responded that Taxpayer submitted settlements (amended tax return) after the statutory deadlines, which ZATCA considered during the assessment and which nullified the effects of the previous returns. ZATCA, concerning (Late submission fine on the additional tax obligation resulting from ZATCA's actions), responded that it imposed the fine for the years 2005 and 2006 AD based on the provisions of Article (7) of the Income Tax Law and Article (68) of the relevant Implementing Regulations. For the year 2009 AD, however, a fine was imposed for the failure to submit a return in accordance with Article (76) of the Income Tax Law.



On Thursday, 12/08/1442 AH corresponding to 25/03/2021 AD, the Department decided to hold a 10-day e-hearing. However, the period elapsed without either party to the appeal submitting any additional arguments.

The Department, on 16/09/1442 AH, corresponding to 28/04/2021 AD, decided to communicate with Taxpayer and request the submission of the contents of Attachments No. (6) and (8) referenced in the statement of appeal. Since Taxpayer's objection pertains to a material error in calculating the additions to fixed assets for 2005 AD, which affected the depreciation calculations for subsequent years, the Department requested Taxpayer provide supporting documents for its claim, along with the reasons for the error and how it reached the correct amount. Taxpayer also pointed out in its appeal regarding the withholding tax on the technical services amount that the amount consists of three components: one is an outstanding amount that has not been paid, the second is for the supply of goods, and the third is paid to a resident entity. Taxpayer referred to a detailed breakdown of these amounts in the attached appendix (2/15) to its appeal. Since the Department did not find this appendix with the appeal, it requested Taxpayer to provide all supporting documents for its claim, detailing the amounts related to the three disputed components. The Department also decided to request ZATCA to provide the field inspection reports related to the appealed assessment, provided that the required document should be submitted within one month from that date. The Department, on 08/10/1442 AH, corresponding to 20/05/2020 AD, received the field inspection report from ZATCA, while the specified period elapsed without a response from Taxpayer.

The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on 24/10/1442 AH corresponding to 05/06/2021 AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final Decision.

Grounds



Upon reviewing Case documents and statement of appeal submitted by Taxpayer, the Department found that conditions of appeal 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 statutory prescribed period.

As for the merits of case, the Department, regarding (Exclusion of the charged amounts and service costs from ... Company Ltd. For 2005 to AD), found that the essence of the appeal lies in Taxpayer's request to deduct such expenses based on the existence of supporting documents for their deduction, while ZATCA believes that the documents provided by Taxpayer are insufficient. The Department, upon reviewing the subject of the dispute, noted that the disagreement between the two parties is document-based and later examined the field inspection report dated 07/03/1432 AH and found that Taxpayer provided the supporting documents for the disputed expenses, as indicated in the report, and confirmed by ZATCA's representative. ZATCA, in its response to Taxpayer's appeal, did not refute Taxpayer's appeal regarding field inspection. Additionally, ... Company Ltd. is a company registered with ZATCA, and therefore, the expenses charged by Taxpayer from this company represent revenues that were declared in the returns submitted to ZATCA or they were excluded from the company's expenses. Since ZATCA did not contest Taxpayer's returns for that company, and since no evidence was presented to the Department that contradicts Taxpayer's assertions in its statement of appeal, this Department concluded to accept Taxpayer's appeal and overturn the primary Decision delivered in this regard.

it was found, regarding (Exclusion of technical service costs obtained from ... Company amounting to SAR 570,758 for 2007 AD), that the appeal lies in Taxpayer's objection to



ZATCA's action in excluding these expenses despite the submission of supporting documents. However, ZATCA believes that the documents provided by Taxpayer are insufficient. The Department, upon examining the subject of the dispute, found that the dispute is document-based on merits and also observed, upon reviewing the field inspection report dated 07/03/1432 AH, that Taxpayer provided the supporting documents for the disputed expenses, as indicated in the report, and confirmed by ZATCA's representative. ZATCA, in its response to Taxpayer's appeal, did not refute Taxpayer's appeal regarding field inspection. Additionally, ... Company Ltd. is a company registered with ZATCA, and therefore, the expenses charged by Taxpayer from this company represent revenues that were declared in the returns submitted to ZATCA or they were excluded from the company's expenses. Since ZATCA did not contest Taxpayer's returns for that company, and since no evidence was presented to the Department that contradicts Taxpayer's assertions in its statement of appeal, this Department concluded to accept Taxpayer's appeal and overturn the primary Decision delivered in this regard.

It was found, regarding (Exclusion of Depreciation Difference for the years 2005 to 2009 AD), that the appeal lies in Taxpayer's rejection to the Primary Objection Committee's Decision that upheld ZATCA's exclusion of depreciation differences for the years in question, in accordance with the Income Tax Law and its Implementing Regulations. Taxpayer contends that there is an error in ZATCA's calculation of fixed assets for 2005 AD, which affected the depreciation calculation for the preceding years. Conversely, ZATCA insists on accuracy and correctness of its procedure regarding this item. Having perused the subject of the dispute, and given that the Department determined that Taxpayer's claim required supporting evidence to be deemed valid, Taxpayer was contacted to substantiate the amount of assets it claimed, which contradicted ZATCA's assertions, and the Department did not receive a response from Taxpayer that verifies the existence of a material error in the calculation of fixed asset additions for 2005 AD, leading to failure to verify the validity of Taxpayer's claim, the Department concluded to dismiss Taxpayer's appeal and uphold the primary Decision in this regard.

The appeal, regarding (Imposition of withholding tax on net income after tax calculation), lies in Taxpayer's objection to the Primary Objection Committee's Decision that upheld ZATCA's action of imposing a withholding tax of 5% on profits transferred to the headquarters, in accordance with the Income Tax Law, its regulations, and established practices of ZATCA and previous committee Decisions, regardless of whether the payment was actual or deemed. Taxpayer contends that the branch did not transfer any profits to the head office, asserting that the amounts transferred were for the purchase of machinery and equipment, while also indicating that the branch has accumulated losses. Having perused the subject of the dispute, and given that the appeal concerns ZATCA's imposition of withholding tax on the net income, assuming that it represents dividends to the head office, since it is legally established that withholding tax is triggered by the occurrence of a payment event, ZATCA's action is based on an assumption that lacks substantial evidence to prove the occurrence of such a payment, Taxpayer submits its returns according to statutory accounts that allow for tracking payment transactions, and ZATCA conducted a filed inspection of Taxpayer and did not establish that a payment event occurred, as well as ZATCA's argument, supported by the Primary Committee, that the date of entry or registration in the books constitutes payment is not explicitly supported by the provisions of the law, this Department concluded to accept Taxpayer's appeal and overturn the primary Decision.

The essence of the appeal, regarding (Imposition of withholding tax on interest charged from the headquarters for payments to the Saudi banks consortium for 2008 AD), lies in Taxpayer's objection to the Primary Objection Committee's Decision that upheld ZATCA's action of imposing a 5% withholding tax on the interest charged from the



headquarters, in accordance with Article (68) of the Income Tax Law and Article (63) of its Implementing Regulations. Taxpayer argues that the headquarters did not generate any revenues according to the documents attached to its statement of appeal. Having perused the subject of the dispute, and given that core of the transaction involved the headquarters paying interest on behalf of Taxpayer, which was not directly paid to the headquarters, and since Taxpayer clarified in its appeal that the amount in question was paid to both local and foreign banks, with the portion attributable to foreign banks amounting to SAR (14.9 million), ZATCA reviewed Taxpayer's appeal and did not deny Taxpayer's assertion regarding the disputed payments made to local and foreign banks and the Department did not find any evidence contradicting Taxpayer's assertions, the Department concluded to amend the primary Decision to subject the financing charges related to the amount paid to a foreign bank, totaling SAR (14.9 million), to withholding tax.

The appeal, regarding (Imposition of withholding tax on expenses listed in Statement No. (3) of the tax returns for the years 2005, 2007, 2008, and 2009 AD), focuses on Taxpayer's request to contest the imposition of withholding tax on such expenses, asserting that there was no actual payment, and that withholding tax applies only upon actual payment.

Taxpayer

further noted that the amounts declared in Statement No. (3) were recorded against the supply of goods, not services. In contrast, ZATCA contends that these amounts were recorded under the category of technical services, which necessitates the imposition of withholding tax. Having perused the subject of the dispute, and given that the Primary Committee based its Decision on the premise that the amount subjected to tax by ZATCA was not reflected in the accrued expenses shown in the financial statements, ZATCA did not respond to Taxpayer's objection concerning the details of the components of the disputed amount, and since ZATCA had previously conducted a field inspection of Taxpayer without raising this issue at that time, emphasizing Taxpayer's claim regarding the withholding tax on the technical services amount, and there was no evidence contradicting Taxpayer's assertions, the Department concluded to accept Taxpayer's appeal and overturn the primary Decision delivered in this regard.

The appeal, regarding (Late submission fine on the amended tax returns for the years 2005 to 2009 AD), lies in Taxpayer's request to cancel the late submission fine for 2008 AD, arguing that it submitted the return within the statutory deadline. However, ZATCA contends that Taxpayer delayed its submission based on the date of the amended assessment. The Department, upon reviewing the documents submitted by Taxpayer, acknowledges its right to amend the return within ten years according to the provisions of Article (59) of the Implementing Regulations without imposing a late submission fine due to the adjustment made after the original return statutory submission period. Conversely, ZATCA maintains that submitting the amended assessment after the expiration of the statutory deadline constitutes a cancellation of the original return, thereby resulting in the amended return being considered submitted after the statutory period, which necessitates imposing a fine for failure of submission as prescribed by law. Upon further consideration of the matter, the Department noted that ZATCA's basis for imposing the fine is due to Taxpayer's adjustment of a previously submitted return. Given that fines, under the regulations, are considered penalties, and that no penalty can be imposed unless explicitly stipulated by law or regulation, and given that the Tax Law does not stipulate this particular fine, and given that the majority of the Department concluded that, according to the provisions of the Tax Law, an adjustment or correction is not considered a substitute for the original return but rather a correction of the original return, unless substantial adjustments are involved that could not be considered mere corrections due to their nature or scope, in which case it would be considered a new return, which has not been proven before this Department nor argued by ZATCA, the Department, by majority vote, determined that imposition of a late submission fine for the amended return is invalid since

it was submitted initially within the statutory period. Therefore, the Department decided to accept Taxpayer's appeal regarding its failure to submit the return for 2008 AD and dismiss the other years as the primary Decision did not address thereof.

Taxpayer's appeal, regarding (Late payment fine on tax differences), lies in its request to cancel the late payment fine imposed on the tax differences identified by ZATCA, as these differences are a subject of legitimate dispute between Taxpayer and ZATCA. On the other hand, ZATCA maintains its stance on the validity of the fine pursuant to the Income Tax Law. Having perused the subject of the dispute and given that the fine is contingent upon the acceptance or dismissal of the related item, the Department decides to cancel the fines imposed on the items for which Taxpayer's appeal was accepted, as the fine is canceled with the invalidation of its underlying basis. Since the Department, regarding (Exclusion of Depreciation Differences), decided to dismiss Taxpayer's appeal regarding this item, it consequently resolves to dismiss its appeal regarding the relevant late payment fine as well. Consequently, the fine should be imposed on the differences for this item if Taxpayer fails to pay, starting from the relevant statutory due date.

The appeal, regarding (Deduction of Carried-Forward Losses for 2007 and 2008 AD), lies in Taxpayer's request to deduct the carried-forward losses for 2007 and 2008 AD from 2009 profits, in accordance with Article (11) of the Implementing Regulations of the Income Tax Law. However, ZATCA maintains that there were no profits in 2009, according to Taxpayer's return, to allow for the deduction of such losses. The Department, upon reviewing Taxpayer's appeal on this item, finds that the appeal is based on the request to deduct carried-forward losses from 2009 profits, relying on the tax assessment conducted by ZATCA that showed Taxpayer had realized profits in 2009 AD, contrary to Taxpayer's return, which reported losses for that year. As stipulated in Article (11) of the Implementing Regulations, Taxpayer's right to deduct losses from previous years is contingent upon having annual profits, as reflected in Taxpayer's return. Since Taxpayer's return demonstrated losses, it does not have the right to deduct previous losses based on the profits indicated by the tax assessment. Accordingly, the Department decided to dismiss Taxpayer's appeal and uphold the primary Decision, supported by its reasons as well as the reasons stated herein.

Decision

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

First: Accept the appeal filed by Taxpayer/... in form against Decision No. (1) of 1437 AH of the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Accept Taxpayer's appeal regarding the item (Exclusion of the charged amounts and service costs from ... Company for the years 2005 to 2009 AD) and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
2. Accept Taxpayer's appeal regarding the item (Exclusion of technical service costs obtained from ... Company amounting to SAR (570,758) for 2007 AD) and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
3. Dismiss Taxpayer's appeal regarding the item (Exclusion of Depreciation Difference for the years 2005 to 2009 AD) and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Taxpayer's appeal regarding the item (Imposition of withholding tax on net income after tax calculation) and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.



5. Amend the primary Decision regarding (Imposition of withholding tax on interest charged from the headquarters for payments to the Saudi banks consortium for 2008 AD), by ruling that the financing costs related to the amount paid to a foreign bank, totaling SAR (149 million), are subject to withholding tax, in accordance with Grounds and merits mentioned herein.
6. Accept Taxpayer's appeal regarding the item (Imposition of withholding tax on the expenses listed in Statement No. (3) of tax returns for the years 2005, 2007, 2008, and 2009 AD) and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
7. Regarding (Late Submission Fines on the Amended Tax Returns for the years 2005 to 2009 AD):
 - A. Accept Taxpayer's appeal for 2008 AD by majority and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
 - B. Dismiss Taxpayer's appeal for the other years, in accordance with Grounds and merits mentioned herein.
8. Accept Taxpayer's appeal regarding (Late payment fine on tax differences) for the items for which the appeal was accepted, confirm validity of the fine imposed from its due statutory date for the tax differences in (Exclusion of Depreciation Differences), in accordance with Grounds and merits mentioned herein, dismiss Taxpayer's appeal regarding (Deduction of Carried-Forward Losses for 2007 and 2008 AD), and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-34)
Delivered in Appeal No. (I-1832-2018)

Principle No. 256

The law does not explicitly stipulate that Taxpayer's accounts shall be discarded merely for failing to properly submit the consortium's information return or register the consortium.

Facts:

On Wednesday 10/11/1441 AH corresponding to 01/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH to consider the appeal filed on 03/06/1438 AH, corresponding to 02/03/2017 AD, by/ the General Authority For Zakat and Tax (GAZT) against the Decision No. (9) of the year 1438 AH delivered by the Primary Zakat and Tax Objection Committee in Riyadh issued in Case No. (39/9) filed by the Appellant against the branch of ... Company . The primary Decision ruled as follows:

First: Accept in form the objection filed by Taxpayer/branch of ... Company regarding the adjusted tax assessment for the years from 2007 to 2012 AD and 2013 assessment.

Second: On Merits:

1. Support Taxpayer's position of not determining the consortium-related profit on an estimated basis.
2. Support GAZT's of rejecting the reduction of revenues by bad debts.
3. Confirm settlement of the dispute upon GAZT's agreement to correct the material error.

Since this Decision was not accepted by GAZT, it submitted a statement of appeal, summarized as follows:

Both parties to the consortium agreement were obligated to maintain separate accounts from their individual accounts, and an information return regarding the consortium was required to be submitted in accordance with Paragraph (5) of Article (17) of the Implementing Regulations of the Income Tax Law, which states: (The partnership's obligations apply to consortiums of companies. This includes registration with the Department, filing information return, and relevant penalties). Moreover, each consortium member's share of profit should be included in their respective tax return. Consequently, the impact of the consortium was excluded from the accounts in terms of revenue and costs, and the assessment was estimated at 10% of the consortium's revenue after excluding the company's share of book profits, in accordance with Article (16/4.3) of the Implementing Regulations of the Income Tax Law, which states: (In order to enforce taxpayers' compliance with statutory requirements and curtail tax evasion, the Department may use tax assessment based on the taxpayer's relevant facts and circumstances, in the following cases: a. Taxpayer's non-filing of the return in due time. In case the taxpayer files its returns and audited financial statements which are based on books and proper records



after the due date and prior to the Department's issuance of the assessment, the Department may accept and process the taxpayer's return according to standard procedures and subject to statutory penalties. b. Taxpayer's failure to keep accurate books and records that truly reflect its transactions in the Kingdom c. Subject to Paragraph (3) of Article (57) of these Regulations, the taxpayer's failure to prove the validity of the return's information by supporting documents and Paragraph (4) of Article (16) of the Implementing Regulations, which states: (Estimated net profit rate shall be determined based on available facts, evidence and indicators relevant to the taxpayer's activity, its nature and circumstances. In all cases, it shall not be less than the following rates of the taxpayer's revenues ... Item No. (8) in the table: Construction contractors, at no less than 10% of revenues). The company's claim, accepted by the Primary Committee, that the law's objective was achieved by the company's was achieved by the company's declaration of its share in its books and payment of tax on its consortium share, does not alter this, as the Tax Law is a law whose procedures cannot be violated, even if the intended purpose is achieved in a different manner than that prescribed by Law. Otherwise, why would the Law have established penalties for those who violate the prescribed procedure? - GAZT also affirms that its action aligns with the statutory provisions for handling consortium, as outlined in Paragraph (5) of Article (17) of the aforementioned Implementing Regulations of the Income Tax Law. Therefore, GAZT maintains the validity of its action. - Additionally, there is a contradiction in the Committee's Decision, as it stated in the reasoning on pages 5 and 6 that the failure to submit the information return does not necessitate an estimated tax assessment, while it ultimately required Taxpayer to provide the accounts and information return related to this contract, along with imposing registration fines and fines for failing to submit the information return as stipulated by law. This approach aligns with the applicable Tax Law concerning (consortium), which the company failed to adhere to. - Based on Article (68), Paragraph (3) of the Implementing Regulations of the Income Tax Law, which stipulates (Estimated assessment on a taxpayer shall not preclude imposition of a non-filing fine and a delay penalty if justified). GAZT's action, which it advocates for, was supported by a similar ruling in circumstances analogous to those of this case, as per the Appellate Decision No. (1396) for the year 1435 AH. GAZT concluded its statement of appeal by reaffirming its request for the appeal to be accepted in form, and, on the merits, to cancel the primary Decision delivered regarding Item (Second), Paragraph (1) supporting Taxpayer's position of not determining the consortium-related profit on an estimated basis.

Upon reviewing the statement of appeal presented by Appellee (Branch of ... Company) dated 11/09/1441 AH, it became clear that Taxpayer's response is based on the premise that the statutory provisions cited by GAZT to support its position do not apply to the dealings with the consortium. These provisions pertain to the taxpayer subject to tax, which is the company, rather than the consortium itself. Taxpayer Company's approach is consistent with what GAZT asserted regarding the necessity for both parties to the contract to maintain separate accounts. Taxpayer Company complied by submitting its independent accounts, which demonstrate its revenues and the costs incurred to execute the project, through its independent return, in accordance with the provisions of the law and its implementing regulations in this regard, and within the legal deadlines for paying the tax due. Furthermore, the field inspection team appointed by GAZT conducted an audit of the company's accounts to verify their accuracy and the related tax obligations, thereby negating GAZT's demand to discard Taxpayer's accounts. Moreover, although the Committee that delivered the Decision upheld Taxpayer Company's position of not determining the consortium-related profit on an estimated basis, it imposed a fine for failure to register the consortium with GAZT and submit the information return. Therefore, the relevant fines for failure of registration and submission of the information return were imposed as previously stated. Accordingly, GAZT believes there is no



contradiction that would justify disregarding and discarding the company's accounts. Therefore, the failure to submit the required consortium's information return and the failure to register within the specified time, although contrary to the legal requirements, does not justify or warrant the action demanded by GAZT to discard Taxpayer Company's accounts. Taxpayer Company concluded its response by expressing its disagreement with GAZT's determination of the consortium-related profit on an estimated basis, arguing that such an action constitutes a violation of the provisions of the Tax Law.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having reviewed the case documents and statement of appeal submitted by the Appellant Company, established that the formal conditions for hearing the appeal were met as per the relevant laws, regulations and Decisions. Therefore, it decided to grant leave to appeal in form for being submitted by a person with a capacity and within the period prescribed by law.

As on Merits, having reviewed the case file and the papers it contained as well as the statement of appeal and having examined GAZT's appeal and the response thereto by Taxpayer, as previously detailed, and after examining the appealed primary Decision, it is established that the fundamental approach in dealing with consortium partners is to treat them as if they were partners in a partnership company, as stipulated by the provisions of the Income Tax Law and its Implementing Regulations. The application of the obligations stipulated in the Tax Law for partnership companies regarding registration, filing information returns, and the assessment of related fines is not a matter related to the consortium itself, as the tax is imposed on its members individually, based on each member's declaration of their respective income and expenses in their tax accounts and returns. Consequently, the tax due is determined based on the return submitted by each member, who is required to maintain the documents and records supporting the revenues and expenses declared in their respective returns. Furthermore, the law does not explicitly provide for discarding Taxpayer's accounts merely for failing to submit the required information return for the consortium or to register the consortium. Thus, this does not justify GAZT's demand to discard Taxpayer's accounts and impose an estimated assessment of the tax due, without any contradiction in imposing fines if Taxpayer fails to fulfill the obligations imposed by the law regarding the submission of an information return for the consortium and its registration with GAZT. Therefore, these violations, even if substantiated, do not justify GAZT's Decision to discard Taxpayer's accounts, make an estimated assessment, and to calculate the tax based on such an assessment. Consequently, the Department decided that the Committee that delivered the Decision is deemed to have applied the law correctly concerning the appeal matter, and there is no reason for amendment or cancellation.

Based on the foregoing, the Department concluded to dismiss GAZT's appeal, deny its request for an estimated assessment to determine the tax due based on GAZT's demand, and uphold the primary Decision delivered in this regard, along with the imposed fines due to the failure to fulfill the obligation to submit the consortium's information return and its registration with GAZT.

Decision

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



First: Accept appeal in form filed by Taxpayer/GAZT against Decision No. (9) of 1438 AH of the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

Dismiss GAZT's appeal and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

**Decision No. (IR-2020-34)
Delivered in Appeal No. (I-1832-2018)**

Principle No. 257

Fines shall be imposed when Taxpayer fails to fulfill the obligations mandated by the law regarding the submission of the information return for the consortium and its registration with GAZT.

Facts:

On Wednesday 10/11/1441 AH corresponding to 01/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH to consider the appeal filed on 03/06/1438 AH, corresponding to 02/03/2017 AD, by/ the General Authority For Zakat and Tax (GAZT) against the Decision No. (9) of the year 1438 AH delivered by the Primary Zakat and Tax Objection Committee in Riyadh issued in Case No. (39/9) filed by the Appellant against the branch of ... Company . The primary Decision ruled as follows:

First: Accept in form the objection filed by Taxpayer/branch of ... Company regarding the adjusted tax assessment for the years from 2007 to 2012 AD and 2013 assessment.

Second: On Merits:

1. Support Taxpayer's position of not determining the consortium-related profit on an estimated basis.
2. Support GAZT's of rejecting the reduction of revenues by bad debts.
3. Confirm settlement of the dispute upon GAZT's agreement to correct the material error.

Since this Decision was not accepted by GAZT, it submitted a statement of appeal, summarized as follows:

Both parties to the consortium agreement were obligated to maintain separate accounts from their individual accounts, and an information return regarding the consortium was required to be submitted in accordance with Paragraph (5) of Article (17) of the Implementing Regulations of the Income Tax Law, which states: (The partnership's obligations apply to consortiums of companies. This includes registration with the Department, filing information return, and relevant penalties). Moreover, each consortium member's share of profit should be included in their respective tax return. Consequently, the impact of the consortium was excluded from the accounts in terms of revenue and costs, and the assessment was estimated at 10% of the consortium's revenue after excluding the company's share of book profits, in accordance with Article (16/4.3) of the Implementing Regulations of the Income Tax Law, which states: (In order to enforce taxpayers' compliance with statutory requirements and curtail tax evasion, the Department may use tax assessment based on the taxpayer's relevant facts and circumstances, in the following cases: a. Taxpayer's non-filing of the return in due time. In case the taxpayer files



its returns and audited financial statements which are based on books and proper records after the due date and prior to the Department's issuance of the assessment, the Department may accept and process the taxpayer's return according to standard procedures and subject to statutory penalties. b. Taxpayer's failure to keep accurate books and records that truly reflect its transactions in the Kingdom c. Subject to Paragraph (3) of Article (57) of these Regulations, the taxpayer's failure to prove the validity of the return's information by supporting documents and Paragraph (4) of Article (16) of the Implementing Regulations, which states: (Estimated net profit rate shall be determined based on available facts, evidence and indicators relevant to the taxpayer's activity, its nature and circumstances. In all cases, it shall not be less than the following rates of the taxpayer's revenues ... Item No. (8) in the table: Construction contractors, at no less than 10% of revenues). The company's claim, accepted by the Primary Committee, that the law's objective was achieved by the company's was achieved by the company's declaration of its share in its books and payment of tax on its consortium share, does not alter this, as the Tax Law is a law whose procedures cannot be violated, even if the intended purpose is achieved in a different manner than that prescribed by Law. Otherwise, why would the Law have established penalties for those who violate the prescribed procedure? - GAZT also affirms that its action aligns with the statutory provisions for handling consortium, as outlined in Paragraph (5) of Article (17) of the aforementioned Implementing Regulations of the Income Tax Law. Therefore, GAZT maintains the validity of its action. - Additionally, there is a contradiction in the Committee's Decision, as it stated in the reasoning on pages 5 and 6 that the failure to submit the information return does not necessitate an estimated tax assessment, while it ultimately required Taxpayer to provide the accounts and information return related to this contract, along with imposing registration fines and fines for failing to submit the information return as stipulated by law. This approach aligns with the applicable Tax Law concerning (consortium), which the company failed to adhere to. - Based on Article (68), Paragraph (3) of the Implementing Regulations of the Income Tax Law, which stipulates (Estimated assessment on a taxpayer shall not preclude imposition of a non-filing fine and a delay penalty if justified). GAZT's action, which it advocates for, was supported by a similar ruling in circumstances analogous to those of this case, as per the Appellate Decision No. (1396) for the year 1435 AH. GAZT concluded its statement of appeal by reaffirming its request for the appeal to be accepted in form, and, on the merits, to cancel the primary Decision delivered regarding Item (Second), Paragraph (1) supporting Taxpayer's position of not determining the consortium-related profit on an estimated basis.

Upon reviewing the statement of appeal presented by Appellee (Branch of ... Company) dated 11/09/1441 AH, it became clear that Taxpayer's response is based on the premise that the statutory provisions cited by GAZT to support its position do not apply to the dealings with the consortium. These provisions pertain to the taxpayer subject to tax, which is the company, rather than the consortium itself. Taxpayer Company's approach is consistent with what GAZT asserted regarding the necessity for both parties to the contract to maintain separate accounts. Taxpayer Company complied by submitting its independent accounts, which demonstrate its revenues and the costs incurred to execute the project, through its independent return, in accordance with the provisions of the law and its implementing regulations in this regard, and within the legal deadlines for paying the tax due. Furthermore, the field inspection team appointed by GAZT conducted an audit of the company's accounts to verify their accuracy and the related tax obligations, thereby negating GAZT's demand to discard Taxpayer's accounts. Moreover, although the Committee that delivered the Decision upheld Taxpayer Company's position of not determining the consortium-related profit on an estimated basis, it imposed a fine for failure to register the consortium with GAZT and submit the information return. Therefore, the relevant fines for failure of registration and submission of the information



return were imposed as previously stated. Accordingly, GAZT believes there is no contradiction that would justify disregarding and discarding the company's accounts. Therefore, the failure to submit the required consortium's information return and the failure to register within the specified time, although contrary to the legal requirements, does not justify or warrant the action demanded by GAZT to discard Taxpayer Company's accounts. Taxpayer Company concluded its response by expressing its disagreement with GAZT's determination of the consortium-related profit on an estimated basis, arguing that such an action constitutes a violation of the provisions of the Tax Law.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

The Department, having reviewed the case documents and statement of appeal submitted by the Appellant Company, established that the formal conditions for hearing the appeal were met as per the relevant laws, regulations and Decisions. Therefore, it decided to grant leave to appeal in form for being submitted by a person with a capacity and within the period prescribed by law.

As on Merits, having reviewed the case file and the papers it contained as well as the statement of appeal and having examined GAZT's appeal and the response thereto by Taxpayer, as previously detailed, and after examining the appealed primary Decision, it is established that the fundamental approach in dealing with consortium partners is to treat them as if they were partners in a partnership company, as stipulated by the provisions of the Income Tax Law and its Implementing Regulations. The application of the obligations stipulated in the Tax Law for partnership companies regarding registration, filing information returns, and the assessment of related fines is not a matter related to the consortium itself, as the tax is imposed on its members individually, based on each member's declaration of their respective income and expenses in their tax accounts and returns. Consequently, the tax due is determined based on the return submitted by each member, who is required to maintain the documents and records supporting the revenues and expenses declared in their respective returns. Furthermore, the law does not explicitly provide for discarding Taxpayer's accounts merely for failing to submit the required information return for the consortium or to register the consortium. Thus, this does not justify GAZT's demand to discard Taxpayer's accounts and impose an estimated assessment of the tax due, without any contradiction in imposing fines if Taxpayer fails to fulfill the obligations imposed by the law regarding the submission of an information return for the consortium and its registration with GAZT. Therefore, these violations, even if substantiated, do not justify GAZT's Decision to discard Taxpayer's accounts, make an estimated assessment, and to calculate the tax based on such an assessment. Consequently, the Department decided that the Committee that delivered the Decision is deemed to have applied the law correctly concerning the appeal matter, and there is no reason for amendment or cancellation.

