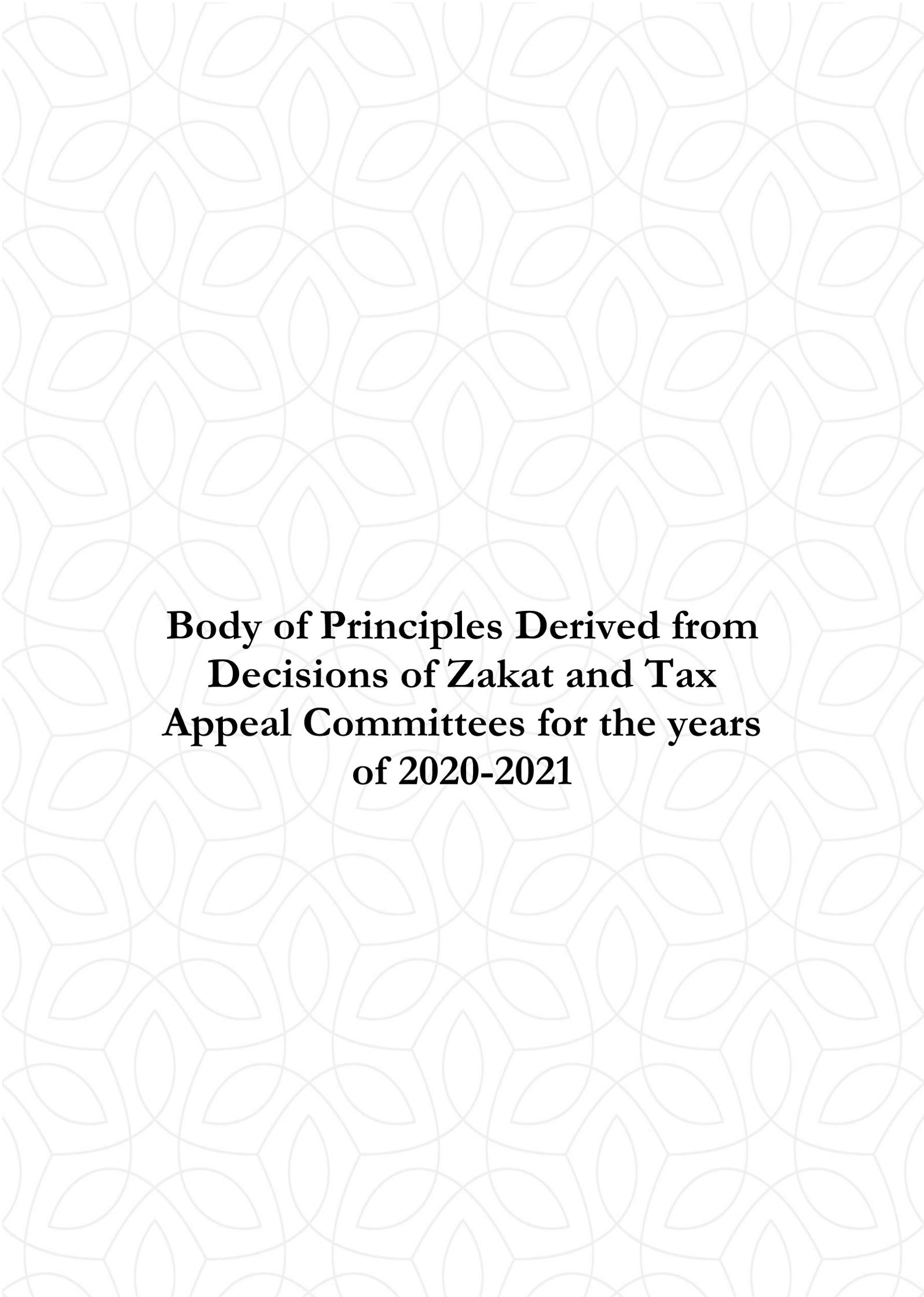




الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

**Body of Principles Derived
from Decisions of Zakat and
Tax Appeal Committees for
the years of
2020-2021**

Volume (1)



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Decisions of Zakat and Tax
Appeal Committees for the years
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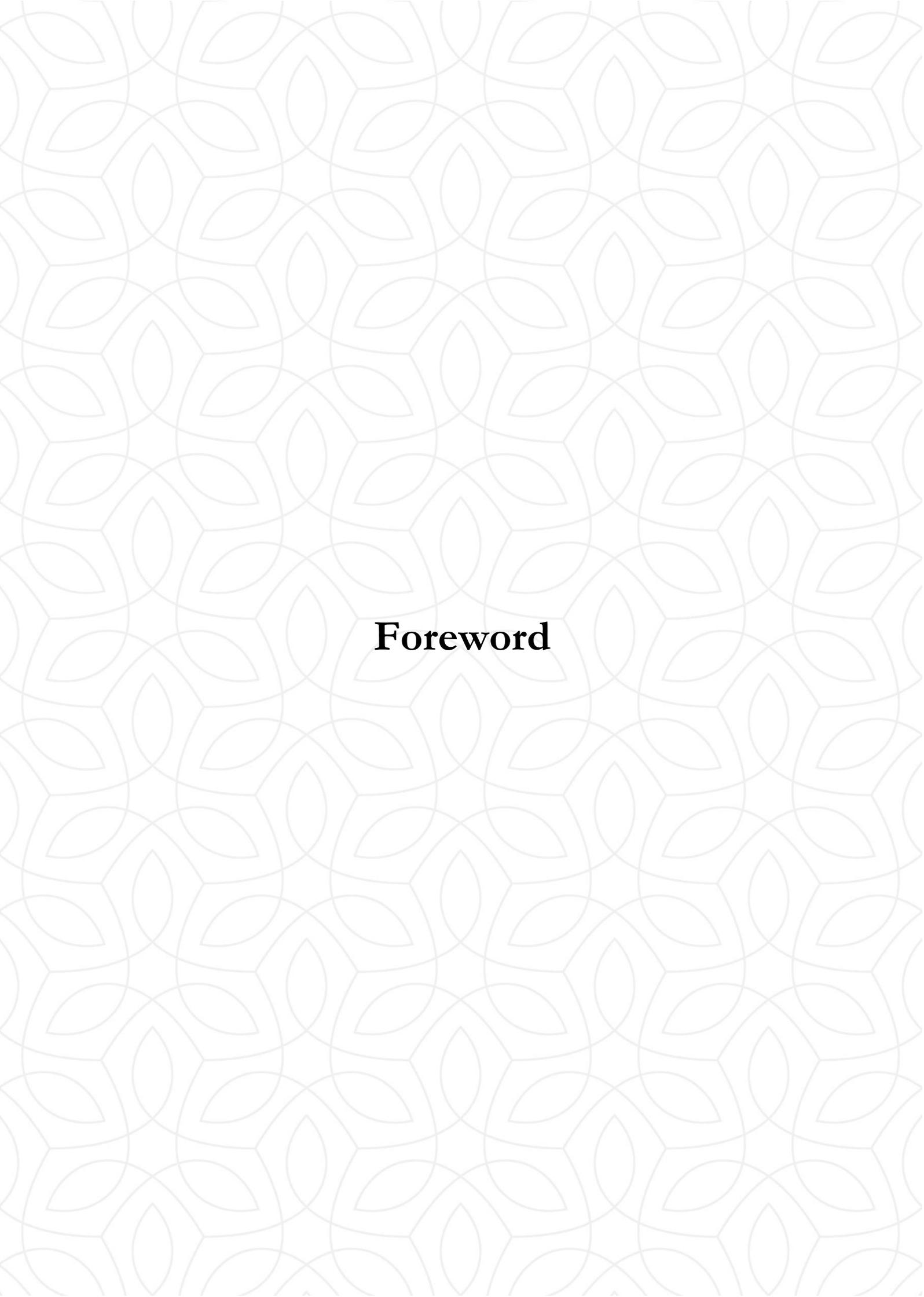
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Decisions of Zakat and Tax
Appeal Committees for the
years of 2020-2021
Volume (1)**

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Foreword



In the Name of Allah, Most Gracious, Most Merciful

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

It goes without saying that the efforts made by the courts and judicial commission, and the rulings and decisions delivered by them are in their entirety a priceless jurisprudential and judicial wealth, and a product that should be taken care of, and in the context of the commercial and industrial revolution that the Kingdom is going through under the Saudi Vision 2030, may zakat and tax controversies have arisen affecting many people. Therefore, and based on the social responsibility of the General Secretariat of the Zakat, Tax and Customs Committees, the Secretariat has sought to create a solid foundation and reference for the committee members, taxpayers and interested parties by publishing these Body of Principles Derived from Decisions of Zakat and Tax Appeal Committees for the years 2020-2021, that serve the zakat and tax sector and contribute to limiting the time taken for deciding upon case. This record clarifies the decisions that the appeal committees have reached, which would have a positive impact on shortening the litigation period, saving efforts for the case examiner, fulfilling the principle of transparency pursued by the General Secretariat, and introducing the practical aspects to the bodies concerned with legal research, in particular the academic, training and other bodies.