Based on the foregoing, the Department concluded to dismiss GAZT's appeal, deny its request for an estimated assessment to determine the tax due based on GAZT's demand, and uphold the primary Decision delivered in this regard, along with the imposed fines due to the failure to fulfill the obligation to submit the consortium's information return and its registration with GAZT.

Decision

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



First: Accept appeal in form filed by Taxpayer/GAZT against Decision No. (9) of 1438 AH of the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

Dismiss GAZT's appeal and uphold the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-134)

Delivered in Appeal No. (ZI-1703-2018)

Principle No. 258

The Tax Law empowers GAZT to reopen assessments and discard accounts if it becomes evident that new information, which was not available at the time of the original assessment, has emerged and could affect its outcome.

Facts:

On Wednesday 01/05/1442 AH, corresponding to 16/12/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened at its headquarters in Riyadh to consider the appeal filed on 07/06/1437 AH by/ ... Company and the appeal filed by the General Authority For Zakat and Tax (GAZT) on 11/06/1437 AH against the Decision No. (7) of the year 1437 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah issued in the objection filed by Taxpayer regarding the Decision under review, which ruled as follows:

First: Accept the objection submitted by Taxpayer/... Company in form to the reopening of the assessment for the period from 07/06/2000 to 31/12/2004 AD regarding exempt taxes, as well as the reopening of the tax and zakat assessment for the years 2005 to 2007 AD due to the destruction of records and the estimated assessment for the years 2008 and 2010 AD.

Second: On Merits:

1. Uphold Taxpayer's objection to the reopening of the assessment for the period from 07/06/2000 to 31/12/2000 AD, for the merits stated in the Decision.
2. Uphold GAZT's Decision to revoke the tax exemption for the period from 07/06/2000 to 31/12/2000 AD and impose a tax liability on Taxpayer, for the merits stated in the Decision.
3. Uphold Taxpayer's request to maintain the accounts without discarding for the years 2000 to 2010 AD, for the merits stated in the Decision.
4. Uphold GAZT's Decision to impose a delay fine for the period from 07/06/2000 to 31/12/2000 AD, for the merits stated in the Decision.

Since both parties, (...) Company and GAZT, dissatisfied with this Decision, each submitted a statement of appeal, including their objections to the following items:

Taxpayer challenges the primary Decision supporting GAZT's cancellation of the tax exemption for the period from 07/06/2000 to 31/12/2010 AD and imposing a tax liability on Taxpayer as outlined in the appealed Decision reasoning. Taxpayer also challenges the fourth item, which upheld GAZT's imposition of a delay fine for the period from 07/06/2000 to 31/12/2000 AD.



Meanwhile, GAZT appeals the primary Decision's rejection of its request to reopen the assessment for the period from 07/06/2000 to 31/12/2000 AD, as well as the Decision upholding Taxpayer's request to maintain the accounts without discarding for the years 2000 to 2010 AD.

The Department, having taken cognizance of both statements of appeal, and having reviewed documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing Case documents and statements of appeal submitted by Appellant Company and the appeal filed by GAZT, the Department found that conditions of both appeals have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and Decisions. Therefore, both appeals were accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

As on Merits, the Department, having reviewed the case file and the papers it contained as well as the statement of appeal submitted by Taxpayer, found that Taxpayer submitted a letter dated 15/04/1442 addressed to the General Secretariat of Tax Committees, which included, through the attorney ..., waiver of the objection to the case filed before the tax committees based on its acceptance of the initiative issued under Ministerial Decision No. (622) dated 09/02/1442 AH, which granted it an exemption from the fines imposed under the primary Decision, provided that the principal tax due, amounting to SAR (3,782,477), is paid or a payment installment plan is submitted. Should GAZT determine that Taxpayer fails to meet the payment deadline or adhere to the installment plan, GAZT reserves the right to implement all mandatory collection measures without recourse to any judicial body. Moreover, Taxpayer's waiver terminates its dispute with GAZT regarding the period in question.

Considering the Department's deliberations on Taxpayer's appeal and its explicit waiver expressed in its commitment to settle the tax due, the department concluded to settle the dispute between Taxpayer Company and GAZT regarding the items appealed by Taxpayer. Regarding GAZT's appeal against the primary Decision that rejected its request to reopen the assessment for the disputed period and its Decision to discard of Taxpayer's accounts for the years 2000 to 2010 AD, it was noted that GAZT's appeal is based on its claim that Taxpayer's did not accurately reflect its actual business activities, as revealed by the field inspection. Considering that the Tax Law empowers GAZT to reopen assessments and discard accounts if new information, not available at the time of the original assessment, emerges and may affect its outcome, GAZT has acted correctly in both reopening the assessment and discarding the accounts for the disputed periods included in its appeal against the Decision. There are no fault rests with the Department for adopting the reasons of the appealed Decision without any additions, whenever it deems those reasons sufficient to render any new additions unnecessary, because, by affirming the Decision based on these reasons, it is confirmed that the Department found no merits in the challenges made against the Decision that warrant a response beyond what those reasons provided. It is established that the appealed Decision regarding the dispute over the two contested items aligns with the sound reasons upon which it was based and which were sufficient to support its conclusion. The Committee that issued the Decision examined the essence of the dispute and reached the result reflected in its ruling and the Appellate Department did not observe any requirement for correction or further comment based on the defenses presented, this Department, leading to the conclusion that they did not affect the Decision's outcome. Moreover, GAZT's contestation of the Decision, asserting that it based its actions of reopening assessments, discarding accounts, and imposing estimated assessments on Taxpayer due to the incorrectness of the accounts provided, is not sustained. Given that Taxpayer's accounts were found to be inaccurate, as evidenced by



the field inspection, the Department found no Grounds for reopening the assessment or for GAZT's action of discarding Taxpayer's accounts and the Committee that delivered the Decision reviewed the field inspection reports and found no evidence of the violations claimed by GAZT as the basis for its actions, the Department concluded that GAZT's appeal was not grounded in fact. Consequently, this Department concluded to dismiss GAZT's appeal regarding the two contested items and uphold the primary Decision delivered in this regard.

Decision

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

First: Accept the appeal in form filed by Taxpayer/ ... Company and the appeal filed by GAZT against Decision No. (7) of 1437 AH issued by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

- a. As for appeal filed by Zakat Payer Company:
Confirm settlement of the dispute regarding Taxpayer's appeal as result of Taxpayer's waiver of the appeal upon acknowledging payment of the tax due and benefiting from the exemption from fines for non-payment or late payment of taxes, pursuant to Ministerial Decision No. (622) dated 09/02/1442 AH.
- b. As for ZATCA Appeal:
 1. Dismiss GAZT's appeal regarding the reopening of the assessment for the period from 07/06/2000 to 31/12/2000 AD and uphold the primary Decision on this matter, in accordance with Grounds and merits mentioned herein.
 2. Dismiss GAZT's appeal regarding the discard of accounts for the years 2000 to 2010 AD and uphold the primary Decision on this matter, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-46)
Delivered in Appeal No.
(IW-1487-2018)

Principle No. 259

A branch of a non-resident company is considered a permanent establishment of a non-resident under the Tax Law and is therefore subject to the taxes prescribed therein, including withholding tax.

Facts:

On Sunday, 28/11/1441 AH, corresponding to 19/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened at its headquarters in Riyadh to consider the appeal filed on 10/08/1439 AH, corresponding to 26/04/2018 AD, by/ ... Company - KSA branch Against Decision No. (17) of 1439 AH of the Second Primary Committee for Zakat and Tax Objections in Riyadh issued in objection No. (38/30) filed by Appellant against GAZT. The primary Decision ruled as follows:

First: Accept the objection submitted by Taxpayer/... Company - KSA branch in form.

Second: On Merits:

1. Dismiss the objection submitted by Taxpayer regarding the imposition of withholding tax on technical services provided by the headquarters.
2. Confirm settlement of the dispute regarding the income tax on unrealized foreign exchange gains.
3. Confirm settlement of the dispute regarding the income tax on refundable withholding taxes.
4. Dismiss the objection submitted by Taxpayer regarding the social insurance differences.
5. Dismiss Taxpayer's objection to item (Late payment fine).

As this Decision was not accepted by either party, Appellant (... -KSA branch), the company submitted a statement of appeal, summarized as follows:

Appellant challenges the imposition of withholding tax for the years 2014 and 2015 AD, arguing that there is no rightful basis for the claim of withholding tax as stated in the appealed Decision. Appellant asserts, regarding GAZT's claim for these amounts paid on the basis that they were paid to related non-resident entities for technical and consultancy services, that such amounts for services provided to the branch by the headquarters should not be subject to withholding tax, contending that the permanent establishment is the headquarters itself, which is liable for income tax, not the branch. Appellant believes that the branch merely represents and extends the permanent establishment that operates in the Kingdom through a permanent location.

Furthermore, the costs under dispute represent salaries and wages paid to employees working at the headquarters. These costs were not incurred to provide services to the



branch registered in the Kingdom and, therefore, should not be subject to withholding tax. Moreover, the services provided to clients in the Kingdom were entirely performed outside the Kingdom. Consequently, these costs should be treated as costs incurred by any resident entity and are not subject to withholding tax as they were not paid to a non-resident entity. Assuming that withholding tax applies to the disputed amounts, the withholding rate for the amount would be 5% and not 15%, as the Ministerial Decision issued in 1435 AH amended the rate, stipulating that payments from a branch to its headquarters are subject to a withholding tax at that rate, thus creating new taxes contrary to law provisions. Furthermore, the double taxation agreement between the Kingdom and the Republic of Italy indicates that the costs of the headquarters related to its revenues, as declared in the tax return of the registered branch in the Kingdom, are not subject to withholding tax. Based on Article (9) of the agreement, the headquarters and the branch are considered a single entity for the purposes of this agreement. Therefore, there is no withholding tax applicable to the relevant transactions conducted. Additionally, GAZT subjected the profit to both income tax and withholding tax. Even if it is assumed, for the sake of argument, that GAZT is justified in requiring the branch to remit the amounts paid as costs to the headquarters on the Grounds that they are subject to withholding tax, which is inconsistent with the provisions of the Tax Law, which stipulate that withholding tax is due upon payment, not merely upon recording the expense as an accrued expense. In addition to the previous points, Taxpayer Company's appeal includes the branch's objection to GAZT's Decision to reject the deduction of social insurance differences for the years 2014 and 2015 AD. This objection is based on the fact that GAZT failed to consider the increase in the withholding rate for Saudi participants, which rose to 12% instead of 11% effective September 1, 2014. The branch also contests the late payment fines for the items that the Primary Committee upheld in favor of GAZT, arguing that GAZT failed to account for the differences in withholding tax indicated in the contested items until several years later, and that the branch could have avoided the late payment fine if it had been notified of the assessment immediately after the end of the fiscal year. Furthermore, the late payment fine arose due to a genuine and clear difference of opinion between GAZT and the branch regarding the ambiguity of the regulations related to withholding tax. Additionally, there are Decisions issued by the appellate committee and rulings from the Board of Grievances stating that late payment fines should be calculated from the date of the final Decision, not from the date of filing the tax return.

GAZT, upon reviewing the presented statement of appeal and the Department's request for a response, reiterated its position, affirming the findings of the primary Decision and the ruling issued for Taxpayer (branch of Appellant Company)

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, after reviewing case file and its documents, as well as the Appeal Memorandum, and considering the overall arguments presented by Appellant, the Department concluded as follows:

1. Taxpayer's appeal, regarding the imposition of withholding tax on the technical services provided by the headquarters for the years 2014 and 2015 AD, is fundamentally based on the assertion that withholding tax should not apply to the



amounts paid, arguing that the branch of the company in the Kingdom and the headquarters constitute a single entity rather than two separate entities. Consequently, from its perspective, there was no payment made to Taxpayer Company by a third party, especially since these amounts were in exchange for the salaries and wages of headquarters' employees and not for services rendered by the headquarters to its branch in the Kingdom. Therefore, these amounts should not be considered revenues for the headquarters and, thus, should not be subject to withholding tax. However, such a claim does not align with the Tax Law provisions, which recognizes the branch of the company as a permanent establishment for a non-resident under Article 5 of the Law, which explicitly states that income is deemed to be sourced in the Kingdom and, therefore, subject to the taxes prescribed by the law, including the withholding tax in dispute. Given that Paragraph (c) of the aforementioned article states that income is deemed to be sourced in the Kingdom (.. a payment made by a permanent establishment of a nonresident in the Kingdom shall be considered as if paid by a resident company). Additionally, Article (4) of the same law specifies that among the entities subject to tax are permanent establishments in the form of a branch of a non-resident company authorized to conduct business in the Kingdom. Accordingly, withholding tax is required to be remitted by Taxpayer when the branch pays amounts to the headquarters for services that benefited the branch in carrying out its operations in the Kingdom. Taxpayer's assertion that these amounts were solely for salaries and wages of employees and workers at the headquarter is not tenable, as long as the branch requested and benefited from the services and recorded thereof as amounts due to the headquarters. The Department, regarding Appellant's argument that the Decision did not address the applicability of this tax in light of the double taxation agreement between the Kingdom and Italy, found no explicit basis in that agreement to prevent the existence and applicability of withholding tax and the issues raised by Appellant in this regard pertain to profit taxes and the handling of their collection between the two countries, as well as the treatment of expenses incurred by the entity when determining their amount. The crux of the matter is that since withholding tax is not linked to profit realization, its obligation arises from the occurrence of payment of amounts from a resident entity to a non-resident entity for services executed in the Kingdom, which results in establishing the source of income as previously described without requiring the presence of employees or workers from the non-resident entity within the Kingdom to carry out such services, meaning there is no requirement for the physical presence of the service provider, as stated in Article (5) of regulations. Given this context, Appellant's argument, as stated, lacks a basis in the law and Appellant's assertion that the withholding tax demanded by GAZT and upheld by the primary Decision is, in essence, an unlawful tax, as it is based on a ministerial Decision that introduced taxes not stipulated in the law or its prescribed rates. This argument lacks a valid basis, as the law permits the regulation to specify any other payments subject to withholding tax, provided that the tax rate does not exceed 15%. Furthermore, the regulation and its amendments have been enacted in accordance with the provisions of the law as a mechanism for modification, as stipulated in Article (79) of the Income Tax Law. Therefore, Appellant's argument in this regard should be dismissed. However, upon reviewing the provisions of the Tax Law regarding the clear conditions and circumstances for determining whoever is obliged to remit the withholding tax on amounts paid to Taxpayer outside the Kingdom, it becomes evident that the duty to pay and remit that amount to GAZT only arises upon the actual payment or its equivalent, such as settlements between the headquarters and the branch, offsets, or any other means that effectively settle the obligation for those amounts paid by the service applicant to the non-resident service provider. It has been established from the contested Decision that the mere entitlement to that amount by



the branch of the non-resident company to the headquarters of the non-resident company was based solely on it being recorded as an outstanding amount, without proving the actual payment for the services rendered or any equivalent payment transaction. Therefore, the withholding tax amounts demanded from Appellant have not fulfilled the conditions for payment to GAZT for the years in dispute, as the occurrence of payment has not realized as previously described. Consequently, this upholds Appellant's position regarding GAZT's lack of entitlement to collect the amounts related to those services recorded as payable by Appellant for the years in question.

2. Upon reviewing the Case file, Taxpayer's appeal, and GAZT's response thereto, Taxpayer's appeal, regarding the social insurance differences, lies in Appellant's request to accept the deduction of social insurance differences, claiming that this difference is attributed to an increase in the rate implemented under SANED Law of social insurance. On the other hand, GAZT, in supporting its position, asserts that the Decision was correct as it relied on the social insurance certificate, contrary to Taxpayer's claims of having settled differences owed to social insurance. Moreover, as evident from the appealed Decision, GAZT's calculation of the applicable rates for the two years in dispute was incomplete, as it relied on the previous rates that were in effect prior to the implementation of SANED Law. Article (7) of SANED Law, issued by Royal Decree No. (M/18) dated 12/03/1435 AH, states: "Subscriptions under this Law shall be two percent of the wage subject to subscription. Said percentage shall be distributed as follows: 1. One percent to be paid by the employer per month. 2. One percent to be paid by the subscriber per month." Additionally, Article (29) of SANED Law states: "This Law shall enter into force from the first day of the month following the lapse of one hundred and eighty days from the date of its publication in the Official Gazette". It is established that SANED Law was implemented starting from 01/11/1435 AH for establishments following the Hijri calendar, and from 01/09/2014 for establishments following the Gregorian calendar. Accordingly, subscription rates for SANED have changed from 01/09/2014, increasing the social insurance expense borne by the establishment for subscribers to 12% instead of 11%, representing an increase of 1% from the rate prior to Law implementation on 01/09/2014. Building on the foregoing, the additional amounts incurred are due to the change in rates and, as such, are considered eligible deductible expenses.
3. Regarding the item of (Late Payment Fine), Zakat Payer is appealing rejection of the primary Decision regarding his objection to the late payment fine for the items where the Primary Committee upheld GAZT's imposition of the fine. Since this Department has determined that Zakat Payer was not required to remit the withholding tax for the disputed years 2014 and 2015, as detailed in the first item hereof, and since the Department supported Zakat Payer's view that there were no discrepancies in the amount of social insurance, any fines imposed by GAZT for Zakat Payer's delay in paying what was due under GAZT's assessment will be nullified with annulment of the original obligation. Therefore, there is no basis for imposing the fines under the given circumstances. As a result, the Department concludes to overturn the primary Decision regarding this item and to uphold Zakat Payer's position on the matter.

Decision

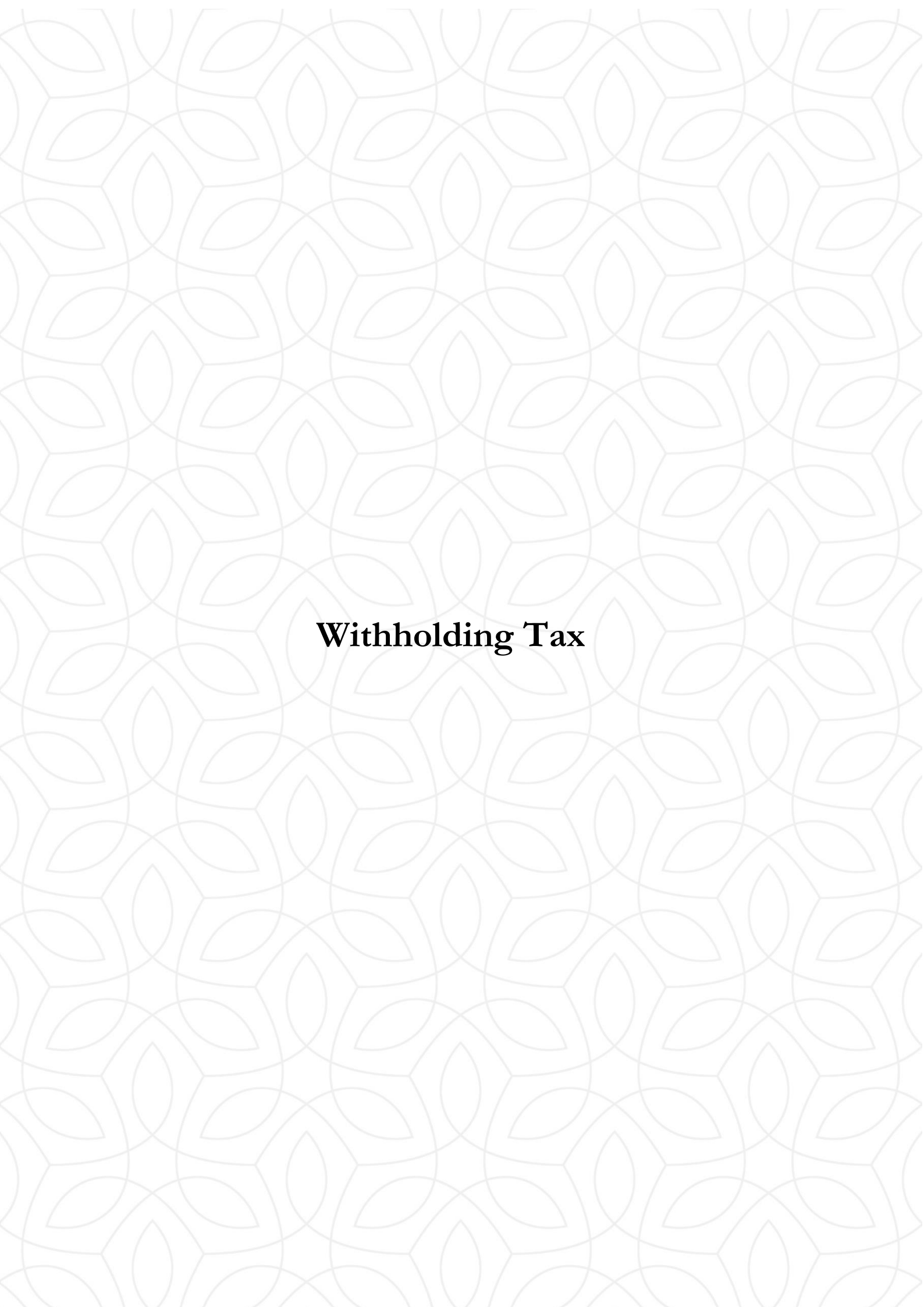
In view of the foregoing, and in light of stated reasons, the Department unanimously decided as follows:

First: Accept, in form, the Appeal submitted by Zakat Payer/... Company – Saudi Branch, Commercial Registration No. (...), and TIN (...), against Decision No. (17) for the year 1439 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.



Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the imposition of withholding tax on the technical services provided by the head office for the years 2014 and 2015, which had not been paid by the date of assessment, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.
2. Accept Zakat Payer's Appeal regarding the discrepancies in social insurance for the years 2014 and 2015, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.
3. The late payment fine imposed in the primary Decision is not applicable, as the original obligation was nullified by Department's acceptance of Zakat Payer's Appeal on the items upon which the fine was calculated, based on the reasons and considerations outlined in this Decision.



Withholding Tax



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-46)
Delivered in Appeal No.
(IW-1487-2018)

Principle No. 260

Withholding tax becomes due for remittance by Zakat Payer when the branch makes payments to the head office in exchange for services from which the branch benefited in carrying out its operations in the Kingdom.

Facts:

On Sunday, 28/11/1441 AH, corresponding to 19/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened at its headquarters in Riyadh to consider the appeal filed on 10/08/1439 AH, corresponding to 26/04/2018 AD, by/ ... Company - KSA branch Against Decision No. (17) of 1439 AH of the Second Primary Committee for Zakat and Tax Objections in Riyadh issued in objection No. (38/30) filed by Appellant against GAZT. The primary Decision ruled as follows:

First: Accept the objection submitted by Taxpayer/... Company - KSA branch in form.

Second: On Merits:

1. Dismiss the objection submitted by Taxpayer regarding the imposition of withholding tax on technical services provided by the headquarters.
2. Confirm settlement of the dispute regarding the income tax on unrealized foreign exchange gains.
3. Confirm settlement of the dispute regarding the income tax on refundable withholding taxes.
4. Dismiss the objection submitted by Taxpayer regarding the social insurance differences.
5. Dismiss Taxpayer's objection to item (Late payment fine).

As this Decision was not accepted by either party, Appellant (... -KSA branch), the company submitted a statement of appeal, summarized as follows:

Appellant challenges the imposition of withholding tax for the years 2014 and 2015 AD, arguing that there is no rightful basis for the claim of withholding tax as stated in the appealed Decision. Appellant asserts, regarding GAZT's claim for these amounts paid on the basis that they were paid to related non-resident entities for technical and consultancy services, that such amounts for services provided to the branch by the headquarters should not be subject to withholding tax, contending that the permanent establishment is the headquarters itself, which is liable for income tax, not the branch. Appellant believes that the branch merely represents and extends the permanent establishment that operates in the Kingdom through a permanent location.

Furthermore, the costs under dispute represent salaries and wages paid to employees working at the headquarters. These costs were not incurred to provide services to the



branch registered in the Kingdom and, therefore, should not be subject to withholding tax. Moreover, the services provided to clients in the Kingdom were entirely performed outside the Kingdom. Consequently, these costs should be treated as costs incurred by any resident entity and are not subject to withholding tax as they were not paid to a non-resident entity. Assuming that withholding tax applies to the disputed amounts, the withholding rate for the amount would be 5% and not 15%, as the Ministerial Decision issued in 1435 AH amended the rate, stipulating that payments from a branch to its headquarters are subject to a withholding tax at that rate, thus creating new taxes contrary to law provisions. Furthermore, the double taxation agreement between the Kingdom and the Republic of Italy indicates that the costs of the headquarters related to its revenues, as declared in the tax return of the registered branch in the Kingdom, are not subject to withholding tax. Based on Article (9) of the agreement, the headquarters and the branch are considered a single entity for the purposes of this agreement. Therefore, there is no withholding tax applicable to the relevant transactions conducted. Additionally, GAZT subjected the profit to both income tax and withholding tax. Even if it is assumed, for the sake of argument, that GAZT is justified in requiring the branch to remit the amounts paid as costs to the headquarters on the Grounds that they are subject to withholding tax, which is inconsistent with the provisions of the Tax Law, which stipulate that withholding tax is due upon payment, not merely upon recording the expense as an accrued expense. In addition to the previous points, Taxpayer Company's appeal includes the branch's objection to GAZT's Decision to reject the deduction of social insurance differences for the years 2014 and 2015 AD. This objection is based on the fact that GAZT failed to consider the increase in the withholding rate for Saudi participants, which rose to 12% instead of 11% effective September 1, 2014. The branch also contests the late payment fines for the items that the Primary Committee upheld in favor of GAZT, arguing that GAZT failed to account for the differences in withholding tax indicated in the contested items until several years later, and that the branch could have avoided the late payment fine if it had been notified of the assessment immediately after the end of the fiscal year. Furthermore, the late payment fine arose due to a genuine and clear difference of opinion between GAZT and the branch regarding the ambiguity of the regulations related to withholding tax. Additionally, there are Decisions issued by the appellate committee and rulings from the Board of Grievances stating that late payment fines should be calculated from the date of the final Decision, not from the date of filing the tax return.

GAZT, upon reviewing the presented statement of appeal and the Department's request for a response, reiterated its position, affirming the findings of the primary Decision and the ruling issued for Taxpayer (branch of Appellant Company)

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, after reviewing case file and its documents, as well as the Appeal Memorandum, and considering the overall arguments presented by Appellant, the Department concluded as follows:

Taxpayer's appeal, regarding the imposition of withholding tax on the technical services provided by the headquarters for the years 2014 and 2015 AD, is fundamentally based on the assertion that withholding tax should not apply to the amounts paid, arguing that the



branch of the company in the Kingdom and the headquarters constitute a single entity rather than two separate entities. Consequently, from its perspective, there was no payment made to Taxpayer Company by a third party, especially since these amounts were in exchange for the salaries and wages of headquarters' employees and not for services rendered by the headquarters to its branch in the Kingdom. Therefore, these amounts should not be considered revenues for the headquarters and, thus, should not be subject to withholding tax. However, such a claim does not align with the Tax Law provisions, which recognizes the branch of the company as a permanent establishment for a non-resident under Article 5 of the Law, which explicitly states that income is deemed to be sourced in the Kingdom and, therefore, subject to the taxes prescribed by the law, including the withholding tax in dispute. Given that Paragraph (c) of the aforementioned article states that income is deemed to be sourced in the Kingdom (... a payment made by a permanent establishment of a nonresident in the Kingdom shall be considered as if paid by a resident company). Additionally, Article (4) of the same law specifies that among the entities subject to tax are permanent establishments in the form of a branch of a non-resident company authorized to conduct business in the Kingdom. Accordingly, withholding tax is required to be remitted by Taxpayer when the branch pays amounts to the headquarters for services that benefited the branch in carrying out its operations in the Kingdom. Taxpayer's assertion that these amounts were solely for salaries and wages of employees and workers at the headquarter is not tenable, as long as the branch requested and benefited from the services and recorded thereof as amounts due to the headquarters. As for Appellant's claim that the Decision did not address the applicability of this tax in light of the Double Taxation Agreement between the Kingdom and Italy, the Department found no explicit provision in that agreement supporting Appellant's argument to prevent the imposition of withholding tax. The agreement raised by Appellant is related to profit taxes and the prevention of double taxation between the two countries, as well as the treatment of expenses incurred by the establishment when determining their amount. The fact remains that withholding tax is not tied to realization of profits, but rather to the event of payment from a resident entity to a non-resident entity for work performed in the Kingdom, which results in the income being sourced from the Kingdom, as previously explained. This is without the requirement for the presence of employees or workers from the non-resident entity in the Kingdom to carry out such work, meaning there is no requirement for the physical presence of the person providing the service, as established by Article (5) of the Regulation. Given this, Appellant's argument does not stand on any legal basis. Furthermore, Appellant's claim that the withholding tax, as demanded by GAZT and upheld by the primary Decision, is in fact unlawful because it is based on a ministerial Decision that introduced taxes not specified in the Law, either in their definition or the applicable rates, is unfounded. This is because the Law granted the regulation GAZT to determine any other payments subject to withholding tax, provided that the tax rate does not exceed 15%. The regulation and its amendments have been made in accordance with what the Law established as a tool for its modification, as outlined in Article (79) of the Tax Law. Therefore, Appellant's argument in this regard shall be dismissed. However, upon reviewing the provisions of the Tax Law regarding the clear conditions and circumstances for determining whoever is obliged to remit the withholding tax on amounts paid to Taxpayer outside the Kingdom, it becomes evident that the duty to pay and remit that amount to GAZT only arises upon the actual payment or its equivalent, such as settlements between the headquarters and the branch, offsets, or any other means that effectively settle the obligation for those amounts paid by the service applicant to the non-resident service provider. It has been established from the contested Decision that the mere entitlement to that amount by the branch of the non-resident company to the headquarters of the non-resident company was based solely on it being recorded as an outstanding amount, without proving the actual payment for the services rendered or any



equivalent payment transaction. Therefore, the withholding tax amounts demanded from Appellant have not fulfilled the conditions for payment to GAZT for the years in dispute, as the occurrence of payment has not realized as previously described. Consequently, this upholds Appellant's position regarding GAZT's lack of entitlement to collect the amounts related to those services recorded as payable by Appellant for the years in question.

Upon reviewing the Case file, Taxpayer's appeal, and GAZT's response thereto, Taxpayer's appeal, regarding the social insurance differences, lies in Appellant's request to accept the deduction of social insurance differences, claiming that this difference is attributed to an increase in the rate implemented under SANED Law of social insurance. On the other hand, GAZT, in supporting its position, asserts that the Decision was correct as it relied on the social insurance certificate, contrary to Taxpayer's claims of having settled differences owed to social insurance. Moreover, as evident from the appealed Decision, GAZT's calculation of the applicable rates for the two years in dispute was incomplete, as it relied on the previous rates that were in effect prior to the implementation of SANED Law. Article (7) of SANED Law, issued by Royal Decree No. (M/18) dated 12/03/1435 AH, states: "Subscriptions under this Law shall be two percent of the wage subject to subscription. Said percentage shall be distributed as follows: 1. One percent to be paid by the employer per month. 2. One percent to be paid by the subscriber per month." Additionally, Article (29) of SANED Law states: "This Law shall enter into force from the first day of the month following the lapse of one hundred and eighty days from the date of its publication in the Official Gazette". It is established that SANED Law was implemented starting from 01/11/1435 AH for establishments following the Hijri calendar, and from 01/09/2014 for establishments following the Gregorian calendar. Accordingly, subscription rates for SANED have changed from 01/09/2014, increasing the social insurance expense borne by the establishment for subscribers to 12% instead of 11%, representing an increase of 1% from the rate prior to Law implementation on 01/09/2014. Building on the foregoing, the additional amounts incurred are due to the change in rates and, as such, are considered eligible deductible expenses.

Regarding the item of (Late Payment Fine), Zakat Payer is appealing rejection of the primary Decision regarding his objection to the late payment fine for the items where the Primary Committee upheld GAZT's imposition of the fine. Since this Department has determined that Zakat Payer was not required to remit the withholding tax for the disputed years 2014 and 2015, as detailed in the first item hereof, and since the Department supported Zakat Payer's view that there were no discrepancies in the amount of social insurance, any fines imposed by GAZT for Zakat Payer's delay in paying what was due under GAZT's assessment will be nullified with annulment of the original obligation. Therefore, there is no basis for imposing the fines under the given circumstances. As a result, the Department concludes to overturn the primary Decision regarding this item and to uphold Zakat Payer's position on the matter.

Decision

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

First: Accept, in form, the Appeal submitted by Zakat Payer/... Company – Saudi Branch, Commercial Register No. (...), against Decision No. (17) of 1439 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the imposition of withholding tax on the technical services provided by the head office for the years 2014 and 2015, which had not been paid by the date of assessment, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.



2. Accept Zakat Payer's Appeal regarding the discrepancies in social insurance for the years 2014 and 2015, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.
3. The late payment fine imposed in the primary Decision is not applicable, as the original obligation was nullified by Department's acceptance of Zakat Payer's Appeal on the items upon which the fine was calculated, based on the reasons and considerations outlined in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-46)
Delivered in Appeal No.
(IW-1487-2018)

Principle No. 261

Withholding tax is not dependent on the realization of profits but on the actual payment made by a resident entity to a non-resident entity for performing work in the Kingdom, leading to the income being considered as sourced from within the Kingdom.

Facts:

On Sunday, 28/11/1441 AH, corresponding to 19/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened at its headquarters in Riyadh to consider the appeal filed on 10/08/1439 AH, corresponding to 26/04/2018 AD, by/ ... Company - KSA branch Against Decision No. (17) of 1439 AH of the Second Primary Committee for Zakat and Tax Objections in Riyadh issued in objection No. (38/30) filed by Appellant against GAZT. The primary Decision ruled as follows:

First: Accept the objection submitted by Taxpayer/... Company Saudi Branch.

Second: On Merits:

1. Dismiss the objection submitted by Taxpayer regarding the imposition of withholding tax on technical services provided by the headquarters.
2. Confirm settlement of the dispute regarding the income tax on unrealized foreign exchange gains.
3. Confirm settlement of the dispute regarding the income tax on refundable withholding taxes.
4. Dismiss the objection submitted by Taxpayer regarding the social insurance differences.
5. Dismiss Taxpayer's objection to item (Late payment fine).

As this Decision was not accepted by either party, Appellant (... they submitted an Appeal to the Department, which can be summarized as follows:

Appellant challenges the imposition of withholding tax for the years 2014 and 2015 AD, arguing that there is no rightful basis for the claim of withholding tax as stated in the appealed Decision. Appellant asserts, regarding GAZT's claim for these amounts paid on the basis that they were paid to related non-resident entities for technical and consultancy services, that such amounts for services provided to the branch by the headquarters should not be subject to withholding tax, contending that the permanent establishment is the headquarters itself, which is liable for income tax, not the branch. Appellant believes that the branch merely represents and extends the permanent establishment that operates in the Kingdom through a permanent location.

Furthermore, the costs under dispute represent salaries and wages paid to employees working at the headquarters. These costs were not incurred to provide services to the



branch registered in the Kingdom and, therefore, should not be subject to withholding tax. Moreover, the services provided to clients in the Kingdom were entirely performed outside the Kingdom. Consequently, these costs should be treated as costs incurred by any resident entity and are not subject to withholding tax as they were not paid to a non-resident entity. Assuming that withholding tax applies to the disputed amounts, the withholding rate for the amount would be 5% and not 15%, as the Ministerial Decision issued in 1435 AH amended the rate, stipulating that payments from a branch to its headquarters are subject to a withholding tax at that rate, thus creating new taxes contrary to law provisions. Furthermore, the double taxation agreement between the Kingdom and the Republic of Italy indicates that the costs of the headquarters related to its revenues, as declared in the tax return of the registered branch in the Kingdom, are not subject to withholding tax. Based on Article (9) of the agreement, the headquarters and the branch are considered a single entity for the purposes of this agreement. Therefore, there is no withholding tax applicable to the relevant transactions conducted. Additionally, GAZT subjected the profit to both income tax and withholding tax. Even if it is assumed, for the sake of argument, that GAZT is justified in requiring the branch to remit the amounts paid as costs to the headquarters on the Grounds that they are subject to withholding tax, which is inconsistent with the provisions of the Tax Law, which stipulate that withholding tax is due upon payment, not merely upon recording the expense as an accrued expense. In addition to the previous points, Taxpayer Company's appeal includes the branch's objection to GAZT's Decision to reject the deduction of social insurance differences for the years 2014 and 2015 AD. This objection is based on the fact that GAZT failed to consider the increase in the withholding rate for Saudi participants, which rose to 12% instead of 11% effective September 1, 2014. The branch also contests the late payment fines for the items that the Primary Committee upheld in favor of GAZT, arguing that GAZT failed to account for the differences in withholding tax indicated in the contested items until several years later, and that the branch could have avoided the late payment fine if it had been notified of the assessment immediately after the end of the fiscal year. Furthermore, the late payment fine arose due to a genuine and clear difference of opinion between GAZT and the branch regarding the ambiguity of the regulations related to withholding tax. Additionally, there are Decisions issued by the appellate committee and rulings from the Board of Grievances stating that late payment fines should be calculated from the date of the final Decision, not from the date of filing the tax return.

GAZT, upon reviewing the presented statement of appeal and the Department's request for a response, reiterated its position, affirming the findings of the primary Decision and the ruling issued for Taxpayer (branch of Appellant Company)

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, after reviewing case file and its documents, as well as the Appeal Memorandum, and considering the overall arguments presented by Appellant, the Department concluded as follows:

Taxpayer's appeal, regarding the imposition of withholding tax on the technical services provided by the headquarters for the years 2014 and 2015 AD, is fundamentally based on the assertion that withholding tax should not apply to the amounts paid, arguing that the



branch of the company in the Kingdom and the headquarters constitute a single entity rather than two separate entities. Consequently, from its perspective, there was no payment made to Taxpayer Company by a third party, especially since these amounts were in exchange for the salaries and wages of headquarters' employees and not for services rendered by the headquarters to its branch in the Kingdom. Therefore, these amounts should not be considered revenues for the headquarters and, thus, should not be subject to withholding tax. However, such a claim does not align with the Tax Law provisions, which recognizes the branch of the company as a permanent establishment for a non-resident under Article 5 of the Law, which explicitly states that income is deemed to be sourced in the Kingdom and, therefore, subject to the taxes prescribed by the law, including the withholding tax in dispute. Given that Paragraph (c) of the aforementioned article states that income is deemed to be sourced in the Kingdom (... a payment made by a permanent establishment of a nonresident in the Kingdom shall be considered as if paid by a resident company). Additionally, Article (4) of the same law specifies that among the entities subject to tax are permanent establishments in the form of a branch of a non-resident company authorized to conduct business in the Kingdom. Accordingly, withholding tax is required to be remitted by Taxpayer when the branch pays amounts to the headquarters for services that benefited the branch in carrying out its operations in the Kingdom. Taxpayer's assertion that these amounts were solely for salaries and wages of employees and workers at the headquarter is not tenable, as long as the branch requested and benefited from the services and recorded thereof as amounts due to the headquarters. As for Appellant's claim that the Decision did not address the applicability of this tax in light of the Double Taxation Agreement between the Kingdom and Italy, the Department found no explicit provision in that agreement supporting Appellant's argument to prevent the imposition of withholding tax. The agreement raised by Appellant is related to profit taxes and the prevention of double taxation between the two countries, as well as the treatment of expenses incurred by the establishment when determining their amount. The fact remains that withholding tax is not tied to realization of profits, but rather to the event of payment from a resident entity to a non-resident entity for work performed in the Kingdom, which results in the income being sourced from the Kingdom, as previously explained. This is without the requirement for the presence of employees or workers from the non-resident entity in the Kingdom to carry out such work, meaning there is no requirement for the physical presence of the person providing the service, as established by Article (5) of the Regulation. Given this, Appellant's argument does not stand on any legal basis. Furthermore, Appellant's claim that the withholding tax, as demanded by GAZT and upheld by the primary Decision, is in fact unlawful because it is based on a ministerial Decision that introduced taxes not specified in the Law, either in their definition or the applicable rates, is unfounded. This is because the Law granted the regulation GAZT to determine any other payments subject to withholding tax, provided that the tax rate does not exceed 15%. The regulation and its amendments have been made in accordance with what the Law established as a tool for its modification, as outlined in Article (79) of the Tax Law. Therefore, Appellant's argument in this regard shall be dismissed. However, upon reviewing the provisions of the Tax Law regarding the clear conditions and circumstances for determining whoever is obliged to remit the withholding tax on amounts paid to Taxpayer outside the Kingdom, it becomes evident that the duty to pay and remit that amount to GAZT only arises upon the actual payment or its equivalent, such as settlements between the headquarters and the branch, offsets, or any other means that effectively settle the obligation for those amounts paid by the service applicant to the non-resident service provider. It has been established from the contested Decision that the mere entitlement to that amount by the branch of the non-resident company to the headquarters of the non-resident company was based solely on it being recorded as an outstanding amount, without proving the actual payment for the services rendered or any



equivalent payment transaction. Therefore, the withholding tax amounts demanded from Appellant have not fulfilled the conditions for payment to GAZT for the years in dispute, as the occurrence of payment has not realized as previously described. Consequently, this upholds Appellant's position regarding GAZT's lack of entitlement to collect the amounts related to those services recorded as payable by Appellant for the years in question.

Upon reviewing the Case file, Taxpayer's appeal, and GAZT's response thereto, Taxpayer's appeal, regarding the social insurance differences, lies in Appellant's request to accept the deduction of social insurance differences, claiming that this difference is attributed to an increase in the rate implemented under SANED Law of social insurance. On the other hand, GAZT, in supporting its position, asserts that the Decision was correct as it relied on the social insurance certificate, contrary to Taxpayer's claims of having settled differences owed to social insurance. Moreover, as evident from the appealed Decision, GAZT's calculation of the applicable rates for the two years in dispute was incomplete, as it relied on the previous rates that were in effect prior to the implementation of SANED Law. Article (7) of SANED Law, issued by Royal Decree No. (M/18) dated 12/03/1435 AH, states: "Subscriptions under this Law shall be two percent of the wage subject to subscription. Said percentage shall be distributed as follows: 1. One percent to be paid by the employer per month. 2. One percent to be paid by the subscriber per month." Additionally, Article (29) of SANED Law states: "This Law shall enter into force from the first day of the month following the lapse of one hundred and eighty days from the date of its publication in the Official Gazette". It is established that SANED Law was implemented starting from 01/11/1435 AH for establishments following the Hijri calendar, and from 01/09/2014 for establishments following the Gregorian calendar. Accordingly, subscription rates for SANED have changed from 01/09/2014, increasing the social insurance expense borne by the establishment for subscribers to 12% instead of 11%, representing an increase of 1% from the rate prior to Law implementation on 01/09/2014. Building on the foregoing, the additional amounts incurred are due to the change in rates and, as such, are considered eligible deductible expenses.

Regarding the item of (Late Payment Fine), Zakat Payer is appealing rejection of the primary Decision regarding his objection to the late payment fine for the items where the Primary Committee upheld GAZT's imposition of the fine. Since this Department has determined that Zakat Payer was not required to remit the withholding tax for the disputed years 2014 and 2015, as detailed in the first item hereof, and since the Department supported Zakat Payer's view that there were no discrepancies in the amount of social insurance, any fines imposed by GAZT for Zakat Payer's delay in paying what was due under GAZT's assessment will be nullified with annulment of the original obligation. Therefore, there is no basis for imposing the fines under the given circumstances. As a result, the Department concludes to overturn the primary Decision regarding this item and to uphold Zakat Payer's position on the matter.

Decision

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

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company - Saudi Branch, Commercial Register No. (...), against Decision No. (17) of 1439 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the imposition of withholding tax on the technical services provided by the head office for the years 2014 and 2015, which had not been paid by the date of assessment, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.



2. Accept Zakat Payer's Appeal regarding the discrepancies in social insurance for the years 2014 and 2015, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.
3. The late payment fine imposed in the primary Decision is not applicable, as the original obligation was nullified by Department's acceptance of Zakat Payer's Appeal on the items upon which the fine was calculated, based on the reasons and considerations outlined in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-46)
Delivered in Appeal No.
(IW-1487-2018)

Principle No. 262

Withholding tax must be paid on amounts paid to entities outside the Kingdom when actual payment is made or its equivalent, such as account settlements between the main office and the branch, offsetting, or any other means by which the debt is cleared for the amounts paid by the service requester to the non-resident service provider.

Facts:

On Sunday, 28/11/1441 AH, corresponding to 19/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened at its headquarters in Riyadh to consider the appeal filed on 10/08/1439 AH, corresponding to 26/04/2018 AD, by/ ... Company - KSA branch Against Decision No. (17) of 1439 AH of the Second Primary Committee for Zakat and Tax Objections in Riyadh issued in objection No. (38/30) filed by Appellant against GAZT. The primary Decision ruled as follows:

First: Accept the objection submitted by Taxpayer/... Company - KSA branch in form.

Second: On Merits:

1. Dismiss the objection submitted by Taxpayer regarding the imposition of withholding tax on technical services provided by the headquarters.
2. Confirm settlement of the dispute regarding the income tax on unrealized foreign exchange gains.
3. Confirm settlement of the dispute regarding the income tax on refundable withholding taxes.
4. Dismiss the objection submitted by Taxpayer regarding the social insurance differences.
5. Dismiss Taxpayer's objection to item (Late payment fine).

As this Decision was not accepted by either party, Appellant (... -KSA branch), the company submitted a statement of appeal, summarized as follows:

Appellant challenges the imposition of withholding tax for the years 2014 and 2015 AD, arguing that there is no rightful basis for the claim of withholding tax as stated in the appealed Decision. Appellant asserts, regarding GAZT's claim for these amounts paid on the basis that they were paid to related non-resident entities for technical and consultancy services, that such amounts for services provided to the branch by the headquarters should not be subject to withholding tax, contending that the permanent establishment is the headquarters itself, which is liable for income tax, not the branch. Appellant believes that the branch merely represents and extends the permanent establishment that operates in the Kingdom through a permanent location.



Furthermore, the costs under dispute represent salaries and wages paid to employees working at the headquarters. These costs were not incurred to provide services to the branch registered in the Kingdom and, therefore, should not be subject to withholding tax. Moreover, the services provided to clients in the Kingdom were entirely performed outside the Kingdom. Consequently, these costs should be treated as costs incurred by any resident entity and are not subject to withholding tax as they were not paid to a non-resident entity. Assuming that withholding tax applies to the disputed amounts, the withholding rate for the amount would be 5% and not 15%, as the Ministerial Decision issued in 1435 AH amended the rate, stipulating that payments from a branch to its headquarters are subject to a withholding tax at that rate, thus creating new taxes contrary to law provisions. Furthermore, the double taxation agreement between the Kingdom and the Republic of Italy indicates that the costs of the headquarters related to its revenues, as declared in the tax return of the registered branch in the Kingdom, are not subject to withholding tax. Based on Article (9) of the agreement, the headquarters and the branch are considered a single entity for the purposes of this agreement. Therefore, there is no withholding tax applicable to the relevant transactions conducted. Additionally, GAZT subjected the profit to both income tax and withholding tax. Even if it is assumed, for the sake of argument, that GAZT is justified in requiring the branch to remit the amounts paid as costs to the headquarters on the Grounds that they are subject to withholding tax, which is inconsistent with the provisions of the Tax Law, which stipulate that withholding tax is due upon payment, not merely upon recording the expense as an accrued expense. In addition to the previous points, Taxpayer Company's appeal includes the branch's objection to GAZT's Decision to reject the deduction of social insurance differences for the years 2014 and 2015 AD. This objection is based on the fact that GAZT failed to consider the increase in the withholding rate for Saudi participants, which rose to 12% instead of 11% effective September 1, 2014. The branch also contests the late payment fines for the items that the Primary Committee upheld in favor of GAZT, arguing that GAZT failed to account for the differences in withholding tax indicated in the contested items until several years later, and that the branch could have avoided the late payment fine if it had been notified of the assessment immediately after the end of the fiscal year. Furthermore, the late payment fine arose due to a genuine and clear difference of opinion between GAZT and the branch regarding the ambiguity of the regulations related to withholding tax. Additionally, there are Decisions issued by the appellate committee and rulings from the Board of Grievances stating that late payment fines should be calculated from the date of the final Decision, not from the date of filing the tax return.

GAZT, upon reviewing the presented statement of appeal and the Department's request for a response, reiterated its position, affirming the findings of the primary Decision and the ruling issued for Taxpayer (branch of Appellant Company)

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, after reviewing case file and its documents, as well as the Appeal Memorandum, and considering the overall arguments presented by Appellant, the Department concluded as follows:



Taxpayer's appeal, regarding the imposition of withholding tax on the technical services provided by the headquarters for the years 2014 and 2015 AD, is fundamentally based on the assertion that withholding tax should not apply to the amounts paid, arguing that the branch of the company in the Kingdom and the headquarters constitute a single entity rather than two separate entities. Consequently, from its perspective, there was no payment made to Taxpayer Company by a third party, especially since these amounts were in exchange for the salaries and wages of headquarters' employees and not for services rendered by the headquarters to its branch in the Kingdom. Therefore, these amounts should not be considered revenues for the headquarters and, thus, should not be subject to withholding tax. However, such a claim does not align with the Tax Law provisions, which recognizes the branch of the company as a permanent establishment for a non-resident under Article 5 of the Law, which explicitly states that income is deemed to be sourced in the Kingdom and, therefore, subject to the taxes prescribed by the law, including the withholding tax in dispute. Given that Paragraph (c) of the aforementioned article states that income is deemed to be sourced in the Kingdom (... a payment made by a permanent establishment of a nonresident in the Kingdom shall be considered as if paid by a resident company). Additionally, Article (4) of the same law specifies that among the entities subject to tax are permanent establishments in the form of a branch of a non-resident company authorized to conduct business in the Kingdom. Accordingly, withholding tax is required to be remitted by Taxpayer when the branch pays amounts to the headquarters for services that benefited the branch in carrying out its operations in the Kingdom. Taxpayer's assertion that these amounts were solely for salaries and wages of employees and workers at the headquarter is not tenable, as long as the branch requested and benefited from the services and recorded thereof as amounts due to the headquarters. As for Appellant's claim that the Decision did not address the applicability of this tax in light of the Double Taxation Agreement between the Kingdom and Italy, the Department found no explicit provision in that agreement supporting Appellant's argument to prevent the imposition of withholding tax. The agreement raised by Appellant is related to profit taxes and the prevention of double taxation between the two countries, as well as the treatment of expenses incurred by the establishment when determining their amount. The fact remains that withholding tax is not tied to realization of profits, but rather to the event of payment from a resident entity to a non-resident entity for work performed in the Kingdom, which results in the income being sourced from the Kingdom, as previously explained. This is without the requirement for the presence of employees or workers from the non-resident entity in the Kingdom to carry out such work, meaning there is no requirement for the physical presence of the person providing the service, as established by Article (5) of the Regulation. Given this, Appellant's argument does not stand on any legal basis. Furthermore, Appellant's claim that the withholding tax, as demanded by GAZT and upheld by the primary Decision, is in fact unlawful because it is based on a ministerial Decision that introduced taxes not specified in the Law, either in their definition or the applicable rates, is unfounded. This is because the Law granted the regulation GAZT to determine any other payments subject to withholding tax, provided that the tax rate does not exceed 15%. The regulation and its amendments have been made in accordance with what the Law established as a tool for its modification, as outlined in Article (79) of the Tax Law. Therefore, Appellant's argument in this regard shall be dismissed. However, upon reviewing the provisions of the Tax Law regarding the clear conditions and circumstances for determining whoever is obliged to remit the withholding tax on amounts paid to Taxpayer outside the Kingdom, it becomes evident that the duty to pay and remit that amount to GAZT only arises upon the actual payment or its equivalent, such as settlements between the headquarters and the branch, offsets, or any other means that effectively settle the obligation for those amounts paid by the service applicant to the non-resident service provider. It has been established from the contested Decision that the

mere entitlement to that amount by the branch of the non-resident company to the headquarters of the non-resident company was based solely on it being recorded as an outstanding amount, without proving the actual payment for the services rendered or any equivalent payment transaction. Therefore, the withholding tax amounts demanded from Appellant have not fulfilled the conditions for payment to GAZT for the years in dispute, as the occurrence of payment has not realized as previously described. Consequently, this upholds Appellant's position regarding GAZT's lack of entitlement to collect the amounts related to those services recorded as payable by Appellant for the years in question.

Upon reviewing the Case file, Taxpayer's appeal, and GAZT's response thereto, Taxpayer's appeal, regarding the social insurance differences, lies in Appellant's request to accept the deduction of social insurance differences, claiming that this difference is attributed to an increase in the rate implemented under SANED Law of social insurance. On the other hand, GAZT, in supporting its position, asserts that the Decision was correct as it relied on the social insurance certificate, contrary to Taxpayer's claims of having settled differences owed to social insurance. Moreover, as evident from the appealed Decision, GAZT's calculation of the applicable rates for the two years in dispute was incomplete, as it relied on the previous rates that were in effect prior to the implementation of SANED Law. Article (7) of SANED Law, issued by Royal Decree No. (M/18) dated 12/03/1435 AH, states: "Subscriptions under this Law shall be two percent of the wage subject to subscription. Said percentage shall be distributed as follows: 1. One percent to be paid by the employer per month. 2. One percent to be paid by the subscriber per month." Additionally, Article (29) of SANED Law states: "This Law shall enter into force from the first day of the month following the lapse of one hundred and eighty days from the date of its publication in the Official Gazette". It is established that SANED Law was implemented starting from 01/11/1435 AH for establishments following the Hijri calendar, and from 01/09/2014 for establishments following the Gregorian calendar. Accordingly, subscription rates for SANED have changed from 01/09/2014, increasing the social insurance expense borne by the establishment for subscribers to 12% instead of 11%, representing an increase of 1% from the rate prior to Law implementation on 01/09/2014. Building on the foregoing, the additional amounts incurred are due to the change in rates and, as such, are considered eligible deductible expenses.

Regarding the item of (Late Payment Fine), Zakat Payer is appealing rejection of the primary Decision regarding his objection to the late payment fine for the items where the Primary Committee upheld GAZT's imposition of the fine. Since this Department has determined that Zakat Payer was not required to remit the withholding tax for the disputed years 2014 and 2015, as detailed in the first item hereof, and since the Department supported Zakat Payer's view that there were no discrepancies in the amount of social insurance, any fines imposed by GAZT for Zakat Payer's delay in paying what was due under GAZT's assessment will be nullified with annulment of the original obligation. Therefore, there is no basis for imposing the fines under the given circumstances. As a result, the Department concludes to overturn the primary Decision regarding this item and to uphold Zakat Payer's position on the matter.

Decision

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

First: Accept, in form, the Appeal submitted by Zakat Payer/... Company – Saudi Branch, Commercial Register No. (...), against Decision No. (17) of 1439 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the imposition of withholding tax on the technical services provided by the head office for the years 2014 and 2015, which had



not been paid by the date of assessment, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.

2. Accept Zakat Payer's Appeal regarding the discrepancies in social insurance for the years 2014 and 2015, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.
3. The late payment fine imposed in the primary Decision is not applicable, as the original obligation was nullified by Department's acceptance of Zakat Payer's Appeal on the items upon which the fine was calculated, based on the reasons and considerations outlined in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-64)
Delivered in Appeal No. (W-1672-2018)

Principle No. 263

In tax matters, the fundamental principle is the connection to the rule of certainty, which requires the tax base and withholding rate to be clearly defined. This principle is a cornerstone of any tax legislation.

Facts:

On Saturday, 24/01/1442 AH, corresponding to 12/09/2020, the First Appellate Department for Income Tax Violations and Disputes, established pursuant to Royal Order No. (65474) dated 23/12/1439 AH in accordance with Paragraph (b) of Article 67 of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH, amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh to review the Appeal submitted on 28/03/1438 AH by/ ... Company against Decision of the Third Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (4) of 1438 AH, issued in Objection No. (4/3), filed by the Appellant against the General Authority of Zakat and Tax (GAZT). The primary Decision ruled as follows:

First: Accept, in form, Zakat Payer's objection, in accordance with the rationale of the Decision.

Second: On Merits:

- Reject Zakat Payer's objection regarding the withholding tax on amounts paid to the headquarters for the year 2009, in accordance with the reasoning provided in the Decision.
- Reject Zakat Payer's objection regarding the withholding tax on the amounts transferred at a rate of 15%, in accordance with the reasoning provided in the Decision.
- Reject Zakat Payer's objection regarding imposition of a late payment fine from the date of declaration submission, according to the reasoning of the Decision.

Since this Decision was not accepted by the Plaintiff (... Company), they filed an Appeal with the Department, providing the following summary:

The Appellant objects to the imposition of withholding tax on the amounts paid by the branch of the company in the Kingdom to the head office, as well as the imposition of a late payment fine. The Appellant argues that there is no explicit provision stating that the amounts paid to the head office for technical and consulting services are subject to a withholding rate of 15% instead of 5%.

The Department asked GAZT to reply to Appellant's memorandum regarding the two disputed items within 10 days from the date the request was sent to GAZT, which was on 07/09/1441 AH (corresponding to 30/04/2020 AD). Since GAZT did not provide a response to the Department regarding Company's Appeal against the two issues after the deadline passed and without giving a reason for their delay, and considering that the Appeal brings the case back to the state it was in when the Appeal was filed, the Department must



rely on the statements and responses included in the initial Decision regarding the items under consideration.

Having taken cognizance of the appeal submissions as well as the case document, the Department established that the case has become ripe for adjudication.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, after reviewing case file and its documents, as well as Appeal Memorandum, and considering Appellant's overall arguments, the Department has concluded to decide on the related items as follows:

1. Regarding Zakat Payer's objection to the withholding tax on the amounts paid to the head office for the year 2009, after reviewing Zakat Payer's Appeal, the Department found that the objection is based on Zakat Payer's denial of what was stated in Primary Committee's Decision. Specifically, the Appellant asserted that their representative during the hearing and discussion before the Committee that issued the Decision did not mention that the salaries of the head office employees are recorded in Company's books based on debit notices that are settled with the head office account on a quarterly basis. Additionally, the Appellant denied that their representative failed to object to the occurrence of the transfer from the branch to the head office of payments made by customers in the Kingdom to the Company. The reality, according to the Appellant, is that these costs represent the wages and salaries of the head office employees, not services provided to the permanent establishment in the Kingdom, as they are essentially the costs of the head office employees who carry out work for clients in the Kingdom based on contracts signed with the head office. Furthermore, the permanent establishment of the head office in the Kingdom does not bear the salaries of those technical employees, and the branch was registered solely to submit income tax declarations. The services provided to the permanent establishment are essentially the cost of head office employees, and the branch in the Kingdom cannot be considered independent from that head office. The head office itself serves as the permanent establishment in the Kingdom. Therefore, withholding tax shall not be imposed on a resident entity performing services for itself. The activity is either subject to income tax or to withholding tax, as stated in Appellant's Memorandum, which also includes Appellant's claim that the compensation is provided by the clients, not by the permanent establishment, and is thus subject to income tax. Consequently, the cost of services that contributed to generating the compensation shall not be subject to withholding tax.