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

May Allah's blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions

All praise be to Allah,



Praise be to Allah almighty,

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

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

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

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

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

Secretary General
Abdullah bin Abdulrahman Al-Suhaibani



Work Methodology:

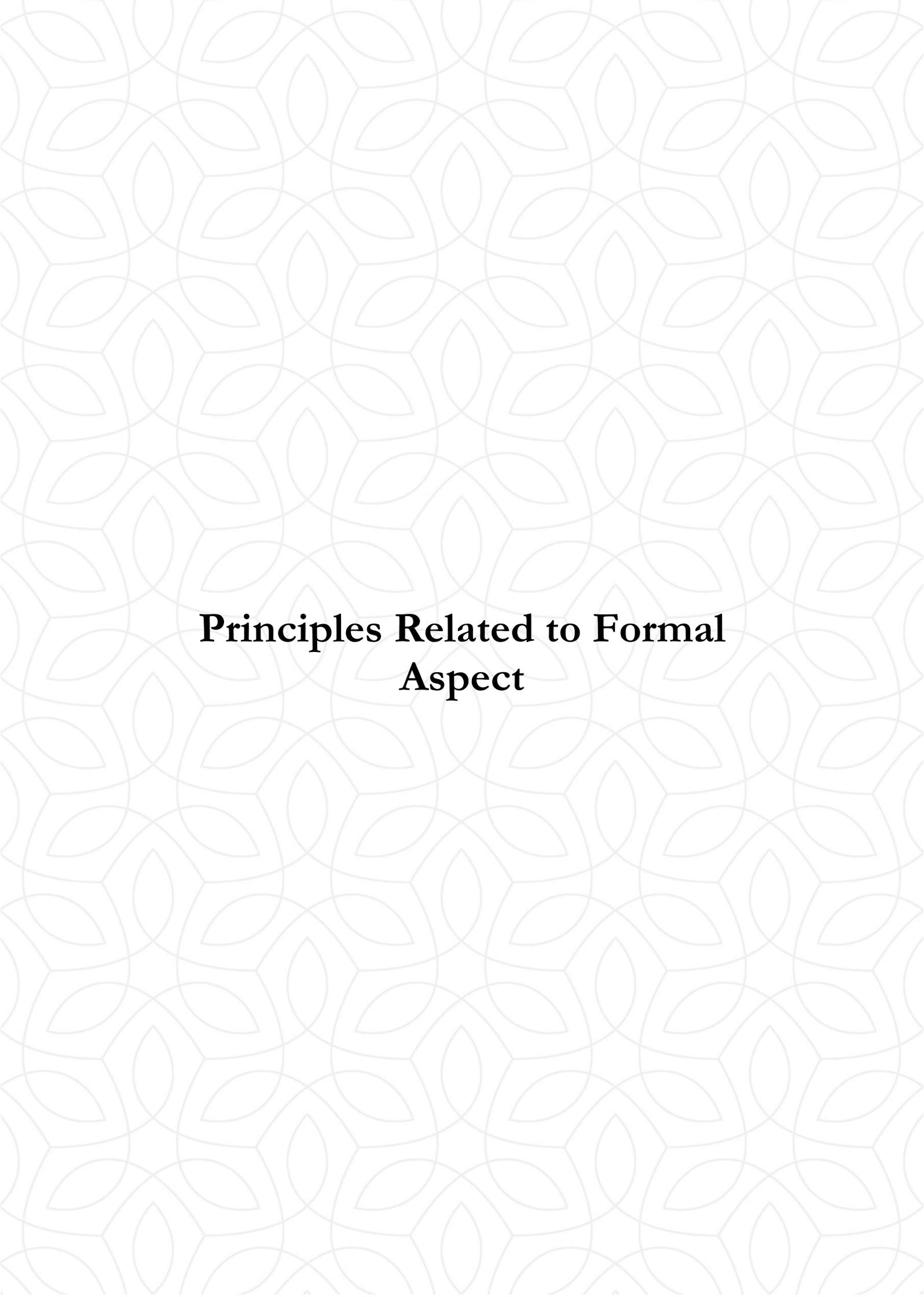
The Secretariat was keen to choose the principles well established by the committees, which have a general character that fits a large number of matters rather than less general matters, that were not also provided for by a legal provision. Duplicate principles were also avoided. For their versatile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

The principles have been arranged as per this classification:

- Formal Principles.
- General Principles.
- Zakat Principles.
 - Zakat Base Components.
 - Deduction from Zakat Base.
 - Zakat Accounting Rules.
- Tax Principles.
 - Income Tax Principles.
 - Withholding Tax Principles.
 - Estimate Assessment
 - Value Added and Excise Goods Principles.
 - Real Estate Transactions Tax:

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

- The final decisions of the Appeal Committees have been carefully inventoried.
- Highlight the principles and the committees opinions while narrating the case proceedings and pleadings of the parties.
- Extract the committees principles usually from the Grounds for decisions, which have a general nature and set out a rule that applies to similar cases.
- Record the number of the appeal decision containing the principle even if the principle was repeated in multiple decisions.
- Merge principles that are similar in wording into one principle while mentioning the decisions in which they were contained.
- Merge principles that are similar in meaning and connotation into one principle, choosing the best, clearest and most general wordings, and adding wordings to each other in some cases.
- Categorize the principles as per the categories mentioned above (Formal Principles, General Principles, Zakat Principles, Tax Principles).
- Arrange the principles in sequential numbering.
- Not to include any principle that is currently provided for in the applicable laws and any new circulars, unless necessary.
- To facilitate review of the appeal decision, the decision of the Appeal Committee from which the principle was extracted has been provided. A number of final decisions have been included for their established nature in highlighting the principle and also the appeal committee decisions have been provided in the analytical part that includes the decision instruments, facts, Grounds and the operative part.
- If there is more than one decision from which the principle was extracted, only one decision is included in addition to reference to the number and details of similar decisions, if any.
- Ensure anonymity of litigants without affecting the decision.



**Principles Related to Formal
Aspect**



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-139)
Delivered in Appeal No. (Z-
33106-2020)

Principle No. 1

Determination of formal aspect of a lawsuit takes precedence over determination of the substance of that lawsuit.

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 pursuant to Royal Order No. (65474) dated 23/12/1439 AH convened at its headquarters in Riyadh, to consider the appeal filed on 14/05/1442 AH corresponding to 29/12/2020 AD, by..... a Saudi National, holder of National ID No., in her capacity as the owner of Printing Corporation, registered under C.R. No., against the Decision No. (IZR-2020-257) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in the case registered under No. (Z-2020-15222), regarding the zakat assessment for the year 1440 AH, filed by the appellant against the General Authority of Zakat and Tax (GAZT). That primary decision ruled to:

Dismiss the Case No.....filed by the Plaintiff..... against the Defendant for not filing an objection to the Defendant's decision during the period prescribed by law.

Dissatisfied with the decision, the Plaintiff filed a statement of appeal, in which she submitted that:

A zakat invoice was issued for the year 1441 / 1442 AH in the amount of SAR 116,954, despite the fact that the company has achieved low profits according to its commercial records and most of these records had losses, and a balance sheet statement will be issued for the year 2020. Accordingly, the Zakat Payer requested to modify the declaration for the period from 25/04/1441 AH to 24/04/1442 AH.

On 15/05/1442 AH, the Defendant ZATCA was contacted through the e-portal of the General Secretariat to provide its response to the appeal, but no response was received within the period given to it.

On Thursday 03/09/1442 AH, the Department decided to hold a 10-day e-hearings session. however, the period ended without receiving any further petitions from the litigants.

On Sunday 10/11/1442 AH, the Department convened, and having reviewed the appeal submissions and considered the case papers and documents contained in the case file, it found that the case was ripe for adjudication.

Grounds

Upon reviewing Case documents and appeal Brief submitted by Zakat Payer, the Department found that conditions for hearing the appeal are fulfilled in form in accordance with conditions



stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law.