After considering Appellant's reasons for challenging the Decision regarding GAZT's right to collect the disputed withholding tax, the Department found that all of these reasons had already been addressed in the preliminary Decision, which concluded that the withholding tax is due on the amounts paid by the branch (Zakat Payer) to the head office. The Department did not find any Grounds to reconsider or amend the result reached in that Decision based on Appellant's reasons for challenging this specific item. Therefore, Zakat Payer's Appeal is rejected, and the primary Decision regarding this item is upheld. The argument that Zakat Payer's representative did not acknowledge transfer of funds from the branch to the head office of the resident entity does not affect this conclusion. Moreover, Appellant's Memorandum indicates that the amounts paid were recorded in the accounts of the permanent establishment as expenses related to the costs of head office employees working on projects in the Kingdom. Furthermore, in Section (D) of page two

of the Memorandum, it is stated that the amounts transferred to the head office are not subject to withholding tax. However, these statements made in Appeal Memorandum contradict Appellant's earlier denial of occurrence of the fund transfer from the branch to the head office. Zakat Payer's claim that the amounts represent the salaries of technical employees performing work for the head office in the Kingdom does not alter the tax treatment of these amounts under Tax Law. These funds, regardless of how they are characterized, are considered payments made from the permanent establishment to the head office in exchange for services rendered for clients within the Kingdom. The branch, as a permanent establishment in the Kingdom, is required to submit tax returns to calculate its income tax liability. Therefore, the argument that these amounts are either subject to income tax or withholding tax is incorrect. Withholding tax applies to payments made by a permanent establishment to a non-resident entity, according to the tax law's definition of a permanent establishment for resident or non-resident entities. This differs from the treatment of expenses when calculating the income tax base, which considers Zakat Payer's expenses incurred in generating income to determine the profits subject to income tax. Accordingly, the Department has decided to uphold the primary Decision, based on its reasoning, that withholding tax is due on the amounts paid by the branch to the head office, and Zakat Payer's Appeal on this item is rejected.

2. As for Zakat Payer's Appeal regarding the primary Decision that required payment of withholding tax at a rate of (15%) and imposition of late payment fines on the unpaid amounts of the withholding tax, where Zakat Payer only paid what was estimated at (5%), considering it the correct tax due on the amounts submitted to GAZT, and disputed the very basis of this tax obligation. After reviewing Zakat Payer's Appeal and considering the imposition of late payment fines in accordance with Tax Law, the Department found that the withholding tax was due as outlined in the first contested item. Zakat Payer had paid (5%) of the amounts due as withholding tax on the technical services provided by the head office and had paid the related late payment fines. However, the tax liability imposed on Zakat Payer pertains to a tax year prior to the issuance of Ministerial Decision No. (1776) on 18/05/1435 AH, which amended and reclassified the amounts paid by the branch to the head office, making them subject to a withholding tax rate of (15%) instead of (5%). Given that this amendment was introduced by the aforementioned ministerial resolution, the technical or consulting services subject to the (15%) withholding tax were not the applicable rule at the time the withholding tax on these amounts was due. The correct rate at that time was (5%), and the amended withholding tax rate cannot be retroactively applied to Zakat Payer. The principle of tax certainty dictates that the taxable base and withholding rate must be clear, as this principle is one of the foundations of any tax legislation. Given these considerations, the Department has decided to accept Zakat Payer's Appeal, applying the (5%) withholding tax rate on the amounts paid to the head office, and Zakat Payer shall not be required to pay beyond this rate. Additionally, the late payment fines associated with the amounts exceeding the (5%) withholding tax rate shall be dismissed, as the correct rate of (5%) applied to the amounts paid.

Decision

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

First: Accept, in form, the appeal submitted by Zakat Payer/ Company, against Decision No. (4) of 1438 AH, issued by the Third Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Reject Zakat Payer's Appeal, and uphold the primary Decision regarding the imposition of withholding tax on the amounts paid by the branch to the head office,



with no entitlement to a refund of the amounts paid for the due tax and the related late payment fines, for the reasons and Grounds stated in this Decision.

2. Accept Zakat Payer's Appeal regarding the non-imposition of withholding tax exceeding (5%) on the amounts paid by the branch to the head office, and non-imposition of late payment fines related to the amounts exceeding this rate, for the reasons and Grounds stated in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-76)
Delivered in Appeal No.
(IW-1696-2018)

Principle No. 264

Insurance payments made abroad through Company's head office, as well as any technical or administrative consultancy expenses paid through it, which are subject to withholding tax, do not constitute income for the head office but rather for independent parties, such as insurance funds and companies that provided those services and consultations.

Facts:

On Tuesday, 22/09/1442 AH, corresponding to 04/05/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the Appeal submitted on 06/06/1438 AH by/ ... Company against Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (7) of 1438 AH, issued in the case of zakat and tax assessment for the years 2005 to 2009, filed by the Appellant against GAZT. The primary Decision ruled as follows:

First: In form:

Accept the objection submitted by Zakat Payer/ ... Company regarding zakat and tax assessment for the years 2005 to 2009 on procedural Grounds based on the justifications provided in the Decision.

Second: On merits:

1. Reject Zakat Payer's objection to the item regarding disallowance of deduction of confirmed tax losses by GAZT for the years 2004 to 2007 against taxable income for the year 2009 for the reasons stated in the Decision.
2. Reject Taxpayer's objection regarding the disallowance of withholding tax paid on foreign insurance premiums from the income tax for 2009 AD, for the merits stated in the Decision.
3. Reject Taxpayer's objection regarding the withholding tax on profits transferred to the headquarters for 2009 AD, for the merits stated in the Decision.
4. Reject Taxpayer's objection regarding late payment fines, for the merits stated in the Decision.

Dissatisfied with this Decision, Plaintiff (... Company) submitted a statement of appeal summarized as follows:

Regarding the Appeal on the item concerning " disallowance of deduction of the confirmed tax losses by GAZT for the years 2004 to 2007 against taxable income for subsequent years," Zakat Payer objects to the committee's Decision supporting GAZT's handling of this item. Zakat Payer emphasizes that the carried-forward tax losses for the years 2004 to 2007, amounting to SAR 7,590,469, are confirmed losses according to GAZT's assessments for those years. Zakat Payer disagrees with GAZT's and committee's position that these are not operational losses, asserting that they indeed represent operational losses. Zakat Payer argues that these losses were incurred as administrative

costs necessary for conducting Company's operations and seizing business opportunities, such as "costs related to participating in bids and securing contracts". These administrative expenses incurred during the mentioned years reflect the operational costs borne by Zakat Payer for business purposes, which are allowed under Article (12) of the Income Tax Law, as well as Paragraph (1) of Article (9) of Implementing Regulations thereof. Zakat Payer claims, based on their Appeal memorandum, that these expenses are supported by the required documentation. Zakat Payer also responds to Committee's reasoning in its Decision, which asserted that the losses incurred during the years 2004 to 2007 are not operational losses due to the absence of revenue in those years. Zakat Payer disagrees, arguing that the condition for allowing expense deductions for tax purposes is that these services were incurred "entirely" for business purposes. In the case of administrative expenses, the Company is allowed to deduct them without the requirement to generate any revenue during the relevant years, and the approved expenses cannot be disregarded simply because no revenue was achieved. Since these losses are confirmed and considered operational losses, Zakat Payer concludes that the carried-forward losses for the years 2004 to 2007 must be deducted against the confirmed taxable profits for subsequent years, based on Article 21(a) of the Income Tax Law, which states: "A net operating loss may be carried forward to the taxable year following the year in which the loss is incurred. The carried forward loss shall be deducted from the tax base of following taxable years until the cumulative loss is fully offset. The Regulations shall specify the maximum limits which may be deducted annually." Zakat Payer also relies on Article (11) of the Implementing Regulations of the same law, which states: "In accordance with the Law and these Regulations and for taxation purposes, a taxpayer may carry forward adjusted operational losses to the taxable years following the loss year, by reducing the following years' profits until the cumulative loss is fully offset, without being limited to a specified period, provided that the maximum deduction allowed in each taxable year does not exceed (25%) of the annual profit based on Zakat Payer's return." Zakat Payer's reliance on these provisions is based on the fact that the Law addresses this issue in the case of profits declared in the tax return, but it is observed that the Law does not provide any clarifications when there are tax losses declared in the return. After GAZT's assessment, the tax loss under the return is converted into taxable profits based on the assessment. Zakat Payer believes that the laws and regulations did not intend to differentiate between two Zakat Payers solely based on whether a loss or profit is declared.

Regarding the Appeal on the item concerning " disallowance of deducting the withholding tax paid on insurance payments made abroad from the income tax for the year 2009," Zakat Payer objects to the Primary Committee's Decision, which supported GAZT's rejection of Zakat Payer's request to deduct the withholding tax paid on insurance payments made abroad from the income tax for the year 2009. Zakat Payer asserts their right to deduct the withholding tax amounting to SAR (32,400) from the taxable base for the year 2009, as this tax was withheld on social insurance expenses paid abroad to the Company's head office. Zakat Payer relies on Paragraph (g) of Article (68) of the Income Tax Law. Their argument is based on the fact that, since GAZT considered the amount paid to the head office as revenue for the branch (Appellant) and did not allow it to be deducted as an expense, the withholding tax must be deducted to avoid double taxation on the same amount.

Taxpayer's appeal, regarding (Reject Taxpayer's objection to the withholding tax on profits transferred to the headquarters for 2009 AD), lies in Taxpayer's objection to the Primary Committee's Decision, which upheld GAZT's imposition of withholding tax on such profits. Taxpayer asserts that this tax is not valid, as the profits in question were actually utilized to offset the company's accumulated losses from previous years and should not be interpreted as actual profit transfers to the headquarters. Consequently, Taxpayer requests that withholding tax not be imposed on such profits.



Concerning the Appeal on the item concerning "late payment fines," Zakat Payer objects to Primary Committee's Decision supporting GAZT in imposing late payment fines on the unpaid tax differences related to the withholding tax and income tax within the statutory deadline. Zakat Payer argues that these fines are unjustified, as the tax differences on which the fines were imposed remain subject to technical disagreement between Zakat Payer and GAZT. Zakat Payer notes that they acted in good faith when filing the tax return within the statutory deadlines and paid the due taxes. Therefore, late payment fines shall not be imposed on the tax liabilities calculated by GAZT in its revised assessments, given that the discrepancies arose due to errors and differing viewpoints between Zakat Payer and GAZT. This argument is based on Paragraph (a) of Article (77) of the Income Tax Law, which stipulates that late payment fines are applied from the date the tax becomes final, and these tax differences are not yet final due to the ongoing dispute.

The Department decided to open the pleadings, GAZT submitted a reply memorandum dated 10/04/1442 AH, corresponding to 25/11/2020 AD, in response to Appellant's memorandum concerning the contested items. GAZT, regarding "Disallowance of tax loss deductions for subsequent years", responded that, upon reviewing the tax assessment, the objection file, and the financial statements, it was evident that there were no revenues for the years 2004 to 2007 AD and it was also clear that the losses for which Taxpayer seeks a deduction are non-operational losses. Therefore, these losses were not deducted based on Article (21) of the Tax Law and Article (11) of the Implementing Regulations of the Income Tax Law. Therefore, GAZT maintains the validity and correctness of its actions. Regarding the Appeal on the item of "disallowance of deducting the withholding tax paid on insurance payments made abroad from the income tax for the year 2009," GAZT stated that a withholding tax was imposed on the insurance payments made abroad in accordance with the provisions of Article (63) of the Implementing Regulations of the Income Tax Law. As for Zakat Payer's request to deduct the withholding tax paid on insurance payments made abroad, GAZT clarified that the provisions of Paragraph (g) of Article (68) of the Income Tax Law, which Zakat Payer referred to, do not apply in this case. This is because the withholding tax paid was not deducted from Zakat Payer, but rather from the insurance companies abroad. The mentioned article pertains to deduction of withholding tax that was withheld from Zakat Payer on amounts included in Zakat Payer's revenues and subject to income tax, not on non-deductible expenses. GAZT, in relation to the appeal on the issue of (Reject Taxpayer's objection to the withholding tax on profits transferred to the headquarters for 2009 AD), stated that it subjected these profits to withholding tax based on the provisions of Article (68) of the Income Tax Law and the withholding tax was imposed because the financial statements showed that the profits were closed in the headquarters' account, which constitutes a payment event, thereby necessitating the imposition of withholding tax based on Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law. GAZT, concerning the appeal on (Late Payment Fine), responded that late payment fines were imposed on the unpaid tax differences related to withholding tax and income tax in accordance with Article (77) of the Income Tax Law.

On 19/3/1442 AH, corresponding to 4/11/2020 AD, the Department requested Taxpayer to submit any additional information regarding its appeal against the Decision under review, within the deadline granted by the Department or alternatively, to rely on the information already provided in its memorandum of appeal. The specified period lapsed without Taxpayer submitting any additional information.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds



Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, concerning Zakat Payer's Appeal on the item of "disallowance of deducting the confirmed tax losses by GAZT for the years 2004 to 2007 against taxable income for subsequent years," it appears that the Appeal centers around Zakat Payer's request to deduct the carried-forward losses for the years 2004 to 2007 against the confirmed taxable profits for subsequent years. Zakat Payer argues that the condition for allowing expense deductions for tax purposes is that these expenses were incurred for business purposes and that they are operational expenses that were paid. However, GAZT maintains that the losses Zakat Payer seeks to deduct are non-operational losses, and therefore, they were not allowed under Article (21) of the Income Tax Law and Article (11) of Implementing Regulations thereof. Having carefully considered the arguments presented by both parties to the appeal, and given that the Primary Committee based its Decision on the Grounds that the disputed losses were not operational due to Taxpayer's lack of revenue, it is established that costs incurred by a taxpayer in the course of their business activities and aimed at generating revenue are, from an accounting standpoint, considered operational costs, regardless of whether revenue is actually realized. Since the law does not provide a specific definition of operating losses, nor does it set a minimum threshold for revenue to be realized in order to classify excess expenses as operational losses, it follows that Taxpayer is entitled to deduct these losses against the profits of subsequent years. Consequently, this Department decided to accept Taxpayer's appeal and reverse the Decision delivered in this regard.

Taxpayer's appeal, regarding (Non-deduction of withholding tax paid on foreign insurance premiums from the income tax for 2009 AD), lies in Taxpayer's request to deduct the withholding tax amounting to SAR (32,400), paid to the headquarters abroad for social insurance, from the income tax base. Taxpayer argues that failure to deduct the aforementioned amount would result in double taxation on the same income, in accordance with the provisions of Article (68), Paragraph (g) of the Income Tax Law. However, GAZT contends that withholding tax was imposed on the foreign insurance premiums in accordance with Article (63) of the Implementing Regulations of the Income Tax Law and further argues that the provisions of Article (68) of the Tax Law, which Taxpayer referenced, do not apply to Taxpayer's case, as the withholding tax paid was not deducted from Taxpayer but rather from the foreign insured companies. Having carefully considered the subject of the appeal, and given that the insurance premiums paid do not constitute income for the headquarters but rather for independent third parties, namely the insurance funds to which these disputed amounts were paid, and given that the Department did not observe any requirement for correction or further comment based on the evidence provided, this Department decided that the arguments presented have not had any impact on the outcome of the primary Decision delivered in this regard. Accordingly, the Department concluded to dismiss Taxpayer's appeal and uphold the Decision delivered in this regard.

Taxpayer's appeal, regarding (Rejection of Taxpayer's objection to the withholding tax on profits transferred to the headquarters for 2009 AD) lies in Taxpayer's request to exempt the said transferred profits from withholding tax for 2009AD, as the profits were utilized to offset accumulated losses from previous years. However, GAZT views the closure of these profits in the headquarters' account constitutes a payment event, thereby necessitating the imposition of withholding tax. Furthermore, it has been ascertained that these profits were recorded in the headquarters' account and this act of recording is considered tantamount to payment. The Department, upon careful consideration of the



arguments presented by both parties to the appeal, and given that Taxpayer files its returns based on statutory accounts, and GAZT failed to prove that these profits were indeed remitted to the headquarters, in accordance with Article (68) of the Income Tax Law, which mandates the occurrence of an actual payment event to trigger the withholding tax, found that the primary Decision's reference to recording the profits in the headquarters' account constitutes payment is not upheld, as such a record does not constitute an actual or deemed payment of profits. Rather, it is an accounting procedure similar to recording annual profits within retained earnings as part of equity. Consequently, this Department resolved to accept Taxpayer's appeal and overturn the Decision delivered in this regard.

Taxpayer's appeal, regarding (Late Payment Fine), lies in Taxpayer's request to waive late payment fines on additional income tax and withholding tax, arguing that the late payment fines should only be calculated after the issuance of the final Decision. However, GAZT maintains the validity of its Decision in accordance with Article (77) of the Income Tax Law. Since the Department decided to accept Zakat Payer's Appeal on the item of disallowance of deducting the confirmed tax losses for the years 2004 to 2007 against taxable income for 2009, and the item of withholding tax on profits transferred to the head office for 2009, the Department concludes that the fines associated with these items are void, as the underlying tax liabilities have been dismissed. Therefore, the Department overturns the primary Decision regarding this item. As for the item regarding disallowance of deducting the withholding tax paid on insurance payments made abroad from the income tax for 2009, for which the Department has decided to reject Zakat Payer's Appeal, and since the dispute over this item does not constitute a technical disagreement or an issue of interpreting relevant tax laws, the Department is convinced that late payment fines shall be imposed from the date Zakat Payer became aware, or shall have been aware, of the tax due. This implies that Zakat Payer was presumed to know about the tax liability from the date it was due according to the law. Therefore, the Department concludes to reject Zakat Payer's Appeal concerning the late payment fines related to this item and upholds the primary Decision regarding this matter.

Decision

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

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Commercial Register No. (...), against Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (7) of 1438 AH.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the item of "disallowance of deducting the confirmed tax losses for the years 2004 to 2007 against taxable income for subsequent years," and overturn the primary Decision in this regard, in accordance with the reasons and Grounds outlined in this Decision.
2. Dismiss Taxpayer's appeal, regarding (Disallowance of withholding tax paid on foreign insurance premiums from income tax for 2009 AD), and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
3. Accept Taxpayer's appeal, regarding (Rejection of Taxpayer's objection to the withholding tax on profits transferred to headquarters for 2009 AD), and reverse the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Taxpayer's appeal, regarding (Late Payment Fine) concerning the items for which Taxpayer's appeal was accepted, overturn the primary Decision delivered in this regard, and confirm validity of the fines for the items where Taxpayer's appeal was dismissed, in accordance with Grounds and merits mentioned herein.





Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-76)
Delivered in Appeal No.
(IW-1696-2018)

Principle No. 265

Recording profits in head office's account does not constitute an actual or deemed payment of those profits; rather, it is an accounting procedure similar to recording annual profits in retained earnings under equity.

Facts:

On Tuesday, 22/09/1442 AH, corresponding to 04/05/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the Appeal submitted on 06/06/1438 AH by/ ... Company against Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (7) of 1438 AH, issued in the case of zakat and tax assessment for the years 2005 to 2009, filed by the Appellant against GAZT. The primary Decision ruled as follows:

First: In form:

Accept the objection submitted by Zakat Payer/ ... Company regarding zakat and tax assessment for the years 2005 to 2009 on procedural Grounds based on the justifications provided in the Decision.

Second: On merits:

1. Reject Zakat Payer's objection to the item regarding disallowance of deduction of confirmed tax losses by GAZT for the years 2004 to 2007 against taxable income for the year 2009 for the reasons stated in the Decision.
2. Reject Taxpayer's objection regarding the disallowance of withholding tax paid on foreign insurance premiums from the income tax for 2009 AD, for the merits stated in the Decision.
3. Reject Taxpayer's objection regarding the withholding tax on profits transferred to the headquarters for 2009 AD, for the merits stated in the Decision.
4. Reject Taxpayer's objection regarding late payment fines, for the merits stated in the Decision.

Dissatisfied with this Decision, Plaintiff (... Company) submitted a statement of appeal summarized as follows:

Regarding the Appeal on the item concerning “ disallowance of deduction of the confirmed tax losses by GAZT for the years 2004 to 2007 against taxable income for subsequent years,” Zakat Payer objects to the committee's Decision supporting GAZT's handling of this item. Zakat Payer emphasizes that the carried-forward tax losses for the years 2004 to 2007, amounting to SAR 7,590,469, are confirmed losses according to GAZT's assessments for those years. Zakat Payer disagrees with GAZT's and committee's position that these are not operational losses, asserting that they indeed represent operational losses. Zakat Payer argues that these losses were incurred as administrative costs necessary for conducting Company's operations and seizing business opportunities,

such as “costs related to participating in bids and securing contracts”. These administrative expenses incurred during the mentioned years reflect the operational costs borne by Zakat Payer for business purposes, which are allowed under Article (12) of the Income Tax Law, as well as Paragraph (1) of Article (9) of Implementing Regulations thereof. Zakat Payer claims, based on their Appeal memorandum, that these expenses are supported by the required documentation. Zakat Payer also responds to Committee’s reasoning in its Decision, which asserted that the losses incurred during the years 2004 to 2007 are not operational losses due to the absence of revenue in those years. Zakat Payer disagrees, arguing that the condition for allowing expense deductions for tax purposes is that these services were incurred "entirely" for business purposes. In the case of administrative expenses, the Company is allowed to deduct them without the requirement to generate any revenue during the relevant years, and the approved expenses cannot be disregarded simply because no revenue was achieved. Since these losses are confirmed and considered operational losses, Zakat Payer concludes that the carried-forward losses for the years 2004 to 2007 must be deducted against the confirmed taxable profits for subsequent years, based on Article 21(a) of the Income Tax Law, which states: "A net operating loss may be carried forward to the taxable year following the year in which the loss is incurred. The carried forward loss shall be deducted from the tax base of following taxable years until the cumulative loss is fully offset. The Regulations shall specify the maximum limits which may be deducted annually." Zakat Payer also relies on Article (11) of the Implementing Regulations of the same law, which states: "In accordance with the Law and these Regulations and for taxation purposes, a taxpayer may carry forward adjusted operational losses to the taxable years following the loss year, by reducing the following years’ profits until the cumulative loss is fully offset, without being limited to a specified period, provided that the maximum deduction allowed in each taxable year does not exceed (25%) of the annual profit based on Zakat Payer’s return." Zakat Payer’s reliance on these provisions is based on the fact that the Law addresses this issue in the case of profits declared in the tax return, but it is observed that the Law does not provide any clarifications when there are tax losses declared in the return. After GAZT’s assessment, the tax loss under the return is converted into taxable profits based on the assessment. Zakat Payer believes that the laws and regulations did not intend to differentiate between two Zakat Payers solely based on whether a loss or profit is declared.

Regarding the Appeal on the item concerning " disallowance of deducting the withholding tax paid on insurance payments made abroad from the income tax for the year 2009," Zakat Payer objects to the Primary Committee's Decision, which supported GAZT’s rejection of Zakat Payer’s request to deduct the withholding tax paid on insurance payments made abroad from the income tax for the year 2009. Zakat Payer asserts their right to deduct the withholding tax amounting to SAR (32,400) from the taxable base for the year 2009, as this tax was withheld on social insurance expenses paid abroad to the Company’s head office. Zakat Payer relies on Paragraph (g) of Article (68) of the Income Tax Law. Their argument is based on the fact that, since GAZT considered the amount paid to the head office as revenue for the branch (Appellant) and did not allow it to be deducted as an expense, the withholding tax must be deducted to avoid double taxation on the same amount.

Taxpayer’s appeal, regarding (Reject Taxpayer’s objection to the withholding tax on profits transferred to the headquarters for 2009 AD), lies in Taxpayer’s objection to the Primary Committee’s Decision, which upheld GAZT’s imposition of withholding tax on such profits. Taxpayer asserts that this tax is not valid, as the profits in question were actually utilized to offset the company's accumulated losses from previous years and should not be interpreted as actual profit transfers to the headquarters. Consequently, Taxpayer requests that withholding tax not be imposed on such profits.



Concerning the Appeal on the item concerning "late payment fines," Zakat Payer objects to Primary Committee's Decision supporting GAZT in imposing late payment fines on the unpaid tax differences related to the withholding tax and income tax within the statutory deadline. Zakat Payer argues that these fines are unjustified, as the tax differences on which the fines were imposed remain subject to technical disagreement between Zakat Payer and GAZT. Zakat Payer notes that they acted in good faith when filing the tax return within the statutory deadlines and paid the due taxes. Therefore, late payment fines shall not be imposed on the tax liabilities calculated by GAZT in its revised assessments, given that the discrepancies arose due to errors and differing viewpoints between Zakat Payer and GAZT. This argument is based on Paragraph (a) of Article (77) of the Income Tax Law, which stipulates that late payment fines are applied from the date the tax becomes final, and these tax differences are not yet final due to the ongoing dispute.

The Department decided to open the pleadings, GAZT submitted a reply memorandum dated 10/04/1442 AH, corresponding to 25/11/2020 AD, in response to Appellant's memorandum concerning the contested items. GAZT, regarding "Disallowance of tax loss deductions for subsequent years", responded that, upon reviewing the tax assessment, the objection file, and the financial statements, it was evident that there were no revenues for the years 2004 to 2007 AD and it was also clear that the losses for which Taxpayer seeks a deduction are non-operational losses. Therefore, these losses were not deducted based on Article (21) of the Tax Law and Article (11) of the Implementing Regulations of the Income Tax Law. Therefore, GAZT maintains the validity and correctness of its actions. GAZT, regarding the appeal on the issue of (Non-deduction of withholding tax paid on foreign insurance premiums from the income tax for 2009 AD), responded that withholding tax was imposed on foreign insurance premiums in accordance with the provisions of Article (63) of the Implementing Regulations of the Income Tax Law. Moreover, GAZT, concerning Taxpayer's request to deduct the withholding tax paid on foreign insurance premiums, clarified that the provisions of Paragraph (g) of Article (68) of the Tax Law, which Taxpayer referenced, do not apply to its case, as the withholding tax paid was not deducted from Taxpayer but rather from the foreign insured companies and the mentioned article pertains to the deduction of withholding tax that has been withheld from Taxpayer on amounts that are included in Taxpayer's revenues and subject to income tax, not on unapproved expenses. GAZT, in relation to the appeal on the issue of (Reject Taxpayer's objection to the withholding tax on profits transferred to the headquarters for 2009 AD), stated that it subjected these profits to withholding tax based on the provisions of Article (68) of the Income Tax Law and the withholding tax was imposed because the financial statements showed that the profits were closed in the headquarters' account, which constitutes a payment event, thereby necessitating the imposition of withholding tax based on Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law. GAZT, concerning the appeal on (Late Payment Fine), responded that late payment fines were imposed on the unpaid tax differences related to withholding tax and income tax in accordance with Article (77) of the Income Tax Law.

On 19/3/1442 AH, corresponding to 4/11/2020 AD, the Department requested Taxpayer to submit any additional information regarding its appeal against the Decision under review, within the deadline granted by the Department or alternatively, to rely on the information already provided in its memorandum of appeal. The specified period lapsed without Taxpayer submitting any additional information.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, concerning Zakat Payer's Appeal on the item of "disallowance of deducting the confirmed tax losses by GAZT for the years 2004 to 2007 against taxable income for subsequent years," it appears that the Appeal centers around Zakat Payer's request to deduct the carried-forward losses for the years 2004 to 2007 against the confirmed taxable profits for subsequent years. Zakat Payer argues that the condition for allowing expense deductions for tax purposes is that these expenses were incurred for business purposes and that they are operational expenses that were paid. However, GAZT maintains that the losses Zakat Payer seeks to deduct are non-operational losses, and therefore, they were not allowed under Article (21) of the Income Tax Law and Article (11) of Implementing Regulations thereof. Having carefully considered the arguments presented by both parties to the appeal, and given that the Primary Committee based its Decision on the Grounds that the disputed losses were not operational due to Taxpayer's lack of revenue, it is established that costs incurred by a taxpayer in the course of their business activities and aimed at generating revenue are, from an accounting standpoint, considered operational costs, regardless of whether revenue is actually realized. Since the law does not provide a specific definition of operating losses, nor does it set a minimum threshold for revenue to be realized in order to classify excess expenses as operational losses, it follows that Taxpayer is entitled to deduct these losses against the profits of subsequent years. Consequently, this Department decided to accept Taxpayer's appeal and reverse the Decision delivered in this regard.

Regarding Zakat Payer's Appeal on the item of "disallowance of deducting the withholding tax paid on insurance payments made abroad from income tax for the year 2009," the Appeal revolves around Zakat Payer's request to deduct the withholding tax amounting to SAR (32,400) — paid to the head office abroad for social insurance — from the taxable base, as the failure to deduct this amount leads to double taxation on the same income, according to Article (68), Paragraph (g), of the Income Tax Law. GAZT, however, maintains that the withholding tax on insurance payments made abroad was imposed according to the provisions of Article (63) of the Implementing Regulations of Income Tax Law and that the provisions of Article (68) cited by Zakat Payer do not apply to this case, as the withholding tax paid was not deducted from Zakat Payer but from the foreign insurance companies. Having carefully considered the subject of the appeal, and given that the insurance premiums paid do not constitute income for the headquarters but rather for independent third parties, namely the insurance funds to which these disputed amounts were paid, and given that the Department did not observe any requirement for correction or further comment based on the evidence provided, this Department decided that the arguments presented have not had any impact on the outcome of the primary Decision delivered in this regard. Accordingly, the Department concluded to dismiss Taxpayer's appeal and uphold the Decision delivered in this regard.

Regarding Zakat Payer's Appeal on the item of "rejection of Zakat Payer's objection to the withholding tax on profits transferred to the head office for the year 2009," the Appeal revolves around Zakat Payer's request not to impose withholding tax on the profits transferred to the head office in 2009, as the profits were used to settle accumulated losses from previous years. However, GAZT argues that closing the profits in head office's account constitutes a payment event, which requires imposition of withholding tax, as these profits were recorded in head office's account, and this recording is considered equivalent to payment. The Department, upon careful consideration of the arguments presented by both parties to the appeal, and given that Taxpayer files its returns based on



statutory accounts, and GAZT failed to prove that these profits were indeed remitted to the headquarters, in accordance with Article (68) of the Income Tax Law, which mandates the occurrence of an actual payment event to trigger the withholding tax, found that the primary Decision's reference to recording the profits in the headquarters' account constitutes payment is not upheld, as such a record does not constitute an actual or deemed payment of profits. Rather, it is an accounting procedure similar to recording annual profits within retained earnings as part of equity. Consequently, this Department resolved to accept Taxpayer's appeal and overturn the Decision delivered in this regard.

Taxpayer's appeal, regarding (Late Payment Fine), lies in Taxpayer's request to waive late payment fines on additional income tax and withholding tax, arguing that the late payment fines should only be calculated after the issuance of the final Decision. However, GAZT maintains the validity of its Decision in accordance with Article (77) of the Income Tax Law. Since the Department decided to accept Zakat Payer's Appeal on the item of disallowance of deducting the confirmed tax losses for the years 2004 to 2007 against taxable income for 2009, and the item of withholding tax on profits transferred to the head office for 2009, the Department concludes that the fines associated with these items are void, as the underlying tax liabilities have been dismissed. Therefore, the Department overturns the primary Decision regarding this item. As for the item regarding disallowance of deducting the withholding tax paid on insurance payments made abroad from the income tax for 2009, for which the Department has decided to reject Zakat Payer's Appeal, and since the dispute over this item does not constitute a technical disagreement or an issue of interpreting relevant tax laws, the Department is convinced that late payment fines shall be imposed from the date Zakat Payer became aware, or shall have been aware, of the tax due. This implies that Zakat Payer was presumed to know about the tax liability from the date it was due according to the law. Therefore, the Department concludes to reject Zakat Payer's Appeal concerning the late payment fines related to this item and upholds the primary Decision regarding this matter.

Decision

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

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Commercial Register No. (...), against Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (7) of 1438 AH.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the item of "disallowance of deducting the confirmed tax losses for the years 2004 to 2007 against taxable income for subsequent years," and overturn the primary Decision in this regard, in accordance with the reasons and Grounds outlined in this Decision.
2. Dismiss Taxpayer's appeal, regarding (Disallowance of withholding tax paid on foreign insurance premiums from income tax for 2009 AD), and overturn the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
3. Accept Taxpayer's appeal, regarding (Rejection of Taxpayer's objection to the withholding tax on profits transferred to headquarters for 2009 AD), and reverse the primary Decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Taxpayer's appeal, regarding (Late Payment Fine) concerning the items for which Taxpayer's appeal was accepted, overturn the primary Decision delivered in this regard, and confirm validity of the fines for the items where Taxpayer's appeal was dismissed, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-132)
Delivered in Appeal No.
(ZIW-1646-2018)

Principle No. 266

The default rule is that a non-resident is subject to tax on any amount they receive from any source within the Kingdom, and withholding tax is required unless Zakat Payer can prove that the amount is not subject to tax or that taxes on it have already been paid.

Facts:

On Tuesday, 19/11/1442 AH, corresponding to 29/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (65474) dated 23/12/1439 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 12/05/1438 AH by/ ... Company against Decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (6) of 1438 AH, issued in Case No. (8/37), regarding zakat and tax assessment for the years 2010 to 2012, filed by the Appellant against Zakat, Tax and Customs Authority (ZATCA). The primary Decision ruled as follows:

First: In Form:

Accept, the objection submitted by ... Company regarding zakat assessment for the years 2010 to 2012 on procedural Grounds.

Second: On Merits

1. Reject Zakat Payer's objection regarding the item of social insurance.
2. Reject Zakat Payer's objection regarding the request to deduct school expenses from zakat base for the years 2010 to 2012.
3. The dispute between ZATCA and Zakat Payer concerning provisions added to zakat base for the year 2010 has been resolved.
4. Uphold Zakat Payer's objection to deduct the amounts of SAR (7,830) for 2011 and SAR (87,252) for 2012 from the retained earnings balance, in accordance with ZATCA's assessment.
5. Deduct the net value of fixed assets from the zakat base, while adding all sources of financing.
6. Reject Zakat Payer's objection regarding calculation of withholding tax for the years 2010 to 2012.
7. Accept Zakat Payer's objection regarding non-imposition of a late payment fine on items upheld by the Committee, while the objection to the calculation of late payment fines on items upheld by ZATCA is rejected.

As this Decision was not accepted by Zakat Payer (... Company), Zakat Payer submitted a Statement of Appeal, which included the following:

Regarding the "Social Insurance" item, Zakat Payer bases the Appeal on having paid social insurance amounts monthly and regularly to the General Organization for Social Insurance for the years 2010 to 2012, according to its regulations in this regard, and with supporting documents. Zakat Payer asserts disagreement with ZATCA's method of calculating the

social insurance difference. Regarding the "School Expenses" item, Zakat Payer confirms having paid the value of school expenses for the years 2010 to 2012 and requests deduction of these expenses from the zakat base for these years. Regarding the "Saudi Partner's Share in Retained Earnings" item, Zakat Payer bases the appeal on the fact that the Saudi partner's share in retained earnings was subject to different amounts than in the zakat declaration for the years 2011 and 2012. The retained earnings in the zakat declaration for 2011 were SAR (45,060,641), while they were SAR (51,009,323) according to the assessment. For 2012, the retained earnings in the declaration were SAR (75,004,518), while the assessed retained earnings amounted to SAR (80,936,179). Zakat Payer asserts the right to include the retained earnings as reported in zakat declaration. Regarding the "Withholding Tax" item, Zakat Payer bases the appeal on the assertion that the company pays withholding taxes on a monthly and regular basis and submits both monthly and annual returns. ZATCA matched certain expense items with non-resident companies against the annual withholding tax form for the same year. It is well-known that withholding tax is calculated on a cash basis, while expenses recorded during the year are calculated on an accrual basis, and the withholding tax on those amounts may have been paid in subsequent years when the amounts were transferred to the company. Additionally, during the same year, withholding tax payments were made for amounts transferred to the same companies but with different amounts. Furthermore, some amounts are paid to entities that are not subject to withholding tax according to the Income Tax Law, as they do not constitute services for which withholding tax is applicable. Regarding the "Late Payment Fines" item, Zakat Payer asserts that the items for which the fines were imposed are subject to ZATCA's discretionary judgment, and different interpretations are possible. Moreover, the delay in zakat and tax assessment by ZATCA shall not result in penalizing Zakat Payer.

On Thursday, 26/08/1442 AH, corresponding to 08/04/2021 AD, the Department decided to hold a virtual hearing for a period of 10 days. During this time, Zakat Payer did not submit any additional information beyond what had already been provided. However, ZATCA submitted a memorandum responding to Zakat Payer's appeal on the disputed items. Regarding the (Social Insurance) item, ZATCA confirmed that it adjusted Zakat Payer's declaration to reflect the differences in social insurance expenses between the amounts recorded in the accounts and the social insurance certificate, based on the findings in the field audit report, which was signed by Zakat Payer's representatives. Additionally, Zakat Payer did not provide supporting documents for these discrepancies. Regarding the item of "School Expenses," ZATCA responded to Zakat Payer's Appeal by affirming that it had added back the school expenses to profit due to Zakat Payer's failure to provide supporting documents for the item as required under Paragraph (7) of the Implementing Regulations of Income Tax Law. As for the item of "Saudi Partner's Share in Retained Earnings," ZATCA stated that it calculated Saudi partner's share in retained earnings for the years 2011 and 2012 in the same manner applied to all Zakat Payers. The amount used from the Zakat provision was deducted from the opening Zakat balance of the year. Regarding the "Withholding Tax" item, ZATCA stated that it imposed withholding tax based on the documents provided by Zakat Payer during the field audit of its accounts, specifically for the items of "Technical and Advertising Services" and "Support and Operational Expenses." Upon reviewing these items, it was found that payments had been made to external parties for services, but withholding tax had not been paid on these amounts. Furthermore, Zakat Payer did not provide documents supporting its position to ZATCA. Regarding the "Late Payment fine" item, ZATCA affirmed the validity of its actions in applying the provisions of Article (77) of the Income Tax Law.

On 03/11/1442 AH, corresponding to 13/06/2021, after reviewing the Appeal briefs and responses, and examining the documents and records in case file, the Department determined that the case is ready for adjudication and issuance of a Decision on its merits.



Grounds



After reviewing case files and the Statement of Appeal submitted by the Zakat Payer, the Department concluded that the formal requirements for accepting the Appeal are met in accordance with the applicable laws, regulations, and rulings. This confirms that the Appeal is formally accepted as it was submitted by an authorized party within the legally specified timeframe.

As for the merits of case, it was found, regarding Zakat Payer's appeal against (Social Insurance) item, that the subject of the appeal lies in the deduction of this amount from Zakat Payer's zakat base, due to the payments made to GOSI, supported by the relevant documents. However, ZATCA contends that it added the difference between the amounts recorded in Zakat Payer's accounts and those indicated in the social insurance certificate to Zakat Payer's zakat base, due to the lack of supporting documents for this difference. Additionally, Zakat Payer signed the field inspection report, which included these amounts. Having perused subject of the dispute, and since ZATCA's actions were based on the social insurance certificate, Zakat Payer failed to provide justifications for the discrepancies between the amounts they declared and those reflected in the social insurance certificate, the field inspection report did not include any objections or reservations from Zakat Payer regarding its contents, and this Department determined that the conclusion reached by the Committee that delivered the contested Decision, as well as Zakat Payer's arguments that did not affect the outcome of the contested Decision, this Department concludes to dismiss Zakat Payer's appeal and uphold the primary Decision concerning this item, supported by its reasons as well as the reasons stated herein.

Regarding Zakat Payer's appeal on the "School Expenses" item, the appeal is based on Zakat Payer's request to deduct the value of this item, as they claim to have paid these school expenses for the years 2010 to 2012. However, ZATCA asserts that Zakat Payer did not provide supporting documents for this claim. Upon reviewing the matter of dispute and the stance of the Committee that made the Decision, and since the audited financial statements indicate that Zakat Payer incurred these expenses, the audited financial statements are considered sufficient evidence to recognize these expenses unless there is contrary evidence that justifies deviating from the content of those statements. As no such contrary evidence was presented to the Department, the Department concludes to accept Zakat Payer's Appeal concerning the zakat aspect of this item. As for the tax aspect related to this item, the regulations require Zakat Payer to provide documentary evidence proving the incurrence of the claimed expenses, and since Zakat Payer failed to provide supporting documentation for its claim in accordance with the Tax Law, the Department concludes to dismiss Zakat Payer's appeal and uphold the primary Decision delivered in this regard. Zakat Payer's appeal, regarding (Saudi Partner's Share in Retained Earnings) item lies in its request to include the retained earnings as reported in the zakat declaration and to cancel ZATCA's actions regarding this item. However, ZATCA contends that it calculated the Saudi partner's share in the retained earnings for 2011 and 2012 AD using the same method applied to all zakat payers, whereby the utilization of the zakat provision was deducted from the zakat opening balance. Having perused the subject of the dispute and given that ZATCA failed to provide a detailed explanation on how it calculated the partner's share, considering that the balance of retained earnings is affected by any transfers made, and since the Department could not determine the reason behind ZATCA's linkage of zakat provision (which is an account within the company's liabilities) to the retained earnings account (which is an account under shareholders' equity), this Department concludes to accept Zakat Payer's declaration, as no evidence was presented for contradiction. Consequently, the Department concludes to accept Zakat Payer's appeal and overturn the primary Decision delivered in this regard.



Regarding Zakat Payer's Appeal on the "Withholding Tax" item, the appeal is based on Zakat Payer's request to cancel the withholding tax imposed, arguing that the expenses are accrued but payment has not been made, and that part of the services provided by a non-resident entity is not subject to withholding tax. ZATCA, however, maintains that based on the field audit report, it was found that payments were made to non-resident entities, and withholding tax had not been paid on those amounts. Upon reviewing the matter of dispute, the Department notes that the default rule is that a non-resident is subject to tax on any amount they receive from any source within the Kingdom. ZATCA confirmed, through the analytical data provided by Zakat Payer during the field audit of their accounts for the items of (technical and advertising services, and support and operational expenses), that withholding tax was due and had not been paid. The primary Decision included the related amounts, and Zakat Payer did not provide evidence in the appeal to prove that the withholding tax was paid or to demonstrate that the amounts were not subject to tax. Furthermore, Zakat Payer did not deny that these payments, subject to withholding tax, had indeed been made. The Department did not observe any Grounds for reconsideration or further comment based on the evidence presented. Therefore, the Department, by majority, concludes that the information provided does not impact the outcome of the primary Decision regarding this item. Consequently, the Department decided to reject Zakat Payer's Appeal and uphold the primary Decision on this matter.

Regarding the "Late Payment Fine" item, the Appeal is based on Zakat Payer's request to cancel the late payment fine, arguing that the fine is not applicable due to the legitimate dispute over the contested items. Additionally, Zakat Payer claims that ZATCA delayed in issuing the assessment, which resulted in a delay in resolving the value of items. However, ZATCA maintains that it imposed the fine in accordance with Article (77) of the Income Tax Law. Having perused the subject of the dispute and given that the fine is contingent upon the acceptance or dismissal of the related item, the Department decides to cancel the fines imposed on the items for which Zakat Payer's appeal was accepted, as the fine is canceled with the invalidation of its underlying basis and validity of the fines imposed on the items for which Zakat Payer's appeal was dismissed. Consequently, the fine should be imposed on the differences for this item if Zakat Payer failed to pay, starting from the relevant statutory due date.

Decision

Based on the foregoing, and taking into account the aforementioned reasons, the Department decided the following:

First: Accept, in form, the Appeal submitted by Zakat Payer/, against Decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (6) of 1438 AH.

Second: On Merits:

1. Reject Zakat Payer's Appeal regarding the "Social Insurance" item, and uphold the primary Decision in this regard, based on the reasons and justifications outlined in this Decision.
2. Accept Zakat Payer's Appeal regarding the "School Expenses" item in regards of zakat aspect, and reject it for the tax aspect, based on the reasons and justifications outlined in this Decision.
3. Accept Zakat Payer's Appeal regarding the "Saudi Partner's Share in Retained Earnings" item, and overturn the primary Decision in this regard, based on the reasons and justifications outlined in this Decision.
4. Reject, by majority, Zakat Payer's Appeal regarding the "Withholding Tax" item, and uphold the primary Decision in this regard, based on the reasons and justifications outlined in this Decision.



5. Affirm validity of the fines imposed for the items where Zakat Payer's appeal was not accepted, starting from their legal due date, and cancel the fines for the items where Zakat Payer's appeal was accepted, based on the reasons and justifications outlined in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-72)
Delivered in Appeal No.
(IW-1776-2018)

Principle No. 267

Under Law, a company's branch is regarded as a permanent establishment for a non-resident entity. As a result, it is liable for taxes specified by the Law, including withholding tax, whenever it makes payments to the main office for services that the branch utilized in conducting its operations within the Kingdom.

Facts:

On Wednesday, 14/01/1442 AH, corresponding to 02/09/2020, the First Appellate Department for Income Tax Violations and Disputes, established pursuant to Royal Order No. (65474) dated 23/02/1439 AH in accordance with Paragraph (b) of Article 67 of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH, amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh to review the Appeal submitted on 23/04/1437 AH by/ ... Company-Saudi Branch, against Decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (5) of 1437 AH, issued in Objection No. (32/26), filed by the Appellant against the General Authority of Zakat and Tax (GAZT). The primary Decision ruled as follows:

First: Accept, in form, the objection submitted by Zakat Payer/ company ...- Saudi branch.

Second: On Merits:

1. Reject Zakat Payer's objection to the imposition of withholding tax on amounts recorded in favor of ... Company (main office) based on the justifications presented in the Decision.
2. Resolve the dispute regarding the imposition of a 5% withholding tax on ... Company based on the reasons provided in the Decision.
3. Resolve the dispute over non-deduction of the permanent excess balance of the income tax paid in favor of ... Company, as per the amended tax return for 2012, against the income dues for 2013. based on the reasons provided in the Decision.
4. Reject Zakat Payer's objection to the imposition of late payment fines for the reasons stated in the Decision.

As this Decision did not satisfy the Plaintiff (... Company- Saudi branch) regarding the contested items, the Company filed an Appeal with the Department, summarized as follows:

Zakat Payer contests the imposition of withholding tax for the years 2012 and 2013, amounting to SAR (6,182,767.13), which includes the contested withholding tax under appeal and related late payment fines. The Appeal argues against claim's validity for withholding tax, as stipulated in the Decision under appeal. GAZT's demand is based on treating the payments as amounts paid from a resident entity to a non-resident for technical and consulting services. However, the Appellant argues that these amounts, representing services provided by the headquarters to the branch, shall not be subject to withholding



tax, as the permanent establishment is considered to be the headquarters itself, which is subject to income tax, not the branch. The branch is merely an extension of this permanent establishment, which operates within the Kingdom through a fixed location. Furthermore, the costs under objection represent salaries and wages of employees working at the headquarters, not services provided to the entity registered in the Kingdom that would make them subject to withholding tax. The work performed for clients in the Kingdom was executed entirely outside the Kingdom, meaning these costs shall be treated as expenses of a resident entity and, thus, not subject to withholding tax since they were not paid to a non-resident entity. In the hypothetical scenario where withholding tax would apply to the disputed amounts, the withholding rate would be 5%, not 15%, as the ministerial Decision amended the rate in 1435 AH, making payments from the branch to the headquarters subject to withholding at that rate. This ministerial Decision introduces new tax requirements, differing from Law's original stipulations. Additionally, the Double Taxation Convention between the Kingdom and the Republic of Italy indicates that headquarters' costs related to revenues declared in the tax return of the registered branch in the Kingdom shall not be subject to withholding tax, based on Article (9) of the treaty, which considers the headquarters and the branch as a single entity. Consequently, no withholding tax applies to transactions between them. Furthermore, the Company is already subject to measures preventing double taxation, as GAZT has subjected the profit to income tax and withholding tax. If it were hypothetically accepted that the branch must remit the amounts paid as costs to the headquarters as withholding tax, this would contradict the Law, which states that withholding tax is to be remitted upon payment, not merely recorded as an accrued expense. The branch also objects to the late payment fines on the items upheld by the Primary Committee in favor of GAZT, arguing that GAZT did not calculate the withholding tax differences in the objection items until several years had passed. The branch could have avoided the late payment fine if it had been notified of the assessment immediately after the fiscal year ended. The late payment fine was due to a clear, genuine difference in perspectives between GAZT and the branch, given the ambiguity of regulations related to withholding tax. Moreover, there are Appellate Committee Decisions that stipulate imposition of late payment fines from the date of the final Decision, not from the date of filing the tax return.

Upon reviewing GAZT's response to Zakat Payer's appeal, based on the case file, it became clear that GAZT requested upholding of primary Decision's outcome, maintaining its statements and positions presented during dispute's review. GAZT argued that Zakat Payer's reliance on the Double Taxation Convention between Saudi Arabia and Italy was not valid, as the Convention covers income taxes in accordance with Articles (2) and (7), while the withholding tax imposed on non-residents relates to income generated from a source within the Kingdom and is deducted from the gross amount at the prescribed rates. The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, after reviewing case file and its documents, as well as Appeal Memorandum, and upon considering Appellant's arguments and Department examination of the contested items, the Department has concluded the following regarding these items:

1. Regarding Zakat Payer's objection to the imposition of withholding tax on technical services provided by the head office for the years 2014 and 2015, Zakat Payer's Appeal was primarily based on the argument that withholding tax shall not be applied to the amounts paid, as the branch in the Kingdom and the head office are considered one entity, not two separate entities. Therefore, from Zakat Payer's perspective, there was no transfer of funds between different parties, especially since these amounts were for salaries and wages of the head office employees and not for services provided by the head office to its branch in the Kingdom. As such, the amounts shall not be considered income for the head office that would be subject to withholding tax. However, this claim is not consistent with what is stipulated by Tax Law, which considers the branch of the company a permanent establishment of a non-resident, as clearly stated in Article (5) of the Law, which explicitly deems income to be derived from a source in the Kingdom. Consequently, it is subject to the taxes outlined in the Law, including the withholding tax that Zakat Payer is disputing. According to Paragraph (c) of the aforementioned Article, income is considered to be derived from a source in the Kingdom (...the amount paid by a permanent establishment to a non-resident, as if it were paid by a resident company). Additionally, Article (4) of the Law states that among the entities subject to tax are permanent establishments, such as a branch of a non-resident company licensed to conduct business in the Kingdom. Accordingly, withholding tax is required to be remitted by Zakat Payer when the branch pays amounts to the head office in exchange for services that the branch benefited from in conducting its operations in the Kingdom. Appellant's claim that these amounts were for salaries and wages of employees at the head office does not negate this obligation, as long as the branch requested services from which it benefited and recorded the amounts as payable to the head office. As for Appellant's argument that the Decision did not address the applicability of this tax considering provisions of the Double Taxation Convention between the Kingdom and Italy, the Department did not find any explicit clause in the Convention, as referenced by the Appellant, that would prevent the imposition of withholding tax. Convention provisions referenced by the Appellant pertain to taxes on profits and elimination of double taxation between the two countries, as well as treatment of the expenses incurred by an entity in determining profit amounts. Given that withholding tax is not tied to profit generation but is triggered by the act of payment from a resident entity to a non-resident entity for services executed in the Kingdom, it establishes a source-based income requirement without necessitating the physical presence of non-resident entity's employees or workers within the Kingdom to carry out these services. This principle aligns with Article (5) of the Regulations, which does not require the physical presence of the service provider. Thus, Appellant's argument lacks support in the Law.

As for Appellant's claim that the withholding tax demanded by GAT, as affirmed by the primary Decision, constitutes an unlawful tax, arguing that it relies on a ministerial Decision that introduced taxes not specified in Law definition or within the prescribed rates, this claim lacks a valid basis as the Law comprised regulations to specify any additional payments subject to withholding tax, provided the tax rate does not exceed 15%. The Regulations and amendments thereof were issued in accordance with provisions of the Law, as outlined in Article (79) of the Income Tax Law. Therefore, Appellant's argument in this matter is without merit and shall be disregarded.

However, after considering the Tax Law and the clear conditions and provisions for determining when the withholding tax on amounts paid to Zakat Payer outside the Kingdom becomes due, it is evident that the obligation to pay and remit the tax amount to GAZT only arises upon actual payment or its equivalent, such as account settlements between the main office and the branch, offsetting, or any other means that legally settles the amounts paid by the service requester to the non-resident service provider. Since the



Decision in dispute relied merely on the amount being due in the records of the non-resident branch of the company to the main office, without evidence of actual payment or any act equivalent to payment for the services provided, the withholding tax amounts required from the Appellant were not valid for remittance to GAZT for the years in dispute, as the actual payment had not occurred as outlined earlier. Thus, Appellant's view is upheld in recognizing that GAZT is not entitled to claim remittance of these service-related amounts recorded as due for the years in question.

2. Regarding the item of "delay fines," the Appellant has filed an Appeal seeking rejection of the primary Decision, as It objects to being required to pay the delay fines for the items that the Primary Committee upheld in imposing such fines. This Department has determined that the Appellant is not required to remit the withholding tax amount for the disputed years 2012 and 2013, as detailed in the first clause of this Decision. Consequently, the Department concludes by annulling the primary Decision concerning that item and supporting Appellant's position, thereby indicating that the delay fines are not applicable.

Decision

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

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company - Saudi Branch, Commercial Register No. (...), against Decision No. (5) of 1437 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

- Accept Zakat Payer's Appeal regarding the imposition of withholding tax on the technical services provided by the head office for the years 2012 and 2013, cancel Zakat Payer's obligation to pay the claimed withholding tax for the disputed amounts for those years, and overturn the primary Decision in this regard, based on the reasons and considerations outlined in this Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-294)
Delivered in Appeal No.
(IW-51527-2021)

Principle No. 268

The amounts paid for technical or consulting services, which are subject to a withholding tax of 15%, were not the standard applied at the time the withholding tax was required on those amounts, which should have been subject to a rate of 5% due to the non-retroactive application of the revised withholding tax rate on Zakat Payer.

Facts:

On Sunday 04/03/1443 AH corresponding to 10/10/2021AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Order No. (65474) dated 23/12/1439AH, convened at its headquarters in Riyadh, to consider the Appeal filed on 12/10/1442 AH corresponding to: 23/05/2021 AD, by Zakat, Tax and Customs Authority against the Decision of the Third Department for Determination of Income Tax Violations and Disputes in Riyadh, Decision No. (ITR-147-2021), issued regarding Case No. (IW-10-2018) related to the tax assessment for the years 2009 to 2012, filed by Zakat Payer against ZATCA. Department's Decision ruled as follows:

First: In form:

Accept, in form, the objection of Plaintiff/branch of Company, commercial register No.(...), on procedural Grounds.

Second: On merits:

Cancel Defendant's Decision regarding rejection of Plaintiff's request to recover the withholding tax paid in excess of the years from 2009 to 2012.

As this Decision was not accepted by Plaintiff (ZATCA), they submitted an Appeal memorandum summarized as follows:

If ZATCA objects to Department's Decision being Appealed, it asserts that the withholding tax on amounts paid to related parties for technical and consulting services shall be imposed at a rate of 15% based on the Income Tax Law and Implementing Regulations thereof. Regarding the effective date of Ministerial Decision No. 1776 dated 18/05/1435 AH on the event or assessment, ZATCA clarifies that this Decision did not create a new event or even a new amendment to paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law. Instead, the Decision was issued merely to rephrase it, as some provisions of the regulations needed clarification or removal of any ambiguity in their meaning and content as contained in the regulations. The ministerial Decision explicitly stated that some provisions of the regulations required amendments either to clarify their intent or to eliminate ambiguities. Additionally, the ministerial Decision concerning this article reflects ZATCA's application prior to the issuance of the Decision. The refund request was submitted by the withholding Zakat Payer, not by the tax-eligible beneficiary (the non-resident party), and the applicant did not provide an official authorization from the beneficiary according to paragraph (1) of Article (66) of the Implementing regulations. Therefore, the Case is filed by a party lacking the

legal capacity. Accordingly, ZATCA requests the esteemed Department to overturn the Decision of the Primary Department and uphold its procedure based on the aforementioned reasons.

A response memorandum was submitted by Zakat Payer dated 14/11/1442 AH, corresponding to 23/06/2020, addressing the points raised in ZATCA's memorandum concerning the item under Appeal. Zakat Payer argued that the taxes were paid before issuance of the ministerial Decision, which included amendments to withholding tax rates, and thus it would not be fair to apply it retroactively. Regarding the status of the refund applicant, Zakat Payer stated that it was handled according to the procedures in place at the time of submission, adding that ZATCA did not raise the issue of status throughout objection period. Consequently, Zakat Payer requests the esteemed Department to rule in favor of rejecting the Appeal and upholding the Decision of the Primary Department for the reasons provided.

On Tuesday, 16/01/1443 AH, corresponding to 24/08/2021, after the Department reviewed Appeal Memorandum and examined case file, it decided to hold an electronic hearing session for a period of ten (10) days. Zakat Payer submitted a set of documents, the content of which did not depart from the previous submissions.

On Monday, 20/02/1443 AH, corresponding to 07/09/2021 AD, and after reviewing and responding to Appeal Memoranda and examining case file documents and evidence, the Department has determined that the case is ready for resolution and a Decision on merits. Therefore, the Department decided to close the hearing and reserve the case for judgment.

Grounds



Having taken cognizance of Case documents and statement of appeal submitted by ZATCA, the Department found that the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and resolutions. Therefore, the appeal is accepted in form for being submitted by a party having capacity and within the prescribed time-limit.

Upon reviewing the subject of dispute and examining case file, the Department notes that ZATCA's objection lies in its imposition of the withholding tax at a rate of 15% based on the Income Tax Law and Implementing Regulations thereof. Furthermore, ZATCA asserts that the tax refund request was submitted by a party lacking the proper legal status. Therefore, ZATCA requests overturning of Primary Department's Decision. Meanwhile, Zakat Payer argues that the taxes were paid before issuance of the ministerial Decision that amended the withholding tax rates, and concerning the legal status of the refund applicant, the refund was requested in accordance with the procedures in place at that time, and ZATCA did not raise any objections or challenges regarding this matter at any stage of the case. Thus, Zakat Payer requests rejection of ZATCA's Appeal and affirmation of Primary Department's Decision. It was found that the tax assessment on Zakat Payer pertained to a tax year prior to the issuance of Ministerial Decision No. 1776 dated 18/05/1435 AH, which included an amendment and reclassification of amounts paid from a branch to the head office, specifying that they would be subject to a 15% withholding tax rate instead of 5% from that date forward, according to the amendment in the ministerial Decision. This indicates that the amounts paid for technical or consulting services at a 15% withholding tax rate were not the standard practice at the time when the withholding tax was due on these amounts, which were subject to a 5% rate, as the amended withholding tax rate was not intended to be applied retroactively to Zakat Payer. ZATCA's claim of exceptions allowing retroactive application based on an administrative Decision does not hold, as the administrative Decision does not explicitly state what ZATCA claims. Furthermore, it is an established principle in tax matters that they are governed by the principle of certainty, which requires clarity in the tax base and withholding rate, as this principle forms a



fundamental basis of the Income Tax Law. Accordingly, this Department concludes to reject ZATCA's Appeal and uphold Primary Department's Decision in its final ruling.