On Merits: The Department, having reviewed the case file and documents contained therein and considered the statement of appeal submitted by the Zakat Payer, and after examining the primary decision, found that the subject matter of appeal is related to the Appellant's request to amend the zakat assessment for the year 1440 AH, and having referred to paragraph (1) and paragraph (4) of Article (22) of the Implementing Regulations for Zakat Collection, which stipulates: "1. The Zakat Payer may object to ZATCA's assessment within sixty days from the date of receipt of the assessment letter. The objection must be made in writing indicating the Grounds for objection addressed to the entity that notified the Zakat Payer of the assessment. If the last day of the objection period falls on an official holiday, the objection shall be acceptable if submitted on the first working day immediately following that holiday ... 4. The objection shall not be accepted in form in the following cases: A. If the objection is submitted after the expiry of the prescribed period, or if it is not reasoned". Since the case documents indicate that the Appellant requests in its statement of appeal to modify the zakat assessment for the year 1440 AH issued in the variation letter dated 29/12/2019 AD and the letter was contested by the Zakat Payer on 01/04/2020 AD, thus, the Zakat Payer filed an objection to ZATCA's assessment after expiration of the period prescribed by law; and since the appellant did not dispute the decision regarding its conclusion of not accepting the case in form; and since the claims contained in its statement of appeal is related to the substantive part; and since the determination of the formal aspect of a case takes precedence over the substantial aspect. Therefore, the Department decided by majority to reject the Zakat Payer's appeal and uphold the primary decision.

Decision

Based on the Foregoing, the Department unanimously decided to:

First: Accept in form the Appeal filed by the Zakat Payer, C.R., against the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. IZR-2020-257

Second: On Merits:

A. Dismiss Zakat Payer Appeal by majority and uphold the primary decision as per the Grounds and merits mentioned herein.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-98)
Delivered in Appeal No. (V-
88828-2021)

Principle No. 2

The Tax Dispute and Violation Committee Procedures do not provide for requiring the taxpayers to pay the amount they are disputing.

Facts:

On Saturday 07/03/1442 AH corresponding to 24/10/2020 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 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 25/04/1438 AH, by.....establishment against the decision No. (5) of the year 1438 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh in Case No. (37/9) filed by the appellant against the General Authority of Zakat and Tax (GAZT). The primary decision ruled as follows:

to dismiss the objection in form.

Dissatisfied with the decision, the Appellant filed an appeal the summary of which is as follows. The Zakat Payer challenges the primary decision for dismissing its objection in form arguing that GAZT's letter dated 04/01/1437 AH was not reasoned, which should be held in violation of Clause 10 of the Implementing Regulations for Zakat Collection issued by the Minister of Finance's Decision No. (393) of 06/08/1437 AH, which provided that "If the Zakat Payer disputes the zakat amount contained in the notice addressed to him, he may object to the notice received by him by a reasoned objection sent by registered mail to the entity that notified him within sixty days from the date of receipt of the notice, whereafter, he shall have no right to object). The Appellant also claims that it is established it has submitted its objection to the zakat assessment within the period prescribed by law, which confirms as it alleges the admissibility of objection in form for being filed within the prescribed period. The Appellant also adds that the filing of the objection within the prescribed period guarantees the integrity of Zakat Payer's procedure in terms of form. As on merits, the Appellant argued that the appeal should be accepted for the Grounds stated in the objection. Accordingly, the appealed decision was wrong in this regard, as the objection was submitted within the prescribed period, and its substantive Grounds haven't been considered or examined.

The appellant also added that the Appellant does not have the amount it was charged with, as charging this huge and exaggerated amount will negatively affect the Appellant and all its employees, and will most likely cause it to cease its activity and to be unable to fulfill its obligations towards its employees and those dealing with it, indicating that a key ground for objecting to the zakat assessment included in the decision is that the Appellant requests that the zakat assessment be in accordance with the regular accounts that show the true size of company's business, and properly determine the right zakat assessment under the regular accounts.



The Zakat Payer also argued that the zakat imposed on companies in the Kingdom covers the funds that have been held for a year, according to the Sharia provisions, while in reality, not all funds held by the Appellant are owned by it. So how come that the Appellant be required to pay zakat of such funds without validating their amount and real owner? The Zakat Payer also pointed out to the existence of significant financial losses incurred by it as a result of misappropriation and embezzlement of funds from it in addition to some other incidents.

Accordingly, the Zakat Payer requests that its appeal against Decision No. (5) of 1438 AH be accepted, and that the zakat for the years 1432 to 1435 AH be reassessed on Grounds that valid financial statements had been provided, which he claims should help reach accurate and correct assessment of the zakat it should pay that discharges it from any obligations under Sharia, confirming his complete willingness to submit any financial statements and documents requested from it.

On Wednesday, 09/07/1441 AH, the Department held a session to consider the appeal. Having asked the attorney for the establishment owner if the zakat related to the submitted appeal had been paid, he replied that he had no information about that, and that he would return to his client to ask about that. Having asked GAZT representatives about the statement of the Appellant's attorney that he had no information about the payment of zakat by the Zakat Payer, they replied: Article 23.3 of the Implementing Regulations for Zakat Collection requires that the appeal be rejected in from for non-payment of zakat. Having taken a look at the appeal letter submitted by the Appellant's attorney, we found that the Appellant didn't pay and that this situation is typical to the appeals involving similar cases that brought before the Department.

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 reviewed the case documents and the statement of appeal submitted by the Appellant, the Department held that the conditions for accepting the appeal in form are present according to the relevant laws, regulations and decisions, which means that the appeal is accepted in form for being submitted with a person with a legal capacity and within the period prescribed by law. This fact however is not affected by the Appellee's argument that the appeal should be dismissed in from as the Appellant has not paid the bank guarantee in order for his claims to be heard as required by the Implementing Regulations for Zakat Collection that provided for that condition for hearing the appeal. The Department decided that this request is inadmissible as the Royal Order No. (26040) of 21/04/1441 AH approving the Tax Dispute and Violation Committee Procedures stated in its third clause that the primary and appeal committees shall consider the objections submitted by the concerned parties against the decisions issued by GAZT regarding zakat assessments in accordance with the Tax Dispute and Violation Committee Procedures, and since those rules did not require that the taxpayers pay the amounts imposed on them while objecting to such amounts, which also comes in consistency with the tax law as amended in 1438 AH. Moreover, based on the presumed innocence principle as well as the fact that GAZT is the party that objects to the zakat declaration submitted by the Zakat Payer, and since the aspects of the dispute between the Zakat Payer and GAZT are not within their time frame as per the Implementing Regulation for Zakat Collection of the year 1438, therefore, the request of GAZT to dismiss in form the appeal filed by the Zakat Payer against the primary decision related to the zakat assessment based on its claim that the Zakat Payer has not paid the amount charged to him is inadmissible for these Grounds.

As for the merits of appeal submitted by the Zakat Payer, the Department, having examined the primary decision, found that the Appellant had submitted its objection to the arbitrary assessment decision on 04/01/1437 AH, i.e., within the period prescribed for submitting objections. The dispute between the Zakat Payer and GAZT is, in fact, that the Zakat Payer's is not satisfied with the zakat assessment imposed on him after the zakat declaration submitted by it was rejected.



While the primary department decided not to consider the objection on the basis that the objection submitted on 04/01/1437 AH was not reasoned and that the subsequent objection letter dated 01/05/1437 AH was not registered with GAZT until 27/02/1437 AH, thereby the legal period set for considering the object has expired, the Department has established that the first objection submitted during the legal period was sufficient in itself to explain the reason for the objection, where Appellant requested that its statements included in the zakat declaration be adopted for making the zakat assessment rather than issuing arbitrary assessment. The Department held that the primary department should have opened the door for discussing this issue so that the Zakat Payer could respond to the Grounds and evidence claimed by GAZT that made it disregard the zakat declaration submitted by the Zakat Payer, being the primary basis for assessment that should have been considered rather than recouring to the arbitrary assessment. Therefore, this conclusion is not affected by the argument that the second objection letter was submitted after expiration of the period prescribed for receiving objections.

Considering the pleas and objections included in the Zakat Payer's objection would ensure that the zakat payable by the Zakat Payer be collected on the funds under its possession that are subject to zakat as per the Sharia provisions and zakat regulations. Accordingly, the Department hereby concludes to accept the Appellant's appeal, quash the primary decision of the First Primary Zakat and Tax Objection Committee in Riyadh, remand the case to the First Department for Determination of Income Tax Violations and Disputes in Riyadh to determine it.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept in form the appeal submitted by the Zakat Payer..., C.R. No....., TIN No....., against decision No. (5) of 1438 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

Reverse the primary decision and remand the case to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for the Grounds stated above.

Similar Decisions:

First Appellate Department for Income Tax Violations and Disputes
Decision No. IR-2020-59



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-133)
Delivered in Appeal No. (1571-2018-Z)

Principle No. 3

If a new item emerges during modification of zakat assessment by ZATCA according to a primary decision that was not present at the time of objecting to the original assessment, that new item will not be brought before the appeal committee, but rather settled or objected to with ZATCA.

Facts:

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) 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 in Riyadh to consider the appeal filed on 03/06/1439 AH, by Company, and the appeal filed on 03/03/1439 AH, by GAZT against the decision No. (29) for the year 1438 AH of the Primary Zakat and Tax Objection Committee in Dammam, issued in Case No. (2) filed by the Zakat Payer. The appealed decision ruled to:

First: Accept in form the objection submitted by Company to the zakat assessment made by GAZT for the year 2014.

Second: On Merits:

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

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

First: The appeal of Company against the Primary Department decision to

1. (Uphold GAZT decision for not deducting land contributions from the zakat base for the year 2014): The Appellant 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 the 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 the zakat base.
3. (Not deducting projects under implementation for the year 2014 AD in the amount of SAR 6,539,970, and the 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 GAZT approved the deduction of investments in subsidiaries and associates, and there was no dispute between GAZT and the Company regarding this issue. However, the modified assessment by GAZT 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 GAZT'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: GAZT's Appeal

GAZT 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). GAZT 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 the 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 the 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. GAZT adds that, given the nature of the 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.



GAZT also argued that its view is validated by the presence of sale of one of the investments (bank shares...), which is a response to the 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. GAZT also claimed that the 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 GAZT's procedure. In light of this conflict in the Committee's decisions and in the absence of real Grounds for these changes, GAZT 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 GAZT to respond to the Tax Payer's claims regarding the items subject matter of the appeal. GAZT responded on 26/04/1442 AH with a reply maintaining GAZT'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 GAZT at that time. GAZT also indicated that the item of not deducting investments in fully-owned subsidiaries and associates was not challenged by the Zakat Payer and it is a new claim, which should be dismissed.

The Department also received Zakat Payer's reply regarding GAZT'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 the 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. The Zakat payer also submitted that GAZT'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 GAZT'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 GAZT 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 GAZT 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

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 were 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 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. (Uphold GAZT decision for not deducting land contributions from the 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 the 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 the 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

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept appeal filed by Zakat Payer (... Company), C.R. No. (...), and appeal filed by ZATCA against Primary Committee for Zakat and Tax Objections in Dammam Decision No. (29) of 1438 AH.

Second: On Merits:

a. As for appeal filed by ... Company:

1. Accept appeal filed by Zakat Payer regarding the item of upholding ZATCA in disallowing deduction of 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 disallowing deduction of 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 (Disallowing 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:

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 in Riyadh

Decision No. (IR-2020-81)
Delivered in Appeal No. (Z-
1640-2018)

Principle No. 4

The primary condition for accepting objection in form is being filed within the statutory period. In addition, failure to meet some formal requirements for objection does not undermine objection acceptance as long as such requirements are corrected before ZATCA reviews the objection.

Facts:

First: Dismiss objection filed by Zakat Payer (...) to zakat assessment for years from 2001 to 2008 in form as stated in decision Grounds.

Second: On Merits:

Since the Committee did not accept the objection in form. Therefore, the Committee may not discuss the objection on merits.

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

Appellant Company's appeal involves claim to overturn Primary Committee's decision subject matter of appeal that dismissed Company's objection to zakat assessment, subject matter of objection, in form due to the fact that Company's objection filed to ZATCA (Appellee) within the statutory period for objection was not reasoned. Thereupon, Appellant Company requests that its objection is accepted in form in accordance with Ministerial Resolution No. (32/961) dated 22/04/1418 AH on the ground that the objection No. (1997) dated 24/10/1431 AH filed to ZATCA, in which the Company objected to assessment value, is considered as a reason for objection to the entire items. (Since the General Secretariat addressed Appellant Company on 30/06/2020 AD via e-mail to open pleadings and submit any additional documents or satisfy with the submitted ones, but the period determined for response expired without receiving any response).

Since the Department did not receive an answer by ZATCA to Zakat Payer Company's appeal; Since the appeal shall bring the case back to its original state existing at the time of consideration when hearing appeal. Therefore, the statements and answers of both parties included in primary decision regarding subject matter of appeal shall be considered. Since the primary decision included a reference that assessment for Zakat Payer was made by Letter No. (34/8168/3) dated 27/08/1431 AH, while the objection was received under No. (1997) on 24/10/1431, and the supplementary objection was received under No. (2215) on 04/12/1431 AH. Thereupon, ZATCA deems that the primary objection is not accepted in form due to the fact that it was not reasoned despite of being filed within the statutory period, and that the supplementary objection is not accepted in form for being filed after expiry of the statutory period. In addition, such orientation was affirmed in several decisions, including Decision No. (1551) of 1437 AH.

Having taken cognizance of the statement of appeal and documents included in Case file, the Department 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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On Merits: Having taken cognizance of Case file, documents included therein and statement of appeal. Since after considering the filed appeal, the Department found that the appeal involves Appellant Company's request to have its objection heard regarding the items subject matter of objection before ZATCA after Primary Committee's decision was rendered to dismiss its objection in form, as the objection was filed within the statutory period but without being reasoned. Since the Department found that the Company submitted its primary objection letter within the time-limit, and also submitted its supplementary objection a few days after expiry of the statutory period. Since Appellant Company argued that the primary objection letter was sufficient to articulate the full extent of its objections regarding the variances for each year of the contested assessment for years from 2001 to 2008 regarding all contested items. Since it did not appear from Case documents that Zakat Payer received zakat assessment by a document recording the date of receipt, it was only inferred that the date of calculating period was based on the issuance of assessment on 27/08/1431 AH. Since the issuance of ZATCA assessment on that date does not necessarily mean that Zakat Payer was notified in the same date of assessment. Since the period between filing supplementary objection and expiry of the statutory period was not long, assuming that Zakat Payer received assessment letter in the date of issuance by ZATCA, and after considering substance of Appellant Company's objection as previously outlined. Since reviewing arguments and objections regarding the item subject matter of appeal ensures that zakat was collected from Zakat Payer in accordance with Sharia rules applicable when considering Company's objection to zakat assessment subject matter of objection. Since it was found from such circumstance that accompanied determining that date in which Appellant Company received zakat assessment and filed an objection to such assessment afterward, that there is uncertainty whether it received the assessment in the same day in which ZATCA issued the assessment. Since uncertainty is interpreted in favor of Zakat Payer, and since there is no credible document in Case file confirming that Zakat Payer was notified of the assessment in issuance date, this confirms that the objection was filed within the statutory period. In addition, the fact that the reasons for objection were provided after the statutory period does not affect the matter, as the crucial factor is the date in which the objection was filed. Therefore, the Department is convinced to accept Zakat Payer Company's objection and refer the subject matter of Company's objection to zakat assessment, subject matter of the dispute, to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration and adjudication on Zakat Payer Company's reasons for objection, as outlined in its objection memorandum submitted by Zakat Payer in this regard. In addition, the fact that the primary objection filed within the statutory period was not reasoned does not negate the fact that the primary requirement for accepting the objection in form is its submission within the statutory period. Moreover, failure to meet some formal requirements for objection is not material as long as such requirements are corrected before ZATCA began reviewing objection. Furthermore, it is apparent to the Department that ZATCA was made aware of reasons for objection before it began reviewing objection. Therefore, the Department concludes that the decision rendered by the Second Primary Committee for Zakat and Tax Objections in Jeddah shall be overturned.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:



First: Accept appeal in form filed by Zakat Payer (... Company), C. R. No. (...), against Decision No. (4) of 1438 AH rendered by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

Accept appeal filed by Zakat Payer, overturn Primary Committee's decision and remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Jeddah to adjudicate on merits of the objection to zakat assessment in view of reasons for objection to such assessment for years from 2001 to 2008.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-91)
Delivered in Appeal No. (Z-1589-2018)

Principle No. 5

The capacity of Company's representative during the ongoing dispute with ZATCA shall be ensured, because this matter is one of the primary procedural issues necessary before delving into details of the objection.

Facts

First: Accept the objection in form filed by (...) Company to zakat assessment for years from 2010 to 2014.

Second: On Merits:

Uphold ZATCA in disallowing deduction of carried forward losses in full from Zakat Payer's zakat base, while adjusting balance deducted as zakat provision to avoid double payment of zakat as calculated by the Committee in decision Grounds.

Dissatisfied with this decision, (... Company) submitted a statement of claim to the Department on 29/05/1439 AH, including reference that a decision was made on liquidating Company in 2010, and that the Company is the process of liquidation. In addition, this implies that the losses shown by the Company are actual losses resulting in liquidation resolution made by the shareholders. As a result, it necessitates taking into account Company's accounts to avoid disrupting liquidation process. In addition, the proper processing requires acknowledging state of losses as reflected in Company's book balances at the time of liquidation resolution, due to the fact that there is not an activity in which the Company engaged after its licenses and commercial registration were cancelled.