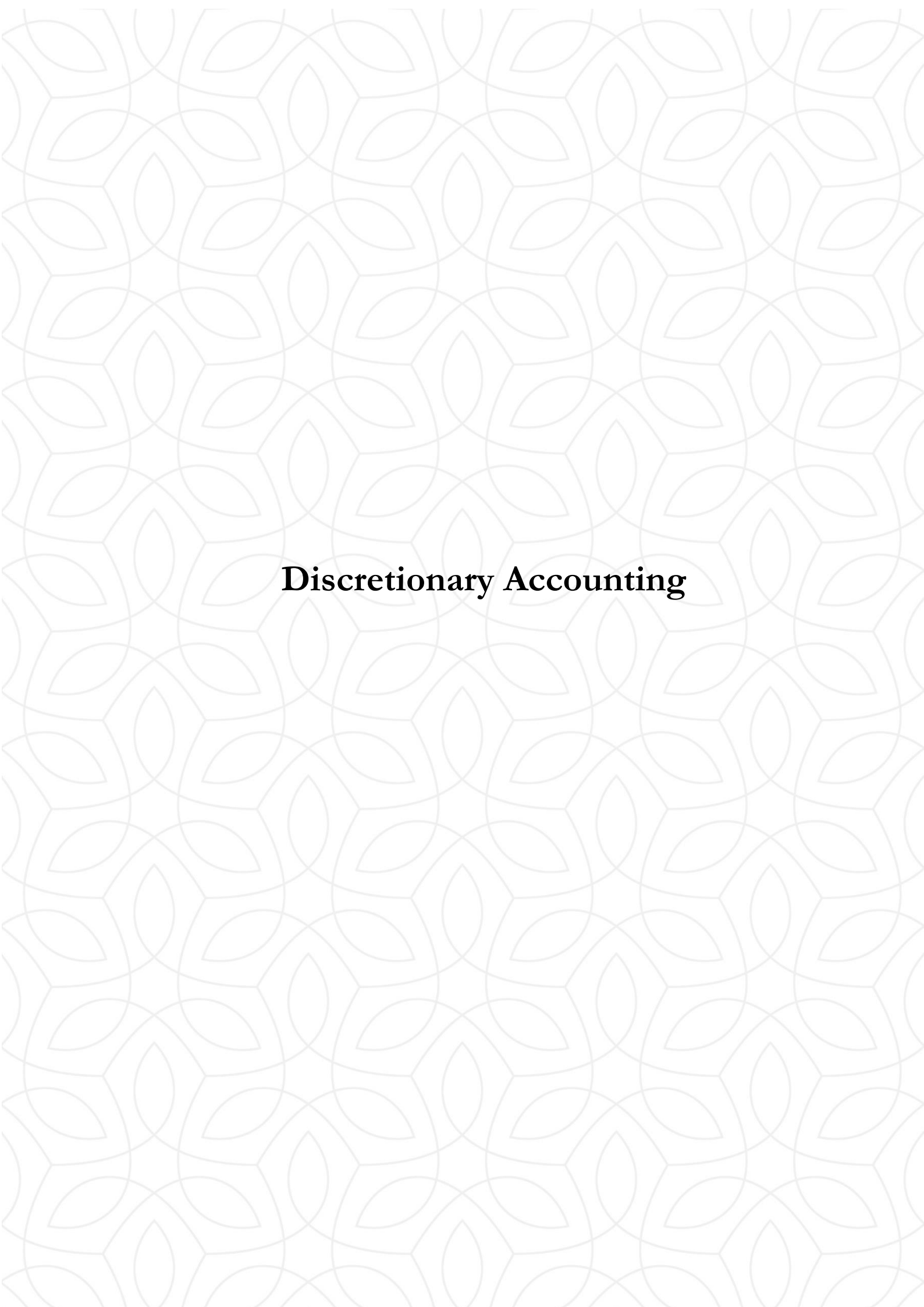
Decision

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

First: Accept, in form, the Appeal submitted by/ ZATCA, against the Decision of the Third Department for Determination of Income Tax Violations and Disputes in Riyadh, Decision number (ITR-147-2021), issued regarding Case No. (IW-10-2018), concerning Zakat assessment for the years 2009 to 2012.

Second: On Merits:

Reject ZATCA's Appeal, and uphold Decision of the Third Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and Grounds stated in this Decision.



Discretionary Accounting



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-47)
Delivered in Appeal No.
(IW-1482-2018)

Principle No. 269

The estimated profit for activities associated with a tax-subject contract is set at 15% of those activities.

Facts:

On Sunday, 26/12/1441 AH, corresponding to 16/08/2020, the First Appellate Department for Income Tax Violations and Disputes, established pursuant to Royal Order No. (65474) dated 23/16/1439 AH in accordance with Paragraph (b) of Article 67 of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH, amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh to review the Appeal submitted on 11/07/1438 AH by/ ... Company against Decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (10) of 1438 AH, issued in Case No. (13/37), filed by the Appellant against the General Authority of Zakat and Tax (GAZT) (GAZT). The primary Decision ruled as follows: First: Accept, in form, the objection submitted by ... Company, to the estimated tax assessment for the years from 2009 to 2014.

Second: On Merits:

1. Uphold GAZT's position on the discretionary assessment.
2. Support GAZT's viewpoint regarding the delay fine, reject imposition of a concealment fine.

Dissatisfied with this Decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

Zakat Payer company objects to the estimated assessment for the years 2009 to 2014, stating that the branch of the company indicates that the contract for the first project, concluded between the Parent Company in the UK and Facility Security Forces at an amount of SAR (97,819,000), was executed by a Saudi entity within the Kingdom for warranty maintenance services. Since the branch was not established at the time the contract was signed (its establishment date being 23/01/1432 AH, corresponding to 29/12/2010), contract revenue was not disclosed, as all contract items were delivered before branch's establishment. Additionally, the Company was unaware of tax laws in the Kingdom. Therefore, the Appellant Company requests a reduction in the estimated profit rate of 25% for the estimated taxable profit on the associated activities, based on Article (34), which stipulates a maximum rate of 15% of the project contract amount for taxable profit.

Regarding the second project contract between the branch and the Special Emergency Forces for an amount of SAR (54,333,800), and the third project contract between the branch and Facility Security Forces for an amount of SAR (99,935,000), these were not disclosed within the years under objection, as revenue recognition occurs upon obtaining the necessary approvals, not from the date of delivery. Revenue is not recognized on a



percentage-of-completion basis, as considered by GAZT, since the final delivery of goods occurred in years subsequent to the objection years. Accordingly, the revenue for the second project was declared in 2015, and for the third project in 2016. Therefore, the branch requests recognition of the declared revenue for these two projects within the tax returns for 2015 and 2016. GAZT's demand that Zakat Payer treat these contracts and calculate tax on them based on the percentage-of-completion method does not align with the nature of these contracts, which are more applicable to construction and manufacturing projects, rather than contracts related to commercial activities based on the delivery of ready-made materials to the other party. The disputed contracts are based on the supply of goods to the client (vehicles equipped with computers and sensors), where the supplying company adds these components to the vehicles, which it does not manufacture. Consequently, the revenue recognition for the Company is similar to that of supplying any ready-made goods, in accordance with applicable Saudi standards. This approach was followed by Zakat Payer Company in its tax returns for 2015 and 2016. Additionally, GAZT's tax calculation on contract revenues related to delivering goods under these contracts does not obligate Zakat Payer, considering that contracts for maintenance and training services were concluded with Saudi companies within the country.

The Department requested GAZT to respond to the points raised in Appellant's Memorandum regarding the items under objection. GAZT's response, dated 21/07/2020, stated that it sufficed to reiterate its position presented before the Objections Committee when examining Zakat Payer Company's objection. GAZT requested affirmation of the appealed Decision, confirming the validity and correctness of its procedure, considering that Zakat Payer's claims did not deviate from those previously raised during the review of its objection before the Primary Committee, which GAZT had addressed at that time.

The Department, having taken cognizance of memorandums of appeal and replies thereto, and having reviewed documents included in Case file, found that the Case has become ripe for adjudication on its merits.

Grounds

Upon reviewing case documents and the Appeal Memorandum submitted by Appellant Company, the Department found that the conditions for considering the Appeal procedurally were met in accordance with the relevant laws, regulations, and Decisions. Therefore, the Appeal is admissible in form, as it was submitted by an authorized party and within the legally prescribed time frame.

On merits, after reviewing case file, its contents, and Appeal Statement, and upon examining the Appeal submitted by Zakat Payer Company against the primary Decision, which also included GAZT's position on Zakat Payer's objection regarding the tax assessment for the disputed years, the Department found that the core dispute between Zakat Payer and GAZT relates to the first project, which was assessed on an estimated basis by GAZT. Zakat Payer requests a reduction in the profit rate used for tax purposes from 25% to 15% for the associated activities, as Article (34) of the law specifies this rate as the maximum limit. Upon reviewing this Article of the Law, the Department found that it refers to Article (16) of the Implementing Regulations to determine the estimated tax by calculating the estimated profit for Zakat Payer's tax assessment. This Article of the Regulations outlines the profit rates for revenues associated with Zakat Payer's activities, specifying rates for certain activities. The activities related to determining Zakat Payer's tax base fall under the category of "other activities," for which the estimated profit rate is set at 15%. GAZT did not provide evidence of similar contracts where a profit rate higher than this estimation was imposed, based on explicit provisions justifying such a rate for revenues from associated activities. Given this, the Department, after examining the nature of these contracts, found no basis to support GAZT's determination of a 25% profit rate for these contracts for tax assessment purposes. Therefore, the Department supports



Zakat Payer's view of calculating tax based on an estimated profit rate of 15% for the associated activities in this item. This rate shall be used as the basis for determining the net profit for the associated activities to calculate tax, in direct application of Article (16) of the Implementing Regulations of the Income Tax Law. Considering that these associated activities are similar to other activities taxed at a 15% profit rate, the Department concludes to reject the primary Decision regarding this matter.

As for the estimated assessment disputed by Zakat Payer concerning the second and third projects, Zakat Payer requests that the contracts be treated as goods supply contracts, rather than as projects completed in stages, as described by Zakat Payer in the contract's content. Zakat Payer argues that these contracts are not related to the concept of calculating tax based on the percentage-of-completion method, as GAZT believes. Instead, the contract entails the delivery of goods (equipped vehicles) to the requesting party. After reviewing Zakat Payer's Appeal regarding the second and third projects, the Department found no Grounds for GAZT's classification of these contracts as stage-based projects, which would require Zakat Payer to submit tax returns based on the percentage-of-completion method, disregarding their commercial nature, which does not align with GAZT's tax assessment standard applied in this case. Given the above, and in light of the absence of any substantiated response from GAZT supported by evidence or arguments justifying the classification of these contracts as stage-based projects for tax purposes, the Department concludes to rely on the apparent nature of the contract. It supports Company's stance that these contracts are for the supply of goods rather than projects completed over time. The Department found that Zakat Payer disclosed its contracts in the years in which revenue from these contracts was realized in accordance with accounting standards and submitted its returns based on official accounts. Thus, there is no justification for the arbitrary assessment imposed by GAZT when it handled these contracts in estimating the tax.

Regarding the maintenance and training services associated with these contracts, Zakat Payer argues that the profit rate shall not exceed 15% of the value of these services, rather than the 25% rate imposed by GAZT, based on the tax system as outlined in Article (34). Upon reviewing this Article, the Department noted that it refers to Article (16) of the Implementing Regulations of the Income Tax Law to determine the estimated tax by calculating the estimated profit for Zakat Payer's tax assessment. This Article specifies profit rates for revenues associated with certain taxpayer activities, and these activities fall under the category of "other activities," for which the estimated profit rate is set at 15%. GAZT did not provide evidence of similar contracts where profit rates higher than this estimation were imposed, given the nature and subject of these contracts. Consequently, the Department found no basis supporting GAZT's determination of a 25% profit rate for these contracts for tax assessment purposes. Therefore, the Department supports Zakat Payer's view of calculating tax based on an estimated profit rate of 15% for the associated services in this item and rejects the preliminary Decision on this matter.

Regarding Zakat Payer's Appeal on the withholding tax imposed on the profits of the three disputed contracts, amounting to SAR (504,176), the Department found, after examining the primary Decision and objections thereof, that this objection was not addressed in the Decision. Furthermore, Zakat Payer's Appeal did not indicate an objection to the lack of consideration of this issue during the dispute review by the Primary Committee. Consequently, the Department considers Zakat Payer's dispute regarding the withholding tax amount as a new request, leading to a dismissal of its consideration.

Regarding Zakat Payer's objection to primary Decision's imposition of delay penalties on the unpaid tax amount, Zakat Payer argues that these fines shall not apply, asserting that the original violation did not occur on his part. After reviewing Zakat Payer's Appeal concerning the delay fine imposed by the appealed Decision, the Department concluded, based on the accepted tax assessments in Zakat Payer's returns for the second and third



contracts as previously noted, that there is no basis for imposing the delay fine, as the original reason for it is nullified. However, regarding the delay fine related to the tax amount for the first contract, Zakat Payer's Appeal was based on justifying the delay in payment due to his lack of awareness of the obligation to pay tax on the profits of this contract, as he believed he was exempt under a double taxation avoidance agreement. Such an excuse, however, is insufficient to exempt Zakat Payer from timely payment of tax, as ignorance of the law is not considered Grounds for exemption from compliance with its provisions. Consequently, the Department upholds imposition of the delay fine on Zakat Payer for the tax related to the first contract only, with the delay period starting from the day following the end of the statutory period for Zakat Payer's submission of the tax return for the year in which the revenue from the disputed first contract was realized.

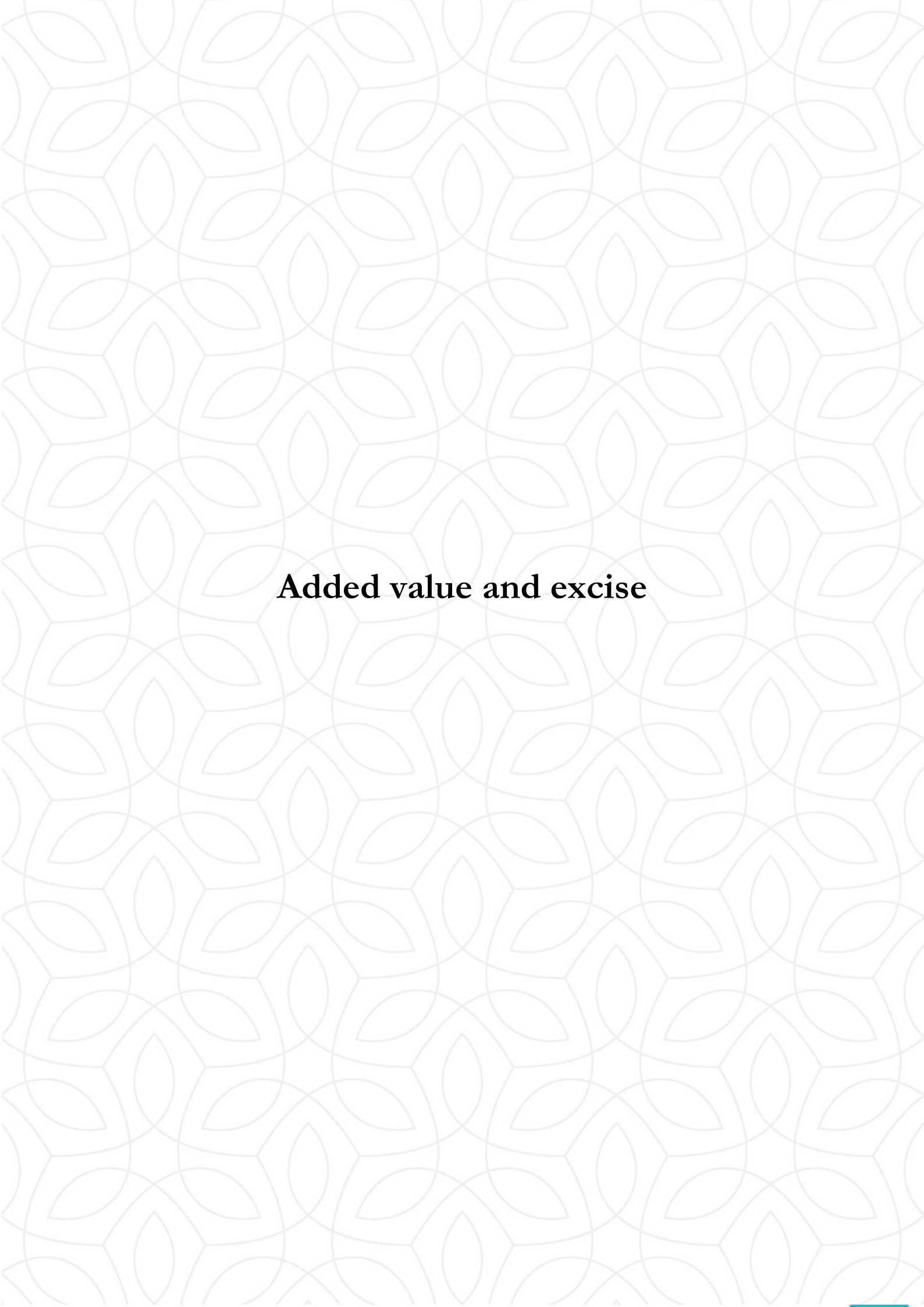
Decision

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

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Commercial Register No. (...), against Decision No. (10) of 1438 AH, issued by the First Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Estimate profit rate for the associated activities of each of the three contracts at 15%, for the reasons and Grounds stated in this Decision.
2. Accept Zakat Payer's Appeal requesting cancellation of the estimated tax on the second and third contracts is accepted, and assess Zakat Payer's taxes according to their returns, for the reasons and Grounds stated in this Decision.
3. Reject Zakat Payer's Appeal concerning the delay fine on the unpaid tax for the first contract and its associated activities, with an estimated profit of 15%. The delay fine shall be calculated starting from the day following the end of the statutory period for Zakat Payer's submission of the tax return for the year in which revenue for the first contract in dispute was realized, for the reasons and Grounds stated in this Decision.
4. Accept Zakat Payer's Appeal requesting waiver of the delay fine on the unpaid tax for the second and third contracts is accepted, as the original basis for the fine is nullified, for the reasons and Grounds stated in this Decision.
5. Dismiss Zakat Payer's Appeal regarding the withholding tax, for the reasons and Grounds stated in this Decision.

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Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Dammam

Decision No. (VD-2020-325)
Delivered in Appeal No. (V-
10348-2019)

Principle No. 270

If Defendant (GAZT) does not claim that there was a delay or cessation in the payment of the tax, thereby negating any harm, and if Plaintiff's (Objector's) claim regarding the obstacle and his attempts to overcome it are not denied by Defendant, the Department may annul the fine Decision in question and consider it as if it had never been issued if there is insufficient evidence to justify penalizing Plaintiff.

Facts:

On Sunday, (10/02/1442 AH) corresponding to (27/09/2020) AD, the First Department to adjudicate Value Added Tax violations and disputes in Dammam, established under the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed under Royal Order No. (65474) dated 23/12/1439 AH, convened to review the aforementioned case. As the case met the prescribed legal requirements, it was submitted to the General Secretariat of Tax Committees under No. (10348-2019-V) dated 00/00/2019 AD.

The facts of this case are summarized as follows: On behalf of himself, under National ID No. (...), Plaintiff filed a claim, objecting to the late registration fine of SAR (10,000) imposed for Value Added Tax (VAT) purposes. It requests cancellation of the fine on the Grounds that he did not exceed the mandatory VAT registration threshold.

Upon presenting the claim to Defendant, it responded as follows: "First: Substantive Defense: 1. The Decision is presumed to be valid and correct, and the burden of proof lies on anyone who claims otherwise. 2. Paragraph (2) of Article (50) of the Unified Agreement for VAT across the GCC Regions states that "the mandatory registration threshold is SAR (375,000)." Additionally, Paragraph (9) of Article (79) of the Implementing Regulations of the VAT Law provides that any person whose annual supplies exceed the mandatory registration threshold but do not exceed SAR 1 million shall be exempt from mandatory registration if this occurs before January 1, 2019. However, they must submit their registration application by no later than December 20, 2018. Upon reviewing Plaintiff's data with GAZT, it turns out that Plaintiff's first VAT registration application was submitted on 10/09/2019. Furthermore, he indicated upon registration that his previous and subsequent revenues exceeded the mandatory registration threshold, which required him to register by December 20, 2018. 3. Building on the foregoing, the late registration fine was imposed pursuant to Article (41) of the VAT Law, which stipulates that "Any Person who has not applied for registration within the period specified in the Regulations shall be fined ten thousand (10,000) riyals". Second: Requests: Based on the above, GAZT requests the honorable Committee to rule for dismissal of the Case.

On Tuesday, 27/01/1442H, a session was held in accordance with remote litigation procedures, and since both parties wished to proceed with the Case, the session was attended by ..., with national ID No. (...), representing the Plaintiff under power of



attorney No. (...), and by representative of Defendant ..., holding National ID No. (.....) When asked if either Party had anything additional to submit beyond what was previously presented in the claim statement and responses, the Plaintiff responded that they did have additional information. Upon presenting this to Defendant's representative, they adhered to their previous requests and defense. Accordingly, the Department instructed GAZT to respond to the following: 1. Specify the date of the last tax return submitted by the previous business owner, Ms. Khaloud Al-Shahri. 2. Confirm whether GAZT accepted deregistration of the previous business owner on 9/12/2019, as indicated in the email sent by GAZT on 10/12/2019. 3. Respond to Plaintiff's statement that he made several attempts to cancel the previous registration and add new owner's registration for VAT, but was unable to due to rejections from the General Authority of Zakat and Tax (GAZT)'s website. GAZT's representative agreed to provide the requested information within three working days and requested only the TIN of the previous restaurant owner, which was provided by Plaintiff's attorney during this session, numbered (...). Consequently, Case review was postponed to Sunday, 27/9/2020.

The Defendant subsequently submitted a Memorandum stating that the last tax return from the previous owner was filed for the second quarter of 2020, and that deregistration of the restaurant business was completed on 09/09/2019.

On Sunday, 27/09/2020, a session was held in accordance with remote litigation procedures, attended by both Parties as before. When asked if they had anything additional to submit beyond the claim statement and responses, both Parties responded that they had nothing further to add. Accordingly, the Department went into deliberation to issue a Decision.

Grounds

After reviewing case documents and conducting thorough examination, and based on the VAT Law issued by the Royal Decree No. (M/113) dated 2/11/1438 AH and amendments thereof, Implementing regulations of the law issued by the Decision of the Board of Directors of the General Authority of Zakat and Tax (GAZT) No. (3839) dated 14/12/1438 AH, as amended, as well as Tax Dispute and Violation Committee Procedures issued by the Royal Decree No. (26040) dated 11/06/1441 AH, and the Common VAT Agreement of the States of the Gulf Cooperation Council, and other related laws and regulations.

In Form:

Whereas the Plaintiff seeks, through this claim, annulment of the Decision of the General Authority of Zakat and Tax (GAZT) regarding imposition of a late registration fine amounting to SAR (10,000), based on the VAT Law and Implementing regulations thereof, and given that this dispute falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Decree No. (M/113) dated 2/11/1438 AH, and since consideration of such a claim requires an objection to be filed within 30 days from the date of notification, and it is established that Plaintiff submitted the objection within the prescribed statutory period, the claim is thus procedurally admissible.

On Merits:

The Plaintiff argued that they promptly registered upon deregistration of the previous business entity. Defendant's response confirms that the deregistration occurred on 9/9/2019, while the new registration took place on 10/9/2019, indicating that Plaintiff acted immediately after removal of the impediment. Furthermore, Defendant has not claimed any delay in tax remittance or a cessation thereof, which negates the occurrence of any harm. Since Plaintiff's assertion of obstacles and attempts to overcome them was not disputed by Defendant, the Department finds insufficient evidence to justify penalizing



Plaintiff. Therefore, the fine Decision in question should be annulled, rendering it null and void.

Decision

Based on the foregoing and in accordance with provisions of Unified Agreement, the Value Added Tax Law and Implementing Regulations thereof, and Tax Dispute and Violation Committee Procedures, the Department, after deliberation, unanimously decided the following:

Accept the claim submitted by Plaintiff ..., with National ID No. (...), and to annul Decision of the General Authority of Zakat and Tax (GAZT) subject to dispute.

This Decision is issued in the presence of both Parties and is deemed final and enforceable in accordance with Article 42 of Tax Dispute and Violation Committee Procedures. The Department has set Sunday, 01/03/1442 AH (corresponding to 18/10/2020), as the date for issuing a copy of the Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Dammam

Decision No. (VD-2020-353)
Delivered in Appeal No. (V-10583-2019)

Principle No. 271

A claim to waive the fine due to ignorance of the law does not constitute a legitimate justification for exemption from that fine.

Facts:

On Sunday, (10/02/1442 AH) corresponding to (29/9/2020) AD, the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam, established under the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed under Royal Order No. (65474) dated 23/12/1439 AH, convened to review the aforementioned case. As the case met the prescribed legal requirements, it was submitted to the General Secretariat of Tax Committees under No. (V-10583-2019) dated 15/10/2019 AD.

Facts of this Case are summarized as follows: ..., in his personal capacity with National ID number (...), submitted a statement of claim objecting to the late registration fine of SAR (10,000) for VAT purposes. His statement reads: "I kindly request exemption from the imposed fine, as I am an individual with no commercial records; I only began constructing residential units and selling them. I was unaware of the procedures and regulations of VAT, but after obtaining the necessary information and reading some guidance from GAZT, I promptly registered. All due returns have been filed, all invoices paid, and I have remained compliant with filing deadlines to date. I request cancellation of the fine imposed on me."

Upon presenting the statement of claim to Defendant, they responded as follows: "First: Substantive Defense: 1. The Decision is presumed to be valid and correct, and the burden of proof lies on anyone who claims otherwise. 2. Paragraph (2) of Article (50) of the Unified Agreement for VAT across the GCC Regions states that "the mandatory registration threshold is SAR (375,000)." Article (3) of the Implementing Regulations of the VAT Law states, "For registration purposes, every Resident Person in the Kingdom who is not registered by GAZT must at the end of each month calculate the value of his Supplies made in the Kingdom within the twelve months then ended, in accordance with the requirements set out in the Agreement. In cases where this value exceeds the Mandatory Registration Threshold detailed in the Agreement, the Person must apply to GAZT to register within thirty (30) days of the end of that month pursuant to Article eight of these Regulations". Upon reviewing Plaintiff's records with GAZT, it is evident that Plaintiff's VAT registration request was submitted on 18/9/2019. 3. Article (56) of the Implementing Regulations grants GAZT the right to obtain any information directly and continuously related to the tax that is held by a third party. By referring to data from the Ministry of Justice, it is evident that Plaintiff made supplies exceeding the mandatory registration threshold on 24/7/2019 and failed to register within the specified period. 4. Based on the above, a late registration fine was imposed pursuant to Article (41) of the



VAT Law, which states, “Any Person who has not applied for registration within the period specified in the Regulations shall be fined ten thousand (10,000) riyals”. Accordingly, GAZT requests the honorable committee to rule for the dismissal of the Case.

On Tuesday, 12/2/1442 AH, a session was held in accordance with remote litigation procedures, with Defendant present. Plaintiff did not attend despite being notified of session’s date and virtual format, nor did they provide any excuse for their absence. Defendant’s representative, holding National ID No. (.....) requested to proceed with the Case and issue a Decision in Plaintiff’s absence. Consequently, the Department withdrew for deliberation and issuance of a Decision.

Grounds

After reviewing case documents and conducting thorough examination, and based on the VAT Law issued by the Royal Decree No. (M/113) dated 2/11/1438 AH and amendments thereof, Implementing regulations of the law issued by the Decision of the Board of Directors of the General Authority of Zakat and Tax (GAZT) No. (3839) dated 14/12/1438 AH, as amended, as well as Tax Dispute and Violation Committee Procedures issued by the Royal Decree No. (26040) dated 11/06/1441 AH, and the Common VAT Agreement of the States of the Gulf Cooperation Council, and other related laws and regulations.

In Form:

Plaintiff’s claim aims to annul the Decision by the General Authority of Zakat and Tax (GAZT) regarding the imposition of a late registration fine based on the VAT Law and its Implementing Regulations. This dispute falls within the jurisdiction of the Committee for the Resolution of Tax Violations and Disputes, pursuant to Royal Decree No. (M/113) dated 2/11/1438H. The consideration of such claims requires an objection to be filed within thirty (30) days from the date of notification. From the case documents, it is established that Plaintiff was notified of the Decision on 12/10/2019 and filed the objection on 15/10/2019, thereby meeting the statutory deadline and fulfilling the procedural requirements, which necessitates accepting the claim procedurally.

On Merits:

Upon examining the case documents and the responses of both Parties after providing them with sufficient time to submit their statements, the Department established that Defendant issued its Decision to impose a late registration fine based on the provisions of Article (41) of the VAT Law, which states: " Any Person who has not applied for registration within the period specified in the Regulations shall be fined ten thousand (10,000) riyals". Based on Paragraph (1) of Article (23) of the Implementing Regulations of the Value Added Tax Law stating that: For the purposes of applying the Agreement and the Law, Real Estate includes: a. any specific area of land over which rights of ownership or possession or other rights in rem can be created. b. any building, structure or engineering work permanently attached to the land. c. any fixture or equipment which makes up a permanent part of or is permanently attached to the building, structure or engineering work". Whereas Paragraph (7) of Article (9) of Implementing Regulations of the Value Added Tax Law stipulates that: "A person who conducts or intends to conduct a real estate supply is considered to be engaging in an economic activity for registration purposes under the Law and these Regulations, except in cases where the real estate was used or intended to be used as a permanent residence by that person or a closely related family member, as defined in Paragraph 2 of Article Thirty-Seven of these Regulations." Based on Paragraph (1) of Article (3) of the Implementing Regulations of the Value Added Tax Law stating that: " For registration purposes, every Resident Person in the Kingdom who is not registered by GAZT must at the end of each month calculate the value of his Supplies made in the Kingdom within the twelve months then ended, in accordance with the



requirements set out in the Agreement. In cases where this value exceeds the Mandatory Registration Threshold detailed in the Agreement, the Person must apply to GAZT to register within thirty (30) days of the end of that month pursuant to Article eight of these Regulations”. Whereas Paragraph (1) of Article (3) of Implementing Regulations of the Value Added Tax Law stipulates that: " For registration purposes, every Resident Person in the Kingdom who is not registered by GAZT must at the end of each month calculate the value of his Supplies made in the Kingdom within the twelve months then ended, in accordance with the requirements set out in the Agreement. In cases where this value exceeds the Mandatory Registration Threshold detailed in the Agreement, the Person must apply to GAZT to register within thirty (30) days of the end of that month pursuant to Article eight of these Regulations”. In addition, Paragraph (1) of Article (3) of the Value Added Tax Law stipulates that: “A Taxable Person shall be obligated to register according to the Economic Activities carried out by the Taxable Person in the Kingdom and in accordance with the provisions stipulated in the Agreement”.