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 the statement of appeal submitted by Appellant Company, the Department, after reviewing appeal filed against the decision dated 29/05/1439 AH, found that its content did not conclude with a clear statement of the name and capacity of the person who submitted the appeal, whether that person was the liquidator or someone else. Having taken cognizance of primary decision subject matter of appeal, the Department found that the Primary Committee that rendered the decision did not investigate a procedural issue related to the validity of representation of the Company, which was in the process of liquidation, as such decision established that the Committee considered the subject matter of objection in the presence of the two shareholders, ... and ..., and during the recounting of their statements, the two partners confirmed before the Primary Committee that the Company had appointed a liquidator on 16/07/1433 AH, and that the appointment had been officially announced. Since it is established under provisions of Companies Law (Article 207) that the liquidator is responsible for representing the company before the courts and third parties. Since the two shareholders' statements during



hearing of Company's objection before the Primary Committee confirmed that a liquidator had already been appointed for the Company. Since the primary decision did not verify the capacity of the person representing Company during its liquidation process, which is necessary to ensure the validity of proceedings for the person authorized to represent the Company in the dispute with ZATCA. Since this matter is one of the primary procedural issues that must be addressed before delving into the details of objection. Therefore, the Department overturns the primary decision and refer the objection to the Department for Determination of Tax Violations and Disputes in Jeddah for reconsideration after notifying Company's liquidator of subject matter of Company's objection and that the Primary Department verifies the validity of liquidator's representation of the Company when considering subject matter of the objection.

Decision

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

Overturn the primary decision, reconsider the subject matter of objection before the Department for Determination of Income Tax Violations and Disputes in Jeddah to consider the objection in presence of the person having capacity to represent the Company in liquidation process according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-409)
Delivered in Appeal No. (Z-
16530-2020)

Principle No. 6

The qualitative and territorial jurisdiction issues are among the primary issues that shall be initially considered before considering subject matter of the dispute.

Facts:

To consider the appeal filed on .../.../... AH corresponding to .../.../... AD by (...), holder of National ID No. (...), in his capacity as Manager of Appellant Company under Company's memorandum of association, against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-29) rendered in Case No. (Z-9574-2019) regarding zakat assessment for 2014 filed by Appellant against ZATCA. Primary Department's decision states:

Dismiss the Case filed by Plaintiff (... Company), C.R. No. (...), in form due to expiry of the statutory period.

Dissatisfied with this decision, Zakat Payer (... Company) submitted a statement of appeal summarized as follows:

Zakat Payer objects to Primary Department's decision, claiming that the objection was filed in the last day of the deadline for filing objection before ZATCA. With regard to failure of Zakat Payer's representative to appear before the Primary Department, Company Headquarters is located in Dammam, while the Primary Department in Jeddah considered and adjudicated the Case, which falls beyond its territorial jurisdiction. Thereupon, Zakat Payer requests overturning Primary Department's decision for the aforementioned reasons.

Since the Department decided opening of pleadings, ZATCA submitted an answer dated 27/11/1441 AH corresponding to 17/07/2020 AD wherein replies to Zakat Payer's appeal. The answer is summed up in that ZATCA reiterates its previous position submitted before Primary Department. Moreover, Zakat Payer's arguments do not differ from what previously submitted, to which ZATCA has already answered at that time. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

Grounds

In Form: Having taken cognizance of Zakat Payer's appeal, and since the Department found that the appeal was filed after lapse of the time-limit. However, the appeal was filed within the period of exceptional circumstances related to Coronavirus Pandemic, which resulted in restriction on movement of individuals and hindered them from conducting their activities as usual. Since the time-limits for filing appeals and objections to judicial rulings are typically calculated under normal unexceptional circumstances. Given that Coronavirus Pandemic is considered a disaster and an extraordinary and unforeseen event as an unforeseen public emergency, it imposed widespread



precautionary measures, including curfews, restrictions on movement within and between cities and neighborhoods in some areas, and suspension of attendance at workplaces in government agencies. This led to disruption of many accounting and legal offices specialized in filing appeals on judicial decisions related to zakat and tax matters on behalf of Zakat Payers. As the effects of this pandemic are beyond the control of Appellant, and could neither be anticipated nor prevented, and were not caused by negligence or failure, the removal of harm resulting from the missed opportunity to appeal judicial rulings due to such widespread emergencies align with the principles of Islamic law and jurisprudence, such as the rule of "No harm and no reciprocating harm," and that "harm must be removed." Accordingly, the Department unanimously decided to accept the appeal in form.

On Merits: Since Zakat Payer's appeal involves argument that there is no valid ground for Primary Department to dismiss its objection in form due to the fact that the appeal was filed by a party having capacity and within the statutory period. On the other hand, ZATCA argued that its procedure is valid and correct, and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Since the Department found that the Primary Department that considered Zakat Payer's objection did not observe that the subject matter of dispute does not fall within its territorial jurisdiction. Since considering qualitative and territorial jurisdiction issues are among the primary issues that shall be initially discussed before considering subject matter of the dispute. Since Zakat Payer provided this Department with evidence on submitting an application to the General Secretariat before holding the hearing session before the Primary Department to change venue of considering Case to be before the First Department for Determination of Income Tax Violations and Disputes in Dammam. Having taken cognizance of the decision, subject matter of appeal, the Department found that Zakat Payer Company's Headquarters is located in Dammam, while the Department that considered the dispute is the First Department for Determination of Income Tax Violations and Disputes in Jeddah. Since the Primary Department that rendered the decision did not state the reason for adjudicating on subject matter of the dispute despite the fact that the Primary Department does not have territorial jurisdiction over hearing the dispute, assuming that the dispute should be referred to the jurisdiction of the Department for Determination of Income Tax Violations and Disputes in Dammam. Since the decision subject matter of appeal did not include a statement of Primary Department's ground for considering the dispute. Therefore, the Department overturns Primary Department's decision, and refer Zakat Payer's objection to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration.

Decision

First: Accept Appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against First Department for Determination Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-29) rendered in Case No. (Z-9574-2019) regarding zakat assessment for 2014.

Second: On Merits:

Accept appeal filed by Zakat Payer and refer the Case to the First Department for Determination of Income Tax Violations and Disputes in Dammam for consideration according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 7

The instructions for levying zakat are based on setting a statutory period of five years for making zakat assessment from the deadline for filing Zakat Payer's declaration for each year. This period has been established to ensure stability of transactions and prevent instability of Zakat Payers' financial positions without a defined timeframe, thus providing assurance of their financial stability when dealing with ZATCA.

Facts:

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 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 Head Office in Riyadh to consider the appeal filed on 04/05/1439 AH by ... Company, and ZATCA appeal filed on 13/04/1439 AH against First Primary Department for Zakat and Tax Objections in Riyadh Decision No. (5) of 1439 AH rendered in Case No. (12/38) 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 2005 to 2012.

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, including the following items:

1. ZATCA 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 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 such 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.

Having taken cognizance of appeal memorandums and documents included in Case file, the Department 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 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 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 statements and answers included in primary decision regarding subject matter of appeal shall be considered.

As for 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 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 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 the 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 years in question 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 years in question. Since 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

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept appeal filed by Zakat Payer (... Company), and appeal filed by ZATCA against First Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (5) of 1438 AH.
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.
4. 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.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-53)
Delivered in Appeal No. (IW-
1674-2018)

Principle No. 8

Payment shall be limited to the items that are not contested in tax assessment for the purposes of formal acceptance of objection to amounts payable by Zakat Payer based on its tax return. This shall not include withholding tax amounts if such amounts are not subject to objection by Zakat Payer.

Facts:

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 20/04/1438 AH by ... Company Branch against Second Primary Committee for Zakat and Tax Objections Decision No. (3) of 1438 AH of rendered in the Case of tax assessment for 2009 and 2010 filed by Appellant against ZATCA. The primary decision ruled as follows:

First: In from:

Dismiss Zakat Payer's objection in form according to Grounds of the decision.

Second: On Merits:

Dismiss the objection on merits due the fact of being dismissed in form.

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

Zakat Payer objects to the primary decision that dismissed Zakat Payer's objection in form, then dismissing it on merits. In addition, Zakat Payer asserts that Primary Committee's reasoning, which based its ruling on Zakat Payer's failure to pay uncontested tax amounts. In addition, Zakat Payer states that the objection was filed to ZATCA within the statutory period. However, Zakat Payer was not informed to pay the amounts uncontested by ZATCA when receiving objection. Moreover, the objection filing date was within the date of applying ERAD System as ZATCA system. Thereupon, it was not clear for Zakat Payer how to pay the uncontested amounts, as Zakat Payer did not receive the numbers of invoices of paying uncontested amounts, but Zakat Payer only received a notification of issuing an invoice that is empty from the due amounts and invoices. On 17/11/2015 AD, Company's Board of Directors resolved liquidation of the Company in the Kingdom. In addition, ZATCA was informed of completing liquidation procedures. Furthermore, Zakat Payer did not receive the result of objection from ZATCA regarding the fact that the objection was dismissed in form, but rather Zakat Payer was notified by the Committee for Zakat and Tax Objections of such dismissal. Since the uncontested amounts do not exceed SAR 30,000. Therefore, we hope accepting objection in form for being filed within the statutory period, then considering the contested items on merits.

On 21/03/1442 corresponding to 06/11/2020, the Department received an answer from ZATCA wherein replies to claims included in Appellant's memorandum, by reiterating its previous position



presented before Primary Committee. In addition, ZATCA referred to the rulings that support its stance. Moreover, ZATCA stated that Appellant's arguments set out in its statement of appeal do not differ from what previously submitted before the Primary Committee, to which ZATCA has already answered at that time. In addition, ZATCA requests the Department to verify validity of Company's appeal in form. Furthermore, the Department addressed Zakat Payer on 20/03/1442 AH corresponding to 05/11/2020 AD to submit any additional documents to the appeal filed by Zakat Payer within the period given by the Department or satisfy with the earlier submissions, but the period lapsed without submitting any additional submissions to the statement of appeal. In its session held on 13/07/1442 AH corresponding to 25/02/2021 AD, the Department decided holding 10-day e-hearing. Therefore, ZATCA submitted several documents that do not have a relation to subject matter of the appeal, but Zakat Payer did not submit any addition to what set out in the statement of appeal.

The Department, during its session held on 25/07/1442 AH corresponding to 08/03/2021 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

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

As for appeal filed by Zakat Payer regarding dismissal of its Case in form, it turns out that the appeal involves claim that Zakat Payer petitions that its objection is accepted in form and considered on merits, in addition to amending tax assessment. Zakat Payer argues that the objection was filed to ZATCA within the statutory period, but Zakat Payer was not notified by ZATCA of paying uncontested amounts. On the other hand, ZATCA argues that Zakat Payer received the assessment letter on 25/02/1437 AH. In addition, Zakat Payer filed its objection on 25/04/1437 AH. Accordingly, the objection is filed within the statutory period, but the objection is dismissed in form due to Zakat Payer's failure to pay tax due on the uncontested items in accordance with provisions of Paragraph (B) of Article (66) of Income Tax Law. Having taken cognizance of subject matter of the dispute, the Department found that the unpaid amount related to the uncontested items relates to the withholding tax, and does not relate to income tax, as objection and appeal requirements stipulated by Income Tax Law relate to returns of income taxpayer. Accordingly, Zakat Payer's objection was dismissed in form due to failure to pay the withholding tax does not have an excuse stipulated by the law. Thereupon, the Department concludes to accept Zakat Payer's appeal regarding petition for accepting its objection in form before the Primary Committee. Therefore, this Department overturns the primary decision and refer the Case to the Third Department for Determination of Income Tax Violations and Disputes in Riyadh for adjudication on merits.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept the appeal filed by Zakat Payer (... Branch in ...), C.R. No. (...), against Third Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (3) of 1438 AH.

Second: On Merits: Accept appeal filed by Zakat Payer regarding its petition for accepting its objection in form before Primary Committee, overturn primary decision and refer the Case to the Third Department for Determination of Income Tax Disputes and Violations in Riyadh for consideration on merits.



Appeal

Appeal Committee

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

Decision No. (VA-2021-378)
Delivered in Appeal No. (V-55435-2021)

Principle No. 9

If it is proven by documents that Zakat Payer ceased engaging in business activity prior to registering in VAT system, its objection shall be accepted in form. In addition, the competent primary departments shall consider the case, even if the objection is filed after expiry of the statutory period.

Facts:

On Tuesday, 07/02/1443 AH corresponding to 14/09/2021 AD, the First Appellate Department for Value Added and Excise 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 19/09/2021 AD by (...), holder of National ID No. (...), in his capacity as Owner of ... Enterprise, C.R. No. (...) to First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh Decision No. (VJ-2020-828) rendered in Case filed by Appellant against Appellee.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Since Primary Department's decision ruled as follows:

First: In Form:

- Dismiss the Case in form filed by ..., holder of National ID No. (...), due to expiry of the statutory period.

Dissatisfied with this decision, Appellant submitted to Appellate Department a statement of appeal that included objection to Primary Department's decision that dismissed the Case in form. Appellant petitions overturning Primary Department's decision under the pretense that Enterprise's main commercial register was cancelled on 16/11/1439 AH corresponding to 29/07/2018 AD, but TIN was not closed, assuming that TIN would be closed after cancellation. In addition, Appellant concluded by petitioning that the appeal is accepted, and that Primary Department's decision is overturned.

On Tuesday, 07/02/1443 AH corresponding to 14/09/2021 AD, the Appellate Department held its session to consider the appeal filed. In addition, First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah Decision No. (VJ-2020-828) was reviewed, as well as Case file and all memorandums and documents attached. Having taken cognizance of arguments and documents submitted by both parties, and in accordance with provisions of Value Added Tax Law, its Implementing Regulations and Tax Dispute and Violation Committee Procedures, the



report has been concluded. In addition, the Department decided completing consideration of the Case after taking cognizance thereof.

Having taken cognizance of Case file, documents included therein, memorandums and replies submitted by both parties, the Department found that the Case has become ripe for adjudication.

Grounds



Based on 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, and having perused Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040) dated 21/04/1441 AH. Since the appeal was filed by a party having capacity and within the statutory period and fulfilled its statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee, which necessitates that the appeal is accepted in form.

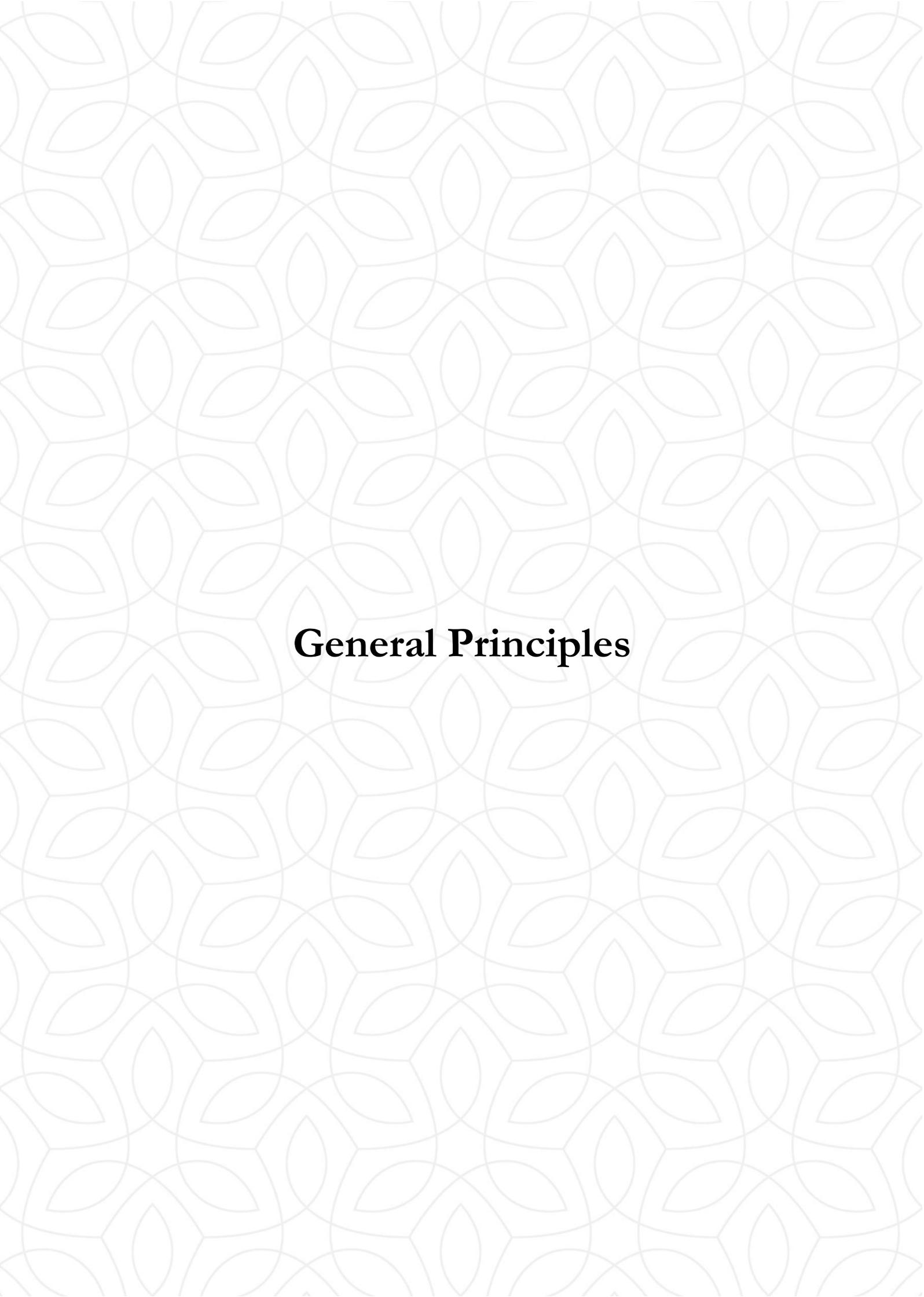
On Merits: Having taken cognizance of Case file, documents included therein, memorandums and replies submitted by both parties, the Appellate Department found that Primary Department's decision has dismissed the Case in form due to expiry of statutory period for objection. Since Appellant objects to Primary Department's decision under the pretense that Enterprise's main commercial register was cancelled on 29/07/2017 AD, but TIN was not closed. Since Primary Department's decision, subject matter of appeal, is based on expiry of the statutory period for grievance against fine for delay in registration issued on 23/01/2020 AD. Since Appellant filed its Case before the General Secretariat of Tax Committees on 25/11/2020 AD. Since it is established from documents that Appellant ceased engaging in business activity prior to registration in VAT system. Therefore, the Appellate Department accepts the appeal and overturns Primary Department's decision.