Based on the foregoing, and considering the submissions made, Plaintiff’s claim to waive the fine due to ignorance of the Law does not constitute a legitimate justification for exemption from the late registration fine. The provisions of the Agreement, the VAT Law, and the Implementing Regulations clearly outline the tax concept of economic activity, its various forms of practice, and both the mandatory and voluntary registration thresholds without ambiguity. The mandatory registration threshold was reached on 24/07/2019, and pursuant to Article 56, Paragraph 2, of the Implementing Regulations of the VAT Law, the Plaintiff was required to submit a registration request to GAZT within thirty (30) days from the end of that month in accordance with Article (3), Paragraph (1) of the Regulations. The Plaintiff failed to comply and registered on 18/09/2019, thereby validating Defendant’s action in imposing the fine.

Decision

Based on the foregoing and in accordance with provisions of Unified Agreement, the Value Added Tax Law and Implementing Regulations thereof, and Tax Dispute and Violation Committee Procedures, the Department, after deliberation, unanimously decided the following:

Dismiss the Case filed by ..., National ID No. (...) against the General Authority of Zakat and Tax (GAZT).

This Decision is issued in the presence of Defendant and in absentia for the Plaintiff, and it is deemed final and enforceable in accordance with Article 42 of Tax Dispute and Violation Committee Procedures.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VSR-2021-158)

Delivered in Appeal No. (V-10580-2019)

Principle No. 272

The statutory requirement for a phase of examination and review aims to compel Defendant to exercise caution and thoroughly assess its Decisions before taking action, to ensure their suitability and legality. This serves to protect individuals by providing safeguards against Defendant as an administrative authority with privileges.

Facts:

On Thursday, 19/08/1442 AH corresponding to 01/04/2021 AD, the First Department to adjudicate Value Added Tax violations and disputes in Dammam, established under the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed under Royal Order No. (17218) dated 27/03/1442 AH, convened to review the aforementioned case. As the case met the prescribed legal requirements, it was submitted to the General Secretariat of Tax Committees under No. (V-10580-2019) dated 15/10/2019 AD.

The facts of this case are summarized as follows: ... (Saudi national) with National ID number (...), as the owner of ... Schools Foundation, under Commercial Register No. (...), submitted a statement of claim objecting to the final assessment, the fine for error in the declaration, and the late payment fine for the tax period concerning the third quarter of 2018.

Upon presenting the statement of claim to Defendant, they responded as follows: “First: In Form: GAZT’s Decision was issued on 25/09/2019, and the escalation to the General Secretariat occurred on 15/10/2019. On Merits Regarding reassessment of the first quarter return for 2019, in line with the principle of voluntary compliance, GAZT allows Zakat Payer the freedom to submit their returns without interference, provided that Zakat Payer submits supporting documents for the filed returns. Zakat Payer submitted the third quarter return for 2018 on 23/10/2018. Pursuant to Paragraph (2) of Article (56) of the Implementing Regulations of the VAT Law, which states, “In addition to the other rights provided for in this Article, GAZT may access relevant information held by third parties directly from those parties including requiring direct access to records generally on an ongoing basis.” it was revealed to GAZT, based on data provided by the Central Bank, that there were sales not declared by Zakat Payer in the return. Consequently, additional information was requested to clarify the nature of these undeclared sales on 04/08/2019, but Zakat Payer did not respond to the issued notifications. Reminders were sent through designated channels, but cooperation was not demonstrated. Accordingly, and pursuant to Paragraph (1) of Article (26) of the VAT Law, which states, “GAZT may make a Tax assessment of a Taxable Person

irrespective of a Tax Return filed by him” and Article (64) of the Implementing Regulations of the VAT Law, which provides, “GAZT may make an assessment of the VAT obligations of a Person in respect of one or more Tax Periods. GAZT shall provide



notification to the Taxable Person when it issues such an assessment.” 3. Subject to the fourth Paragraph of this Article, GAZT may not issue or amend an assessment in respect of any Tax Period after a period of five (5) years has passed from the end of the calendar year in which the Tax Period falls”. GAZT conducted the reassessment on 25/09/2019, incorporating the undeclared sales in the return and calculating the resulting tax. Accordingly, GAZT requests a ruling to dismiss the claim. Regarding the fine for error in filing the return: The fine was imposed after GAZT determined the return to be inaccurate, according to the final assessment notice, based on Paragraph (1) of Article (42) of the VAT Law, which states, “Any Person who files an incorrect

Tax Return to GAZT, amends a Tax Return after filing or files any document with GAZT in relation to the Tax due by him which results in an error in the calculation of the Tax amount resulting in an amount that is less than the Tax due shall be liable to a fine equal to (50%) of the value of the difference between the calculated Tax and the Tax due.”. Regarding the fine for late payment: After reviewing Zakat Payer’s return for the contested period, GAZT found it inaccurate, necessitating an amendment to the return and issuance of a final assessment notice, which resulted in a discrepancy in the due tax amount, unpaid by the statutory deadline. Accordingly, a late payment fine was imposed for the months following the tax period under dispute, as previously explained, in accordance with Article (43) of the VAT Law, which states, “Any Person who fails to pay the Tax due during the period specified by the Regulations shall be liable to a fine equal to 5% of the value of the unpaid Tax for each month or part thereof for which the Tax has not been paid.” Third: Requests: Ruling for dismissal of the Case and upholding GAZT’s action as contested in this case, while reserving GAZT’s right to provide additional responses and clarifications. On Thursday, 27/07/1442 AH, corresponding to 11/03/2021, the session was convened via virtual communication in accordance with remote litigation procedures based on Clause No. (2) of Article (50) of Tax Dispute and Violation Committee Procedures, issued by Royal Order No. (26040) dated 21/04/1441 AH, at 3:00 p.m. Upon calling the parties to the Case, attended/ ..., National ID No. (...), as the representative of Plaintiff by Power of Attorney No. (...); ... (Saudi national) with National ID No. (...) as the representative of the General Authority of Zakat and Tax (GAZT), pursuant to Authorization Letter No. (...) dated 19/05/1441 AH issued by the Deputy Governor for Legal Affairs. During this session, the Department asked Plaintiff’s representative about the claim, to which he responded: “In accordance with the statement of claim, I stand by what has been stated therein. When asked for a response, Defendant’s representative replied: In accordance with the statements made in Reply Memorandum No. 1, the Defendant maintains its position to dismiss the Case. Consequently, the Department requested Plaintiff’s representative to submit a response memorandum, attaching the invoices representing the tax-exempt amounts, and to upload them to the General Secretariat of Tax Committees system no later than 21/03/2021. Accordingly, the Department decided to adjourn the hearing of the case to Thursday, 01/04/2021.

On Thursday, 19/08/1442 AH, corresponding to 01/04/2021 AD, the session was conducted via videoconference, following the remote litigation procedures outlined in Clause (2) of Article (15) of Tax Dispute and Violation Committee Procedures, issued by Royal Order No. (26040) dated 21/04/1441 AH, at 1:00 p.m. Upon calling Parties to the Case, plaintiff’s representative/ ..., previously present and identified, attended, as did/ ... (Saudi national) with National ID No. (...) as a representative of Defendant "General Authority of Zakat and Tax" under authorization letter No. (...) dated 04/06/1442 AH, issued by the Deputy Governor for Legal Affairs. During this session, Plaintiff’s representative submitted a memorandum with attached invoices representing tax-exempt amounts. Upon presenting a sample of these invoices to Defendant’s representative, he responded that the invoices did not contain the civil registry numbers of the beneficiaries, which would confirm their status as Saudi nationals. When this was presented to Plaintiff’s



representative, he responded that the invoices do not typically include the civil registry numbers of beneficiaries, but he could provide evidence showing that the invoices pertain to students holding Saudi nationality. The Department then asked Defendant's representative for the legal basis requiring tax-exempt private educational services providers to include the civil registry number on the invoice. He responded that the regulations do not impose such a requirement but that the presence of the national ID number on the invoice is necessary to verify that the invoices pertain to citizens. The Department further inquired whether Defendant had requested Zakat Payer to provide proof of students' Saudi nationality during the review, to which Defendant's representative requested additional time. The Department found the request for an extension unwarranted and therefore decided to adjourn the session for deliberation, in preparation for issuing a Decision.

Grounds

Having reviewed case documents and conducting examination and with reference to Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and Implementing Regulations thereof issued pursuant to the Minister of Finance Decision No. (1535) of 11/06/1425 AH, as amended, and based on Value Added Tax Law promulgated by Royal Decree No. (M/113) dated 02/11/1438 AH, as amended, and Implementing Regulations thereof issued by ZATCA Board Decision No. (3839) dated 14/12/1438 AH as amended, and Rules of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 11/06/1441 AH, and The Common VAT Agreement of the States of the Gulf Cooperation Council as well as other relevant laws and regulations.

In form, Plaintiff's claim seeks to annul Decision of the General Authority of Zakat and Tax (GAZT) concerning the final assessment, the fine for error in the declaration, and the late payment fine for the tax period related to the third quarter of 2018, based on the VAT Law and Implementing Regulations thereof. This dispute falls within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Decree No. (M/113) dated 2/11/1438 AH. Consideration of such claims requires that an objection be filed within thirty (30) days from the date of notification. From the case documents, it is established that Plaintiff was notified of the Decision on 25/9/2019 and filed the objection on 15/10/2019. Therefore, the claim was submitted within the statutory period and has met the formal requirements, warranting its acceptance in form.

On merits, Regarding Plaintiff's request to annul Defendant's action concerning the final assessment and penalties for the tax period related to the third quarter of 2018, the Department reviewed the Decision issued by Defendant, which imposed VAT on private educational services and associated penalties based on data received from the Saudi Central Bank. Plaintiff contests this Decision on the Grounds that these sales—subjected to tax by Defendant—relate to private educational services provided to citizens, which are exempt from VAT. Plaintiff, as per its commercial registration, operates as a private school offering educational services under a license issued by the Ministry of Education. Upon reviewing Clause (Seventh) of Royal Order No. (A/86) dated 18/04/1439H, which states: "The State shall bear VAT on behalf of citizens benefiting from private healthcare services and private education services," and after examining the invoices provided by Plaintiff's representative, the Department found that the Defendant did not make adequate efforts to verify the nationalities of students enrolled at Plaintiff's school. The statement by Defendant's representative that it contacted the Plaintiff to request information was not substantiated in writing or in argument. The statutory requirement of a review and examination phase is intended to compel the Defendant to exercise due diligence and evaluate its Decisions before implementation to ensure their appropriateness and legality, thus providing safeguards to individuals facing an administrative authority with privileges.



Furthermore, Defendant's argument that the invoices issued by the Plaintiff did not include the civil registry number for each student does not constitute a valid defense, as the Defendant could verify students' Saudi nationality during the review process. This aligns with the Royal Order No. (A/86) dated 18/04/1439 AH, which does not require exempt Zakat Payers to include citizens' civil registry numbers on tax invoices but mandates only the verification of such status. This responsibility rests with Defendant, who should request a comprehensive list of national IDs of Saudi students from Zakat Payer during the review process before making its Decision. The Defendant failed to provide evidence of having taken this step in the present case. Accordingly, the Department sees Grounds to annul the contested Decision of Defendant.

Decision

Based on the above, The Department, after unanimous deliberation, decided.

First: Accept the Case in form.

Second: Accept the objection of Plaintiff National ID No. (...) in its capacity as owner of Schools, Commercial Register No. (...), and annul the Decision made by Defendant/ General Authority for Zakat and Tax.

This Decision is issued in the presence of both Parties. The Department has set a period of thirty days for the receipt of a copy of the Decision, with the option to extend the delivery period by an additional thirty days at its discretion. The Parties have the right to appeal within thirty days from the day following the specified date of receipt. If no objection is filed within this period, the Decision becomes final and enforceable upon the expiration of this timeframe.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Dammam

Decision No. (VD-2021-92)
Delivered in Appeal No. (V-
10664-2019)

Principle No. 273

The VAT Law applies to both natural and legal persons alike, as taxable persons, where there is an economic activity intended to generate income.

Facts:

On Sunday, (04/06/1442 AH) corresponding to (17/01/2020) AD, the First Department to adjudicate Value Added Tax violations and disputes in Dammam, established under the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed under Royal Order No. (65474) dated 23/12/1439 AH, convened to review the aforementioned case. As the case met the prescribed legal requirements, it was submitted to the General Secretariat of Tax Committees under No. (10664-2019-V) dated 16/10/2019 AD.

The facts of this case are summarized as follows: On behalf of himself, under National ID No. (...), submitted a statement of claim, objecting to a late registration fine for VAT amounting to SAR 10,000. In the statement, he mentioned: "We kindly request consideration for the cancellation of VAT late registration fine, as we were unaware of the requirement for individuals to register for VAT. We were not informed at the time of sale transaction; neither the bank notified us through the buyer, nor did the court upon transferring the property to the buyer, nor did the General Authority of Zakat and Tax (GAZT) notify us of the necessity for individuals without a commercial record or business activity to register. Accordingly, we request the cancellation of the fine."

Upon presenting the claim to Defendant, It responded as follows: "First: Substantive Defense: The presumption is that the Decision is valid and sound, and anyone claiming otherwise must provide evidence to support their claim. Paragraph (2) of Article (50) of the Common VAT Agreement of the States of the Gulf Cooperation Council states that "The Mandatory Registration Threshold shall be SAR 375,000". Additionally, Paragraph (9) of Article (79) of the Implementing Regulations of the VAT Law provides that any person whose annual supplies exceed the mandatory registration threshold but do not exceed SAR 1 million shall be exempt from mandatory registration if this occurs before January 1, 2019. However, any application for such registration must be submitted that on or before 20 December 2018. Upon reviewing Plaintiff's records with GAZT, it is evident that Plaintiff's VAT registration application was submitted on 09/03/2019 (after the specified regulatory deadline mentioned above). We inform the esteemed committee that Article (56) of the Implementing Regulations of the VAT Law grants GAZT the right to directly and continuously obtain any information directly related to VAT that is held by a third party. Additionally, upon reviewing Plaintiff's records with the Ministry of Justice, it was found that the Plaintiff has conducted supplies exceeding the mandatory registration threshold. Based on the above, a late registration fine was imposed pursuant to Article (41) of the VAT Law, which states, "Any Person who has not applied for registration within



the period specified in the Regulations shall be fined ten thousand (10,000) riyals”. Second: Requests: Based on the above, GAZT requests the honorable Committee to rule for dismissal of the Case.

The Plaintiff submitted a memorandum in response to the Defendant, stating that he does not own a business or company and lacked sufficient knowledge of the applicable laws and regulations. He mentioned that he had called GAZT’s unified contact number but did not receive information indicating the requirement for individuals to register under the system at the time of the transaction. He was also not informed by the bank of the need to provide a VAT registration certificate, as is now standard practice. Additionally, he was not notified by the court at the time of the property transfer. He became aware of the registration requirement later, when the bank (acting as the lender for the buyer) requested a VAT registration certificate. Consequently, he registered to obtain a tax number and was surprised to find a late registration fine imposed, along with penalties for late declaration submission and late payment, totaling SAR 47,269.

On Sunday, 10/09/1441 AH, a session was held in accordance with remote litigation procedures, with Defendant present. Plaintiff did not attend despite being notified of session’s date and virtual format, nor did they provide any excuse for their absence. Defendant’s representative ... was present, and upon being informed of the situation, requested that the case proceed and a Decision be issued. After reviewing the statements of both parties and the submitted documents, and as the case was ready for judgment, the Department concluded the participation of the attendee for the purpose of deliberation. In accordance with the provisions of the relevant laws, Implementing Regulations, and Tax Committee Procedures, the Department decided to clear the courtroom for deliberation and Decision issuance.

Grounds

After reviewing case documents and conducting thorough examination, and based on the VAT Law issued by the Royal Decree No. (M/113) dated 2/11/1438 AH and amendments thereof, Implementing regulations of the law issued by the Decision of the Board of Directors of the General Authority of Zakat and Tax (GAZT) No. (3839) dated 14/12/1438 AH, as amended, as well as Tax Dispute and Violation Committee Procedures issued by the Royal Decree No. (26040) dated 11/06/1441 AH, and the Common VAT Agreement of the States of the Gulf Cooperation Council, and other related laws and regulations.

In Form:

Plaintiff’s claim aims to annul the Decision by the General Authority of Zakat and Tax (GAZT) regarding imposition of a late registration fine based on the VAT Law and Implementing Regulations thereof. This dispute falls within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes, pursuant to Royal Decree No. (M/113) dated 2/11/1438 AH. The consideration of such claims requires an objection to be filed within thirty (30) days from the date of notification. From the case documents, it is established that Plaintiff was notified of the Decision on 17/09/2019 and filed the objection on 16/10/2019, thereby meeting the statutory deadline and fulfilling the procedural requirements, which necessitates accepting the Case in form.

On Merits:

Article (1) of the Unified Agreement for Value Added Tax for the Cooperation Council for the Arab States of the Gulf defines a "person" as follows: "Any natural or legal person, public or private, or any other form of partnership”. Article (2) of the Implementing Regulations of VAT Law states: “For the purposes of the Law and these Regulations, a Taxable Person in the Kingdom is a Person who conducts an Economic Activity independently for generating income, and is registered for VAT in the Kingdom or who is required to register for VAT in the Kingdom under the Law or these Regulations.”



Additionally, Paragraph (1) of Article (3) of the Implementing Regulations of VAT Law states: "For registration purposes, every Resident Person in the Kingdom who is not registered by the Authority must at the end of each month calculate the value of his Supplies made in the Kingdom within the twelve months then ended, in accordance with the requirements set out in the Agreement. In cases where this value exceeds the Mandatory Registration Threshold detailed in the Agreement, the Person must apply to the Authority to register within thirty (30) days of the end of that month pursuant to Article eight of these Regulations." Paragraph (7) of Article (9) of the Implementing Regulations of VAT Law states: "A person who undertakes or intends to undertake a real estate supply shall be regarded as engaging in an economic activity for registration purposes under the Law and these Regulations, except in cases where the real estate is or is intended to be used as a permanent residence for that person or a closely related family member, as defined in Paragraph 2 of Article Thirty-Seven of these Regulations." Additionally, Paragraph (1) of Article (23) of the Implementing Regulations of VAT Law states: For the purposes of applying the Agreement and the Law, Real Estate includes: a. any specific area of land over which rights of ownership or possession or other rights in rem can be created. b. any building, structure or engineering work permanently attached to the land. c. "Any fixtures or equipment that form a permanent part of, or are permanently attached to, a building, structure, or engineering work," as stated in Paragraph (2) of Article (56) of the Implementing Regulations of VAT Law: "In addition to the other rights provided for in this Article, the Authority may access relevant information held by third parties directly from those parties including requiring direct access to records generally on an ongoing basis." Paragraph (9) of Article (79) of the Implementing Regulations of VAT Law states: "Notwithstanding any other provision of the Law and these Regulations a Person whose value of annual Supplies exceeds the Mandatory Registration Threshold but does not exceed one million (1,000,000) SAR is exempted from the requirement to register in the Kingdom until 1 January 2019. However, any application for such registration must be submitted that on or before 20 December 2018. This Paragraph does not affect any Person's ability to register on a voluntary basis". Article (41) of the VAT Law states: "Any Person who has not applied for registration within the period specified in the Regulations shall be fined ten

thousand (10,000) riyals." Upon reviewing the complete case file and the defenses contained therein, it is evident that the Plaintiff's request to cancel the fine resulting from his delay in VAT registration, on the Grounds of ignorance of the requirement for individual registration, does not negate his violation of the Law. The VAT Law applies equally to natural and legal persons as taxable persons, provided that they engage in economic activities with the intent of generating income, in accordance with Article (2) of the Implementing Regulations of VAT Law. Additionally, he did not provide evidence of his supply volume to demonstrate ineligibility for the late registration fine in accordance with Paragraph (1) of Article (3) and Paragraph (9) of Article (79) of the Implementing Regulations of VAT Law. It has been established, based on the notice of invoice issuance for the fourth quarter of 2018, that VAT amounting to SAR 53,241.33 was due, indicating a supply volume of SAR 1,064,826.6. This supports the conclusion that the Plaintiff reached the mandatory registration threshold and verifies the accuracy of the information relied upon by the Defendant from the Ministry of Justice, requiring registration at that time under the applicable statutory provisions. Furthermore, it was confirmed that the Plaintiff submitted his registration application on 03/09/2019, according to the attached fine notice. Therefore, we find the imposition of the fine to be valid, based on Article (41) of the VAT Law, as the Plaintiff did not register within the legally prescribed period according to the Agreement, Law, and the referenced Regulations.

Decision



Accept the case submitted by ..., holding National ID No. (...) Against the General Authority of Zakat and Tax (GAZT) regarding the late registration fine for VAT purposes. This Decision was issued in the presence of the Defendant and in absentia for the Plaintiff, and it is considered final and enforceable in accordance with Article 42 of Tax Dispute and Violation Committee Procedures. The Department set Wednesday, 11/10/1441 AH (corresponding to 03/06/2020) as the date for delivering a copy of the Decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VSR-2021-160)

Delivered in Appeal No. (V-10582-2019)

Principle No. 274

In accordance with the principle of voluntary compliance, GAZT grants Zakat Payer the freedom to submit their declarations without any intervention, provided that Zakat Payer submits supporting documents for the declarations made.

Facts:

On Thursday, 19/08/1442 AH corresponding to 01/04/2021 AD, the First Department to adjudicate Value Added Tax violations and disputes in Dammam, established under the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed under Royal Order No. (17218) dated 27/03/1442 AH, convened to review the aforementioned case. As the case met the prescribed legal requirements, it was submitted to the General Secretariat of Tax Committees under No. (V-10582-2019) dated 15/10/2019 AD.

The facts of this case are summarized as follows: ... (Saudi national) with National ID number (...), as the owner of ... Establishment, under Commercial Register No. (...), submitted a statement of claim objecting to the final assessment, the fine for error in the declaration, and the late payment fine for the tax period concerning the First quarter of 2019.

Upon presenting the statement of claim to Defendant, they responded as follows: “First: In Form: GAZT’s Decision was issued on 25/09/2019, and the escalation to the General Secretariat occurred on 15/10/2019. Second: On Merits Regarding reassessment of the first quarter return for 2019, in line with the principle of voluntary compliance, GAZT allows Zakat Payer the freedom to submit their returns without interference, provided that Zakat Payer submits supporting documents for the filed returns. Zakat Payer submitted the third quarter return for 2018 on 16/04/2018. Pursuant to Paragraph (2) of Article (56) of the Implementing Regulations of the VAT Law, which states, “In addition to the other rights provided for in this Article, the Authority may access relevant information held by third parties directly from those parties including requiring direct access to records generally on an ongoing basis”. It was revealed to GAZT, based on data provided by the Central Bank, that there were sales not declared by Zakat Payer in the return. Consequently, additional information was requested to clarify the nature of these undeclared sales on 04/08/2019, but Zakat Payer did not respond to the issued notifications. Reminders were sent through designated channels, but cooperation was not demonstrated. Accordingly, and pursuant to Paragraph (1) of Article (26) of the VAT Law, which states, “The Authority may make a Tax assessment of a Taxable Person irrespective of a Tax Return filed by him. ” and Article (64) of the Implementing Regulations of the VAT Law, which provides, “The Authority may make an assessment of the VAT obligations of a Person in respect of one or more Tax Periods. The Authority shall provide notification to the Taxable Person when it issues such an assessment.” GAZT



conducted a reassessment on 25/09/2019, including undeclared sales in the return and calculating the resulting tax. Accordingly, GAZT requests a judgment to dismiss the claim. Regarding the fine for error in filing the return: The fine was imposed after GAZT determined the return to be inaccurate, according to the final assessment notice, based on Paragraph (1) of Article (42) of the VAT Law, which states, “Any Person who files an incorrect

Tax Return to GAZT, amends a Tax Return after filing or files any document with GAZT in relation to the Tax due by him which results in an error in the calculation of the Tax amount resulting in an amount that is less than the Tax due shall be liable to a fine equal to (50%) of the value of the difference between the calculated Tax and the Tax due.”. Regarding the fine for late payment: After reviewing Zakat Payer’s return for the contested period, GAZT found it inaccurate, necessitating an amendment to the return and issuance of a final assessment notice, which resulted in a discrepancy in the due tax amount, unpaid by the statutory deadline. Accordingly, a late payment fine was imposed for the months following the tax period under dispute, as previously explained, in accordance with Article (43) of the VAT Law, which states, “Any Person who fails to pay the Tax due during the period specified by the Regulations shall be liable to a fine equal to 5% of the value of the unpaid Tax for each month or part thereof for which the Tax has not been paid.” Third: Requests: Ruling for dismissal of the Case and upholding GAZT’s action as contested in this case, while reserving GAZT’s right to provide additional responses and clarifications. On Thursday, 27/07/1442 AH, corresponding to 11/03/2021, the session was convened via virtual communication in accordance with remote litigation procedures based on Clause No. (2) of Article (15) of Tax Dispute and Violation Committee Procedures, issued by Royal Order No. (26040) dated 21/04/1441 AH, at 3:00 p.m. Upon calling the parties to the Case, attended/ ..., National ID No. (...), as the representative of Plaintiff by Power of Attorney No. (...); ... (Saudi national) with National ID No. (...) as the representative of the General Authority of Zakat and Tax (GAZT), pursuant to Authorization Letter No. (...) dated 19/05/1441 AH issued by the Deputy Governor for Legal Affairs. During this session, the Department asked Plaintiff’s representative about the claim, to which he responded: “In accordance with the statement of claim, I stand by what has been stated therein. When asked for a response, Defendant’s representative replied: In accordance with the statements made in Reply Memorandum No. (1), the Defendant maintains its position to dismiss the Case. Consequently, the Department requested Plaintiff’s representative to submit a response memorandum, attaching the invoices representing the tax-exempt amounts, and to upload them to the General Secretariat of Tax Committees system no later than 21/03/2021. Accordingly, the Department decided to adjourn the hearing of the case to Thursday, 01/04/2021.

On Thursday, 19/08/1442 AH, corresponding to 01/04/2021 AD, the session was conducted via videoconference, following the remote litigation procedures outlined in Clause (2) of Article (15) of Tax Dispute and Violation Committee Procedures, issued by Royal Order No. (26040) dated 21/04/1441 AH. at 1:00 p.m. Upon calling Parties to the Case, plaintiff’s representative/ ..., previously present and identified, attended, as did/ ... (Saudi national) with National ID No. (...) as a representative of Defendant "General Authority of Zakat and Tax" under authorization letter No. (...) dated 04/06/1442 AH, issued by the Deputy Governor for Legal Affairs. During this session, Plaintiff’s representative submitted a memorandum with attached invoices representing tax-exempt amounts. Upon presenting a sample of these invoices to Defendant’s representative, he responded that the invoices did not contain the civil registry numbers of the beneficiaries, which would confirm their status as Saudi nationals. When this was presented to Plaintiff’s representative, he responded that the invoices do not typically include the civil registry numbers of beneficiaries, but he could provide evidence showing that the invoices pertain to students holding Saudi nationality. The Department then asked Defendant’s



representative for the legal basis requiring tax-exempt private educational services providers to include the civil registry number on the invoice. He responded that the regulations do not impose such a requirement but that the presence of the national ID number on the invoice is necessary to verify that the invoices pertain to citizens. The Department further inquired whether Defendant had requested Zakat Payer to provide proof of students' Saudi nationality during the review, to which Defendant's representative requested additional time. The Department found the request for an extension unwarranted and therefore decided to adjourn the session for deliberation, in preparation for issuing a Decision.

Grounds

Having reviewed case documents and conducting examination and with reference to Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and Implementing Regulations thereof issued pursuant to the Minister of Finance Decision No. (1535) of 11/06/1425 AH, as amended, and based on Value Added Tax Law promulgated by Royal Decree No. (M/113) dated 02/11/1438 AH, as amended, and Implementing Regulations thereof issued by ZATCA Board Decision No. (3839) dated 14/12/1438 AH as amended, and Rules of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 11/06/1441 AH, and The Common VAT Agreement of the States of the Gulf Cooperation Council as well as other relevant laws and regulations.

In form, Plaintiff's claim seeks to annul Decision of the General Authority of Zakat and Tax (GAZT) concerning the final assessment, the fine for error in the declaration, and the late payment fine for the tax period related to the third quarter of 2018, based on the VAT Law and Implementing Regulations thereof. This dispute falls within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Decree No. (M/113) dated 2/11/1438 AH. Consideration of such claims requires that an objection be filed within thirty (30) days from the date of notification. From the case documents, it is established that Plaintiff was notified of the Decision on 25/09/2019 and filed the objection on 15/10/2019. Therefore, the claim was submitted within the statutory period and has met the formal requirements, warranting its acceptance in form.