Decision

Therefore, and after legal deliberation, the Department unanimously decided the following:

First: Accept the appeal in form filed by ..., holder of National ID No. (...), due to the fact that it has been filed within the statutory period.

Second: Accept the appeal in form filed by ..., holder of National ID No. (...), overturn First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah Decision No. (VJ-2020-828) and remand the Case for consideration on merits.



General Principles



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 10

The provision outlines a liability for the enterprise that is uncertain in its value and/or due date. As for expenses of leave, tickets and remuneration, such expenses essentially outline ordinary and necessary expenses for the business activity and shall be deducted from profit to come up with the profit subject to zakat.

Facts:

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 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 19/09//1439 AH corresponding to 04/06/2018 AD by ... against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (23) of 1439 AH rendered in Case No. (Z-2018-1467) filed by Appellant against ZATCA, in which the Primary Decision ruled as follows: First: Accept the appeal in form filed by Zakat Payer (...) regarding zakat assessment for years from 2008 to 2013.

Second: On Merits:

a. Adjustments to Net Profit:

1. Dismiss Zakat Payer's objection to (Provisions) item.
2. Resolution of dispute over (Bad Debts) item.
3. Resolution of dispute over (Gifts for 2012 and 2013) item.
4. Resolution of dispute over (Undisclosed Contracts for 2013) item.

b. Amendments to Zakat Base:

1. Dismiss Zakat Payer's objection to (Provisions) item.
2. Resolution of dispute over (Accounts Payable and Accrued Expenses) item.
3. Resolution of dispute over (Assets) item.
4. Resolution of dispute over (Increased Value of Contract Invoices) item.

Dissatisfied with this decision regarding items for which Zakat Payer's objection was dismissed, Plaintiff (...) submitted to the Department a statement of appeal summarized as follows:

1. As for (Adding Back Leave, Ticket and Remuneration Expenses to Adjusted Profit and Calculating Zakat on Opening Balances for years from 2008 to 2013) item, Zakat Payer's belief differs from Primary Committee's decision that upheld ZATCA stance that such opening balances are provisions of potential and uncertain expenses, which necessities calculating opening balance within zakat base, considering that Zakat Payer considers such balances outline confirmed expenses that will be incurred by Zakat Payer who uses accrual method for their recognition, rather than cash method. Therefore, such expenses shall be calculated as



expenses aligned with Zakat Payer's liabilities according to work regulations applicable in the Kingdom. In addition, such expenses shall be handled according to accounting rules applicable in the Kingdom. Accordingly, such expenses outline costs incurred by Zakat Payer and shall be deductible as stipulated by the method for calculating zakat, as there is no future possibility of non-payment. This is based on what Appellant mentioned in defending his position. ZATCA reply to Zakat Payer's statement in its memorandum by affirming its adoption of ZATCA stance through its memorandum submitted to the Primary Committee that rendered the decision regarding the contested items, confirming that Committee's decision regarding Zakat Payer's appeal affirmed the validity of ZATCA procedure in handling the contested item. Furthermore, Appellant did not submit any new arguments that differ from such arguments previously submitted to the Primary Committee that rendered the decision.

2. As for the contested item regarding (Adding Back Project Cost Provision to Zakat Base) item: Zakat Payer's attorney argues that Office Bylaws stipulates when project completion rate exceeds 90%, and when the value of such projects does not exceed SAR 5,000,000, the remaining expenses shall be recognized within the operating results of the year, along with corresponding revenues for the same year. In addition, such expenses are incurred for projects. However, all supporting documents for recognizing such expenses are not provided. Therefore, the Office applies its accounting policy in handling revenues, since its business activity is based on providing engineering consulting services in order to decrease the likelihood of errors in recording profits and losses at year-end, in line with the principle of matching expenses with revenues for the same period and accounting consistency principle. In addition, Zakat Payer's attorney pointed out that ZATCA approach to subjecting allocation of such project costs to zakat without deducting the corresponding revenues would result in double payment of zakat. To avoid this, ZATCA should deduct the revenues already subjected to zakat in relation to such costs. Accordingly, the recording of expenses of project cost provision and the corresponding revenues will be reflected in Office's net accounting profit, which ensures the payment of zakat on such projects.

ZATCA replies to Zakat Payer's arguments stated in its memorandums, by reaffirming adoption of ZATCA stance through its memorandums submitted to the Primary Committee that rendered the decision regarding the contested items. In addition, Primary Committee's decision regarding the item appealed by Zakat Payer affirmed validity and soundness of ZATCA procedure in handling contested item. Furthermore, Appellant's arguments do not differ from such arguments raised before the Primary Committee.

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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On Merits: Having taken cognizance of Case file, documents included therein and statement of appeal. Since having taken cognizance of Appellant's arguments regarding (Adding Back Leave, Ticket and Remuneration Expenses to Adjusted Profit and Calculating Zakat on Opening Balances for years from 2008 to 2013) item, the Department found that amount in dispute does not fall under the accounting definition of provisions, which states that the provision outlines a liability for the enterprise that is uncertain in its value and/or due date. As for the amounts in dispute, such amounts essentially outline ordinary and necessary expenses related to business activity, which Zakat Payer is entitled to deduct from the profit in order to come up with the profit subject to Zakat. Therefore, the Department accepts Zakat Payer's appeal regarding such expenses,



considering them as deductible expenses, and decides not to add back such expenses to the net profit. Regarding payable opening balances shown in the statement of financial position and related to expenses, ZATCA is entitled to add such balances in full as at the end of fiscal year to zakat base, due to the fact that such expenses outline funds that are still in Company's possession. Accordingly, such expenses are considered as elements that shall be added to zakat base, based on which zakat shall be calculated. Therefore, the Department upholds the primary decision regarding such opening balances.

Regarding (Adding Back Project Cost Provision to Zakat Base) item, since Zakat Payer's appeal involves challenging validity of ZATCA procedure outlined in adding expenses of project cost provision despite the fact that ZATCA did not deduct the corresponding revenues. Since it is established that the principle of matching revenue with expense is a fundamental accounting principle. Since the Department found that Zakat Payer's accounting policy in handling amount of the provision is consistent with that principle. Accordingly, calculating zakat due requires matching revenue with the corresponding expenses and concluding result of this match as the amount subject to zakat. It is not reasonable to consider the revenue alone without deducting related expenses that contributed to generating it. Therefore, the Department accepts Zakat Payer's appeal regarding non-adjustment of net profit in view of project cost provisions in question.

Decision

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

Second: On Merits:

1. As for adjustments to net Profit:
 - a. Accept Zakat Payer's appeal, overturn primary decision and uphold Zakat Payer's entitlement to deduct leave, ticket and remuneration expenses in question to come up with net profit added to zakat base according to reasons and Grounds stated herein.
 - b. Accept Zakat Payer's appeal, overturn primary decision and uphold Zakat Payer's entitlement to deduct project expenses in question to come up with net profit added to zakat base according to reasons and Grounds stated herein.
2. As for amendments to zakat base:
 - a. Dismiss Zakat Payer's appeal, and uphold primary decision's conclusion regarding payable opening balances shown in the statement of financial position resulting from leave, ticket and remuneration expenses in question according to reasons and Grounds stated herein.
 - b. Dismiss Zakat Payer's appeal, and uphold primary decision's conclusion regarding payable opening balances shown in the statement of financial position resulting from project expenses in question according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-112)
Delivered in Appeal No. (Z-1546-2018)

Principle No. 11

Appellate Department may consider reasons for appealed decision without addition, whenever Appellate Department deems that such reasons are sufficient without adding any new reasons. By upholding such reasons, the Department found no merit in the objections raised against the decision that would require a response beyond what was already addressed in such reasons.