On merits, Regarding Plaintiff's request to annul Defendant's action concerning the final assessment and penalties for the tax period related to the third quarter of 2019, the Department reviewed the Decision issued by Defendant, which imposed VAT on private educational services and associated penalties based on data received from the Saudi Central Bank. Plaintiff contests this Decision on the Grounds that these sales—subjected to tax by Defendant—relate to private educational services provided to citizens, which are exempt from VAT. Plaintiff, as per its commercial registration, operates as a private school offering educational services under a license issued by the Ministry of Education. Upon reviewing Clause (Seventh) of Royal Order No. (A/86) dated 18/04/1439 AH, which states: "The State shall bear VAT on behalf of citizens benefiting from private healthcare services and private education services," and after examining the invoices provided by Plaintiff's representative, the Department found that the Defendant did not make adequate efforts to verify the nationalities of students enrolled at Plaintiff's school. The statement by Defendant's representative that it contacted the Plaintiff to request information was not substantiated in writing or in argument. The statutory requirement of a review and examination phase is intended to compel the Defendant to exercise due diligence and evaluate its Decisions before implementation to ensure their appropriateness and legality, thus providing safeguards to individuals facing an administrative authority with privileges. Furthermore, Defendant's argument that the invoices issued by the Plaintiff did not include the civil registry number for each student does not constitute a valid defense, as the Defendant could verify students' Saudi nationality during the review process. This



aligns with the Royal Order No. (A/86) dated 18/04/1439 AH, which does not require exempt Zakat Payers to include citizens' civil registry numbers on tax invoices but mandates only the verification of such status. This responsibility rests with Defendant, who should request a comprehensive list of national IDs of Saudi students from Zakat Payer during the review process before making its Decision. The Defendant failed to provide evidence of having taken this step in the present case. Accordingly, the Department sees Grounds to annul the contested Decision of Defendant.

Decision

Based on the above, The Department, after unanimous deliberation, decided.

First: Accept the Case in form.

Second: Accept the objection of Plaintiff National ID No. (....) in its capacity as owner of Schools, Commercial Register No. (...), and annul the Decision made by Defendant/ General Authority for Zakat and Tax.

This Decision is issued in the presence of both Parties. The Department has set a period of thirty days for the receipt of a copy of the Decision, with the option to extend the delivery period by an additional thirty days at its discretion. The Parties have the right to appeal within thirty days from the day following the specified date of receipt. If no objection is filed within this period, the Decision becomes final and enforceable upon the expiration of this timeframe.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VSR-2020-7)
Delivered in Appeal No. (V-10554-2019)

Principle No. 275

A taxpayer cannot be judged as acting in bad faith solely for listing the price in the tax invoice as tax-inclusive without itemizing it.

Facts:

On Thursday, 11/04/1442 AH corresponding to 26/11/2020 AD, the First Department to adjudicate Value Added Tax violations and disputes in Dammam, established under the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed under Royal Order No. (17218) dated 27/03/1442 AH, convened to review the aforementioned case. As the case met the prescribed legal requirements, it was submitted to the General Secretariat of Tax Committees under No. (V-10554-2019) dated 14/10/2019 AD.

The facts of this case are summarized as follows: ... (Saudi national) with National ID No. (...) in his capacity as a representative for the Plaintiff under Power of Attorney No. (...), submitted a statement of claim objecting to the imposition of a fine for violating the provisions of the Law or Regulations, amounting to SAR 10,000, for VAT purposes, and requests cancellation of the imposed fine.

Upon presenting the statement of claim to Defendant, they responded as follows: "First: Substantive Defense: 1. The Decision is presumed to be valid and correct, and the burden of proof lies on anyone who claims otherwise. 2. GAZT acted upon a report it received concerning non-compliance with the VAT Law and its Implementing Regulations. During a visit to the Plaintiff's premises and an inspection of an issued invoice (attached), it was found that the Plaintiff collected VAT from the end consumer at a rate lower than the rate specified in Paragraph (1/25) of the Common VAT Agreement of the States of the Gulf Cooperation Council, which states, "The basic rate of VAT of 5% shall apply to the value of the supply or import, unless an exemption or zero rate applies to the same supply under this Agreement." Additionally, Article 2 of the VAT Law states that "Tax shall be imposed on the import and supply of Goods and Services in accordance with the provisions stipulated in the Agreement, the Law and the Regulations."

3. Failure to comply with the statutory provisions constitutes a violation punishable by law, as per Article 45 of the VAT Law, which states, "A fine not exceeding fifty thousand (50,000) riyals shall be imposed on any Person that: 3. violates any other provision of the Law or the Regulations". Accordingly, GAZT requests the honorable committee to rule for the dismissal of the Case.

On Thursday, 11/04/1442 AH, corresponding to 26/11/2020, the session was convened via virtual communication in accordance with remote litigation procedures based on Clause No. (2) of Article (15) of Tax Dispute and Violation Committee Procedures, issued by Royal Order No. (26040) dated 21/04/1441 AH, at 1:00 p.m. to consider the Case filed by Plaintiff against the General Authority of Zakat and Tax (GAZT). Upon calling on



Parties to the Case, attended ... (Saudi national) with National ID No. (...) as representative of Plaintiff by Power of Attorney No. (...); and ... (Saudi national) with National ID No. (...) attended as representative of the General Authority of Zakat and Tax (GAZT), pursuant to Authorization Letter No. (...) On 19/05/1441 AH, issued by the Deputy Governor for Legal Affairs, Plaintiff's representative was asked about his claim and responded according to the statement submitted to the General Secretariat of the Tax Committees, affirming adherence to its content. He added that what occurred was unintentional and was neither tax evasion nor an attempt to evade taxes. The Plaintiff provided evidence of his remittance of the 5% VAT as required by law on the two invoices in question. When the Defendant's representative was asked for his response, he affirmed adherence to the reply memorandum, adding that the Plaintiff had failed to comply with the Tax Law, the Common Agreement, and had violated provisions of the Law. When both parties were asked if they wished to add anything further, they declared they were satisfied with their previous submissions. Accordingly, the Department decided to adjourn the session for deliberation in preparation for issuing the Decision.

Grounds

Having reviewed case documents and conducting examination and with reference to Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and Implementing Regulations thereof issued pursuant to the Minister of Finance Decision No. (1535) of 11/06/1425 AH, as amended, and based on Value Added Tax Law promulgated by Royal Decree No. (M/113) dated 02/11/1438 AH, as amended, and Implementing Regulations thereof issued by ZATCA Board Decision No. (3839) dated 14/12/1438 AH as amended, and Rules of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 11/06/1441 AH, and The Common VAT Agreement of the States of the Gulf Cooperation Council as well as other relevant laws and regulations.

In form, Plaintiff's claim seeks to annul Decision of the General Authority of Zakat and Tax (GAZT) concerning the fine for violating provisions of the Law and Implementing Regulations thereof. This dispute falls within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Decree No. (M/113) dated 2/11/1438 AH. Consideration of such claims requires that an objection be filed within thirty (30) days from the date of notification. From the case documents, it is established that Plaintiff was notified of the Decision on 17/9/2019 and filed the objection on 14/10/2019. Therefore, the claim was submitted within the statutory period and has met the formal requirements, warranting its acceptance in form.

On merits, upon Department's review of the case documents and the responses of both parties after allowing them sufficient time to present their statements, it was determined that the fine of SAR 10,000 for a violation of the provisions of the Law or Regulations was imposed on the Plaintiff due to his issuance of a tax invoice that did not itemize the tax amount separately for each spare part. Instead, the total price including the standard 5% VAT was listed, as recorded in the attached field inspection report and invoices No. (...) and No. (...) which the Plaintiff also did not deny in his response. Instead, he attributed it to an error by the employee, explaining that VAT is calculated and remitted correctly to GAZT according to records and the system. Upon comparing the invoices provided by the Defendant, which were cited in the inspection report No. (...) and No. (...) dated 11/11/2018, with the same invoices issued from the system and submitted by the Plaintiff from the Dammam 4x4 Workshop branch, the amounts in both invoices matched, showing proper system-based calculation. This is further supported by the workshop's November 2018 sales records in the attached Excel file. Additionally, invoice No. (...) cited in the inspection report correctly itemizes the tax for the maintenance service, listing it as SAR 250 with a tax of SAR 12.50, while the other goods in the same invoice included tax-



inclusive prices without itemization. Therefore, after reviewing the basis for the fine imposed by GAZT, which claimed VAT was calculated at a rate lower than 5%, this was found incorrect. The VAT was indeed calculated at the standard 5% rate but only itemized for the maintenance service value. As VAT is calculated correctly in the Plaintiff's records and fully remitted to GAZT, the only error was in the lack of itemization on customer invoices, which has since been corrected. Plaintiff's good faith was evident, as noted in the field inspection report, which mentioned accurate and prompt registration of the VAT amount. Since Article (2) of VAT Law stipulates that "Tax shall be imposed on the import and supply of Goods and Services in accordance with the provisions stipulated in the Agreement, the Law and the Regulations", the Department finds it appropriate to cancel Defendant's Decision regarding the imposed fine. Therefore, based on the above and in accordance with the Unified Agreement, the VAT Law and Implementing Regulations thereof, and Tax Dispute and Violation Committee Procedures, the Decision is hereby rendered.

Decision

First: Accept the Case in form.

Second: Accept Plaintiff's objection on merits, and cancel Defendant's Decision regarding the violation of the Law, with a fine amount of SAR 10,000 SAR.

This Decision is issued in the presence of both parties and is considered final and enforceable in accordance with Article 42 of Tax Dispute and Violation Committee Procedures.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VTR-2021-27)

Delivered in Appeal No. (V-10619-2019)

Principle No. 276

The conditions and requirements for a tax document that can be relied upon for tax deduction must be met, in accordance with the provisions of the Unified Agreement and the Implementing Regulations of VAT Law.

Facts:

On Sunday, (04/06/1442 AH) corresponding to (17/01/2021) AD, the Third Department to adjudicate Value Added Tax violations and disputes in Dammam, established under the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed under Royal Order No. (17218) dated 27/12/1439 AH, convened to review the aforementioned case. As the case met the prescribed legal requirements, it was submitted to the General Secretariat of Tax Committees under No. (V-10619-2019) dated 15/10/2019 AD.

The facts of this case are summarized as follows: the Plaintiff, with National ID No. (...), as owner of Fuel Station, under Commercial Register No. (...), submitted a statement of claim objecting to the final assessment for the tax period of the fourth quarter of 2018. This objection pertains to the item of local sales subject to the standard tax rate and the imposition of fines for errors in the declaration and for late payment in relation to VAT.

Upon presenting the statement of claim to the Defendant, the General Authority of Zakat and Tax (GAZT), it responded as follows: "First: Substantive Defense: (a) Local Sales Subject to the Standard Tax Rate: The Plaintiff submitted their declaration for the tax period relating to the fourth quarter of 2018, reporting an amount of SAR 666,500 under the local sales subject to the standard tax rate. Upon reassessment of the tax period by GAZT, additional undeclared revenue amounting to SAR 625,836.65 was included, based on Plaintiff's point-of-sale data provided to GAZT by the Saudi Arabian Monetary Authority. Consequently, the total amount after GAZT's adjustment was SAR 1,292,336.65. This adjustment is based on Article (14) of the Implementing Regulations of VAT Law, which states that "Without prejudice to Article two of the Law, for the purposes of applying the Agreement and the Law in the Kingdom, the Tax is imposed on all Taxable Supplies of Goods and Services made by a Taxable Person in the Kingdom..." (b) Purchases Subject to the Standard Tax Rate: Regarding the Plaintiff's request to increase the amount of purchases, please note that GAZT did not adjust the purchases subject to the standard tax rate, as it accepted the amount of purchases reported by the Plaintiff. According to Article (49) of the Implementing Regulations of VAT Law, the Plaintiff is entitled to deduct input VAT in a tax period subsequent to the period that includes the supply date, in any period within five calendar years. Based on the above, a fine for error in filing the declaration was imposed, in accordance with Paragraph (1) of Article (42) of the VAT Law, which states: "Any Person who files an incorrect Tax Return to the Authority, amends a Tax Return after filing or files any document with the Authority in



relation to the Tax due by him which results in an error in the calculation of the Tax amount resulting in an amount that is less than the Tax due shall be liable to a fine equal to (50%) of the value of the difference between the calculated Tax and the Tax due." (c) Concerning the Late Payment Fine: Upon reviewing Plaintiff's declaration for the fourth quarter of 2018, GAZT found it to be incorrect, which necessitated an amendment to Plaintiff's tax declaration, as previously stated. This resulted in a discrepancy in the amount of VAT due, which was not paid by the regulatory deadline. Consequently, a late payment fine was imposed for the months following the tax period in question, as explained earlier, in accordance with Article 43 of the VAT Law, which states: "Any Person who fails to pay the Tax due during the period specified by the Regulations shall be liable to a fine equal to 5% of the value of the unpaid Tax for each month or part thereof for which the Tax has not been paid." This concludes Defendant's response.

On Sunday, 04/06/1442 AH, the session was conducted via videoconference, following the remote litigation procedures outlined in Clause (Second) of Article (15) of Tax Dispute and Violation Committee Procedures, issued by Royal Order No. (26040) dated 21/04/1441 AH. Upon calling the parties, the Plaintiff or their representative was not present, while ... with National ID No. (...). GAZT attended as representative of the General Authority of Zakat and Tax (GAZT), pursuant to Authorization Letter No. (...) dated 19/05/1441 AH, issued by the Deputy Governor for Legal Affairs, Defendant's representative was asked for his response. He affirmed adherence to the response memorandum and requested the dismissal of the claim. Accordingly, the Department cleared the room for deliberation and Decision issuance.

Grounds

After reviewing the case documents and conducting a thorough examination, and after referring to the Common VAT Agreement of the States of the Gulf Cooperation Council, ratified by Royal Decree No. (M/51) dated 03/05/1438 AH, the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH and its amendments, as well as the VAT Law issued by Royal Decree No. (M/113) dated 02/11/1438 AH and its amendments, and the Implementing Regulations of the VAT Law issued by a Decision from the Board of Directors of the General Authority of Zakat and Tax (GAZT) No. (3839) dated 14/12/1438 AH and its amendments, along with Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040) dated 11/06/1441 AH, and all related laws and regulations, the Department reviewed the case as follows:

In form, since the Plaintiff seeks to cancel Defendant's Decision concerning the final assessment for the tax period of the fourth quarter of 2018 and imposition of a late payment fine based on the VAT Law and its Implementing Regulations, and since this dispute falls within the jurisdiction of the Committee for Adjudication of Tax Violations and Disputes as per Royal Decree No. (M/113) dated 02/11/1438 AH, and since reviewing such a claim is conditional on filing an objection within thirty (30) days of being informed of it, and as it is evident from the case documents that the Plaintiff was notified of the cancellation of the review request on 12/10/2019 and filed her objection on 15/10/2019, the claim was filed within the legally prescribed period, meeting its procedural requirements. Therefore, the claim is accepted in form.

On merits, by reflecting on Case documents and the responses of both parties after granting them sufficient time to present their statements, it was established to the Department that the Defendant issued its Decision regarding the final assessment for the tax period of the fourth quarter of 2018, based on Article (2) of the VAT Law, which states: "Tax shall be imposed on the import and supply of Goods and Services in accordance with the provisions stipulated in the



Agreement, the Law and the Regulations.” Additionally, Article (14) of the Implementing Regulations of VAT Law states: “Without prejudice to Article two of the Law, for the purposes of applying the Agreement and the Law in the Kingdom, the Tax is imposed on all Taxable Supplies of Goods and Services made by a Taxable Person in the Kingdom in the course of carrying on their Economic Activity or those received by a Taxable Person in the Kingdom in the course of carrying on their Economic Activity where the Reverse Charge Mechanism applies, as well as on the Import of Goods into the Kingdom.” Furthermore, Paragraph (8) of Article (49) of the Implementing Regulations of VAT Law provides: “A deduction of Input Tax may be made by a Taxable Person in a Tax Period subsequent to that Tax Period including the date of Supply, provided that the Taxable Person remains eligible to make such deduction under the other provisions of these Regulations. Input Tax may not be deducted in any period which falls more than five calendar years after the calendar year in which the Supply takes place”. It is noted that the Plaintiff objects to Defendant’s addition of sales from point-of-sale transactions not reported by the Plaintiff for the fourth quarter of 2018, amounting to SAR 625,836.65, which resulted in a VAT liability of SAR 31,291.83 for that quarter. This adjustment was made following a review of the Plaintiff’s data from the Saudi Central Bank (SAMA), bringing the taxable sales to SAR 1,292,336.65 instead of SAR 666,500. The Plaintiff requests consideration for unreported purchases in the VAT return and has submitted receipts from (...) Fuel Station for fuel purchases. Upon reviewing Plaintiff’s objections, it is evident that it did not dispute Defendant’s adjustment regarding sales subject to the standard rate, indicating the validity of the adjustments made to the taxable sales under the standard rate. However, regarding Plaintiff’s submitted purchases, which it requests to be added and deducted for tax purposes, it was found that they consist of receipts that do not meet the criteria and requirements for a tax document that can be relied upon for tax deduction under provisions of the Agreement and the Regulations related to tax deduction. Since the Regulations ensure Plaintiff’s right to deduct unclaimed purchases in subsequent declarations as per Paragraph (8) of Article (49) of the Implementing Regulations of VAT Law, the Department finds Defendant’s adjustment to taxable sales under the standard rate to be valid.

Regarding the second item, the fine of error in the declaration for the fourth quarter of 2018, Paragraph (1) of Article (42) of the VAT Law states: “Any Person who files an incorrect Tax Return to the Authority, amends a Tax Return after filing or files any document with the Authority in relation to the Tax due by him which results in an error in the calculation

of the Tax amount resulting in an amount that is less than the Tax due shall be liable to a fine equal to (50%) of the value of the difference between the calculated Tax and the Tax due”, It is evident that the fine of error in the declaration resulted from Defendant’s amendment of Plaintiff’s declaration for the tax period relating to the fourth quarter of 2018. Since the first item led to the Department’s support for Defendant’s action, as the amendment resulted from the declaration initially calculating the tax due at a rate lower than what is legally required, and given the explanation provided, the error fine is consequently valid. The Plaintiff did not present any documents or evidence of verified purchases to be considered in calculating the error fine, to demonstrate the incorrectness of Defendant’s calculation of the fine. Therefore, the Department finds Defendant’s action in imposing the fine to be valid, in accordance with the provisions of Paragraph (1) of Article (42) of the VAT Law.

Regarding the imposition of the late payment fine, Paragraph (1) of Article (27) of the VAT Law, which concerns the payment of tax, states: “The Regulations shall determine the time periods, terms and conditions for the payment of Net Tax due by a Taxable Person.” Paragraph (1) of Article (59) of the Implementing Regulations of VAT Law, related to tax payment, states: “Payment of Tax due by a Taxable Person in respect of a Tax Period must



be made at the latest by the last day of the month following the end of that Tax Period.” Additionally, Article (43) of the VAT Law states: “Any Person who fails to pay the Tax due during the period specified by the Regulations shall be liable to a fine equal to 5% of the value of the unpaid Tax for each month or part thereof for which the Tax has not been paid”. Since the late payment fine arose from the failure to pay the tax discrepancies as per the assessment, which should have been paid in accordance with Paragraph (1) of Article (59) of the Implementing Regulations and in line with Article (43) of the VAT Law, the Department finds Defendant’s action in imposing the fine to be valid.

Decision

Based on the foregoing, and after deliberation, the Department decided unanimously:

- Dismiss the Case submitted by Plaintiff/....., National ID No. (...), as the owner of (...) Fuel Station, under Commercial Register No. (...).

This Decision is issued in the presence of both parties in accordance with the provisions of Article (56) of the Law of Civil Procedures. The parties have the right to appeal this Decision in accordance with the law within thirty days from the day following the date of receipt. If no objection is made within that period, the Decision becomes final and enforceable.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VR-2020-412)
Delivered in Appeal No. (V-10494-2019)

Principle No. 277

The written certificate provided by the customer to the supplier must include the ability to fully deduct the input VAT on the supply.

Facts:



On Wednesday, (18/03/1442 AH) corresponding to (04/11/2020) AD, the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam, established under the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed under Royal Order No. (65474) dated 23/12/1439 AH, convened to review the Case submitted by Plaintiff/ Against the General Authority of Zakat and Tax (GAZT). As the case met the prescribed legal requirements, it was submitted to the General Secretariat of Tax Committees under No. (V-2019-10494) dated 12/10/2019 AD.

The facts of this case are summarized as follows: the Plaintiff, National ID No. (...), owner of ... Contracting Establishment, with Commercial Register No. (...), submitted a statement of claim objecting to Defendant's Decision to reassess his declaration for the fourth quarter of 2018 and impose VAT of SAR 15,555.64. The Plaintiff requests cancellation of this Decision.

Upon presenting the statement of claim to the Defendant, they responded with a memorandum, stating: "1. The Authority exercised its powers to reassess the fourth quarter of 2018, based on Paragraph (1) of Article (64) of the Implementing Regulations of VAT Law, which states: "The Authority may make an assessment of the VAT obligations of a Person in respect of one or more Tax Periods. The Authority shall provide notification to the Taxable Person when it issues such an assessment". As a result, SAR 383,531.13 was added to the local sales subject to the standard tax rate because the Plaintiff had reported this amount under the zero-rated local sales category without a valid regulatory document. Upon reviewing the written certificate provided by the Plaintiff, it was found not to meet the requirements specified in Paragraph (3) of Article (79) of the Implementing Regulations of VAT Law. 2. Subparagraph (c) of the aforementioned article states: "the Customer provides a written certification to the Supplier that Input Tax is able to be deducted or refunded in full on the Supply." Upon reviewing the written certificate submitted by the Plaintiff, it indicates that the supplier (the Plaintiff) can deduct the VAT amount. However, the certificate shall have been issued by the customer to the supplier, stating that the customer can fully deduct the input VAT on the supply. Furthermore, on 29/09/2019, GAZT requested the Plaintiff to provide a written certificate confirming customer's ability to deduct input VAT, yet the Plaintiff submitted a certificate that did not meet regulatory requirements. Consequently, GAZT rejected his objection due to non-compliance with the regulatory requirements for the written certificate stipulated in Paragraph (3) of Article 79 of the Implementing Regulations of VAT Law. 3. Regarding the written certificate attached



by the Plaintiff in case file, it states that the customer is entitled to deduct VAT at a rate of 0% and does not indicate that the customer can fully deduct the input VAT on the supplied services. Therefore, the written certificate does not meet the requirements of Subparagraph (c) of Paragraph (3) of Article 79 of the Implementing Regulations of VAT Law. Based on the foregoing, GAZT requests the committee to issue a judgment dismissing the claim. On Wednesday, 04/11/2020, the Department held its first session via remote video conference to consider the case filed by ..., National ID No. (...), owner of Contracting Establishment, with Commercial Register No. (...), against the General Authority of Zakat and Tax (GAZT). Upon calling the parties to the case, the Plaintiff appeared in person, and ..., National ID No. (...), attended as a representative of the General Authority of Zakat and Tax under authorization No. (1002/179/1441) issued by GAZT. After confirming the presence of the parties by displaying each party's national ID card in an enlarged window and verifying each party's identity, the Department decided to proceed with the case. The Plaintiff requested cancellation of GAZT's Decision to reassess his tax declaration for the fourth quarter of 2018 and impose VAT of SAR 15,555.64, as detailed in the statement of claim. The Department then asked GAZT's representative for his response to the claims in the statement of claim. He responded by affirming the validity of GAZT's Decision, based on the reasons detailed in the response memorandum. When asked if either party had anything further to add, both parties confirmed that they had nothing additional to present. After discussion, the Department decided to close the hearing and adjourn the session for deliberation and issuance of the Decision.

Grounds

After reviewing the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH, as amended, and Implementing Regulations thereof issued by virtue of the Decision of the Minister of Finance No. (1535) dated 11/06/1425 AH, as amended, and after reviewing Tax Committee Procedures issued by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant laws and regulations.

In form, Plaintiff's claim seeks to annul GAZT's Decision to reassess his tax declaration for the fourth quarter of 2018 and impose VAT in the amount of SAR 15,555.64, based on the VAT Law and its Implementing Regulations. This dispute falls within the jurisdiction of the Committee for Adjudication of Tax Violations and Disputes under Royal Decree No. (M/113) dated 20/11/1438 AH. Review of such a claim is conditional upon filing an objection within thirty (30) days from the date of notification of Defendant's Decision, according to Article 49 of the Law. Case documents confirmed that the Plaintiff was notified of the Decision under objection on 12/10/1920 and filed the objection on 12/10/1920, thus fulfilling the procedural requirements for the claim, which is therefore accepted procedurally.

On merits, upon reviewing case documents and responses from both parties, the Department found that the Defendant issued its Decision to reassess the Plaintiff's tax declaration for the fourth quarter of 2018 and imposed VAT amounting to SAR 15,555.64. The Plaintiff requests acceptance of the written certificate he provided concerning local sales subject to a zero tax rate. However, Paragraph (1) of Article 26 of the VAT Law states: "The Authority may make a Tax assessment of a Taxable Person irrespective of a Tax Return filed by him" and Paragraph (1) of Article 64 of the Implementing Regulations for this Law states: "The Authority may make an assessment of the VAT obligations of a Person in respect of one or more Tax Periods. The Authority shall provide notification to the Taxable Person when it issues such an assessment". As Defendant's Decision under objection is, in essence, an exercise of this authority to reassess Plaintiff's tax declaration for the tax period of the fourth quarter of 2018, the Department concludes that this Decision does not contain any administrative defects warranting its cancellation. As for the written certificate



submitted by the Plaintiff, dated 04/02/1441 AH, the Department found that the certificate did not specify the right to deduct the full input VAT; it only referenced zero-rating and did not indicate the specific services related to the supply. Thus, the certificate does not meet the requirements for a written certificate set forth in Subparagraph (3/c) of Article 79 of the Implementing Regulations of VAT Law. Furthermore, the contract commenced upon site handover on 22/01/1437 AH (corresponding to 04/11/2015), with an implementation period of 18 months, ending on 16/06/2017 according to the written certificate provided by the client (the Ministry of Environment, Water, and Agriculture). The contract was subsequently extended for another period. According to Paragraph (3) of Article 79 of the Implementing Regulations of VAT Law, the contract is considered as zero-rated until its expiration on 16/06/2017, and any extension period is subject to review and updating under the prevailing laws, including the VAT Law, which was known to apply as of 01/01/2018. This implies that contract activities performed from 01/01/2018 onward are subject to VAT. Accordingly, the Department finds Defendant's actions to be valid.

Decision

For the aforementioned Grounds, and after deliberation, the Department unanimously decided as follows:

First: To acceptance the case in form.

Second: On Merits: Dismiss the Case submitted by Plaintiff, owner of Contracting Establishment, Commercial Register No. (...), for cancellation of GAZT's Decision regarding the reassessment and imposition of VAT amounting to SAR 15,555.64 for the fourth quarter of 2018.

Third: This Decision is issued in the presence of both parties, and the Department has set Sunday, 22/11/2020, as the date for delivering a copy of the Decision. This Decision is considered final and enforceable in accordance with Article (42) of Tax Dispute and Violation Committee Procedures.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VA-2021-448)
Delivered in Appeal No. (V-51058-2021)

Principle No. 278

Compliance with regulatory instructions regarding the required format and specified components of statutory invoices for VAT purposes is mandatory.

Facts:

As the facts of this case have been detailed in the Decision under appeal, the Appellate Department refers to it to avoid repetition. Primary Department's Decision ruled as follows:

First: In form:

- Accept Plaintiff's Case in form.

First: On merits:

- Dismiss the Case submitted by Plaintiff holding National ID No. (.....) Owner of Establishment Commercial Register No. (...) to cancel GAZT's Decision regarding the reassessment of the second quarter of 2020 and the imposition of VAT in the amount of SAR 74,496.74, a fine for error in the declaration in the amount of SAR(...), and a late payment fine of SAR (...).

As this Decision was not accepted by the Appellant, it submitted an appeal memorandum to the Appellate Department, objecting to Committee's Decision to reject its objection to GAZT's final assessment notice for the second quarter of 2020. The Appellant objects to Appellee's inclusion of sales that do not pertain to the tax period in question, as well as the itemized purchases, on the Grounds that the Appellant previously submitted relevant supporting documents to the Appellee. Additionally, it provided the Department with proof of having sent these documents via mail. The Appellant concluded its Appeal by requesting acceptance of the Appeal and cancellation of Committee's Decision.

Upon presenting Appellant's statement to the Appellee, the Appellee replied as follows: "1. Regarding the invoices submitted by the Plaintiff, we find that she did not provide official invoices for those purchases; instead, it submitted an Excel sheet as a statement, which is not a valid document in this case, as the file was manually prepared by the Appellant and cannot, under any circumstances, be considered evidence of those purchases. 2. Concerning the sales item, ZATCA subjected amounts to VAT that the Appellant did not disclose in the sales category."

On Tuesday 13/03/1443 AH, corresponding to 19/10/2021 AD, the 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 using modern technological means provided by the General Secretariat." The appellate Department reviewed the Decision of the First Department for Adjudicating VAT Violations and Disputes in Riyadh, which is under appeal, along with the case file and all submitted memorandums and documents. After deliberation and



reviewing the defenses and documents presented by both parties, and in accordance with the provisions of the VAT Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, the record was closed accordingly. The Department decided to continue studying the case and issue a ruling upon further examination and consideration.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and 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.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted procedurally.

On merits, upon Appellate Department's review of case documents and examination of the included attachments and documents, and after considering the memoranda and responses submitted by both parties, it became clear that the Decision issued by the Primary Department ruled to dismiss the claim filed by the Plaintiff/ Torfa bint Mansour Al-Qahtani, against the Zakat, Tax, and Customs Authority (ZATCA). The Appellant objects to rejection of its objection regarding the final assessment result for the second quarter of 2020. However, it is evident that the Decision under appeal concerning the dispute aligns with provisions of the Law and is supported by the reasonable Grounds upon which it was based, providing sufficient justification for its ruling. The issuing Department thoroughly examined the core of the dispute and reached the conclusion expressed in the ruling, and the Appellate Department did not find any Grounds within the arguments presented that would require amendment or commentary on the Decision. Based on the foregoing, the Department concludes to reject the Appeal and uphold the Decision of the Primary Department, as supported by its reasoning.

Decision

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

Second: Reject the Appeal submitted by/ ... holding National ID No. (.....) Owner of Establishment Commercial Register No. (...) and uphold the Decision of the First Department to adjudicate Value Added Tax violations and disputes in Riyadh No. (VR-2021-560).

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