Facts:

On Monday, 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) 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 15/03/1439 AH, by ... Company against Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (1) of 1439 AH rendered in Case No. (...) filed by Appellant against ZATCA. The primary decision ruled as follows:

First: Accept the objection in form filed by Company ... to ZATCA zakat assessment for years from 2010 to 2012.

Second: On Merits:

1. Upholding ZATCA in deducting ... Lands and ... Lands from Zakat Payer's zakat base for years in question according to decision Grounds.
2. Upholding ZATCA in deducting foreign investment from Zakat Payer's zakat base for years in question according to decision Grounds.
3. Resolution of dispute between the parties regarding (Management Fees) item according to decision Grounds.
4. Resolution of dispute between the parties regarding (Loans) item according to decision Grounds.
5. Resolution of dispute between the parties regarding (Foreign Exchange Variances) item according to decision Grounds.

Dissatisfied with this decision regarding some items, (... Company) submitted to the Department a statement of appeal summarized as follows:(Upholding ZATCA in Disallowing Deduction of ... Lands and Syria Lands from Zakat Base) Item:

1. The Company appeals against the primary decision, by confirming that the Company provided ZATCA, within objection letter, with a statement that elaborates movement and nature of amounts recorded regarding ... Lands and a copy of computer-generated documents related to such amounts and supports them. In addition, the land purchased in the name of ..., in 2007, was recorded in Company's accounts, while adding some relevant expenses to the value of such lands. As for Syria land, it was wrongly expressed, when preparing audited financial statements



for 2010, that the land value is SAR 26,198,262 instead of SAR 22,633,625 due to exchange rate variances. In addition, such land appeared in its decreased value in 2011 and 2012. Furthermore, such land was owned for the purpose of acquisition for grow capital throughout the years subject matter of assessment. Therefore, such land is considered trading assets not intended for trade, which necessities deducting such lands from Company's zakat base. On the other hand, some rulings of the Board of Grievances affirmed Zakat Payer's entitlement to deduct value of land that is not registered in Company's name, due to the fact that land value is financed by the Company. In addition, there is a fatwa stipulating that the purchase of real estate properties, vehicles, and similar assets for the purpose of use (not intended for trading) shall not be subject to zakat, and the transfer of ownership does not affect the same.

2. (Upholding ZATCA in Disallowing Deduction of Foreign Investments from Zakat Base) Item: The Company appeals against disallowing deduction of foreign investment balance for 2010, by affirming that it calculated zakat based on Arabic audited financial statements or those translated into Arabic of the companies in which the investments were made abroad. In addition, the Company affirmed that should there are some observations to one of the financial statements, all such statements shall not be considered as not approved. Therefore, the Company petitions allowing deduction of investment balance from zakat base for the fiscal year ended on December 31, 2010 AD in accordance with the ministerial resolution that regulates allowing deduction of foreign investments.

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 taken cognizance of Case file, documents included therein and statement of appeal, since the Department may take the Grounds of appealed decision 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. Since it was established that the appealed decision, with regard to the two items in dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Primary Committee that rendered the decision has examined the source of the dispute for each item and reached to the conclusion stated in its wording. Since the Appellate Department did not find any requirement for correction or further response in light of submissions and pleas presented thereto. Therefore, this Department satisfies to decide that the foregoing does not affect the conclusion of the decision. Since the aforementioned is not affected by Company's claim for challenging the decision, by stating general principles that govern transactions over lands that were not registered in the name of Zakat Payer when calculating zakat base, in addition to provisions of the ministerial resolution referred to by Zakat Payer for the method of handling deduction of foreign investments when calculating zakat base, as Zakat Payer's appeal regarding the two items did not include any documents and evidence that prove validity of its claim. However, Zakat Payer's statement was unsubstantiated without providing evidence on validity of its claim despite of the fact that Zakat Payer was given an opportunity for providing the same throughout the period specified for considering objection before the Primary Department until filing appeal that did not go beyond the arguments raised before the Primary Department that responded thereto within reasons for the appealed decision. Therefore, the Department dismisses Zakat Payer's appeal regarding the two items in question and upholds the primary decision in this regard.



Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept appeal in form filed by Zakat Payer (... Company), C.R. No. (...), against Decision No. (1) of 1439 AH rendered by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

Dismiss Zakat Payer's appeal regarding the two contested items: (Upholding ZATCA in Disallowing Deduction of ... Lands and ... Lands from Zakat Base) item and (Upholding ZATCA in Disallowing Deduction of Foreign Investments from Zakat Base) item, and uphold the primary decision in this regard according to reasons and Grounds stated herein.

Similar Decisions:

First Appellate Department for Income Tax Violations
and Appeal Decision No: IR-2020-14

Appeal Decision No: IAR-2020-133

Disputes

Appeal Decision No: IAR-2020-133



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 12

Appointing a local chartered accountant office by Zakat Payer to keep its accounting books is considered a compliance with requirements stipulated by the law in this regard.

Facts:

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 Appellant against ZATCA, in which the Primary Decision ruled as follows:

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

Second: On Merits:

1. Dismiss Zakat Payer's objection to (Making Assessment on Basis of Estimated Profit by 25%) item.
2. Resolution of dispute regarding the item of disregarding tax paid when filing declaration.
3. Dismiss Zakat Payer's objection to (Late Payment Fine) item.

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

Zakat Payer 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 Zakat Payer'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 Zakat Payer (non-resident Company's Branch). Zakat Payer 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, Zakat Payer objects to disregarding tax paid when filing its declaration for years from 2012 to 2015. In this regard, Zakat Payer 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, Zakat Payer'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 Zakat Payer Company's objection. In addition, ZATCA requested upholding appealed decision that upholds validity and soundness of ZATCA procedure, considering that Zakat Payer'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 Zakat Payer's statement of appeal and related to tax paid for years from 2012 to 2015 were included in Zakat Payer'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

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

On Merits: Having taken cognizance of Case file, documents included therein and statement of appeal: As for Zakat Payer'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 Zakat Payer were not substantiated in the manner that ZATCA claimed in its Case against Zakat Payer in this regard. Accordingly, ZATCA estimated Appellant's tax base based on such claims. In addition, ZATCA reasoning for disregarding Zakat Payer'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 Zakat Payer 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, Zakat Payer'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 Zakat Payer's accounts in order to make estimate tax accordingly, by making an estimate tax assessment. Therefore, the Department accepts Zakat Payer's appeal by calculating tax based on Zakat Payer'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 Zakat Payer's appeal regarding late payment fines, since ZATCA claim for imposing late payment fine for tax ensues from variance between the amounts paid by Zakat Payer 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 Zakat Payer's accounts. Since the Department concluded to consider Zakat Payer's returns for the years in question, not to uphold ZATCA position outlined in disregarding Zakat Payer'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 Zakat Payer'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 Zakat Payer are no longer applicable due to the reasons for nullifying original fine claim.

Decision



In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept appeal in form filed by Zakat Payer (... 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 appeal filed by Zakat Payer by considering Zakat Payer's returns for years from 2012 to 2015 and overturn the primary decision in this regard according to reasons and Grounds stated herein.
2. Uphold calculating tax amounts paid by Zakat Payer for years from 2012 to 2015 when completing assessment under this decision according to reasons and Grounds stated herein.
3. Cancel late payment fines for years from 2012 to 2015 due to nullification of their basis and origin according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-82)
Delivered in Appeal No. (Z-1585-2018)

Principle No. 13

The appeal shall bring the case back to its original state existing before the appealed decision is rendered. In addition, the appeal shall be considered according to evidence and arguments submitted before the Primary Committee and new evidence and arguments accepted by Appellate Committee.

Facts:

On Tuesday, 13/02/1441 AH corresponding to 30/09/2020 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 17/07/1439 AH corresponding to 03/04/2018 AD, by ... Company against Decision No. (13) of 1439 AH rendered in Case No. (24/38) filed by Appellant against ZATCA, in which the Primary Decision ruled as follows:

First: Accept objection in form filed by ... Company to ZATCA zakat assessment for years from 1425 to 1428.

Second: On Merits:

Uphold ZATCA in adjusting net profit in import variance except for the amount of SAR 1,056,057 for the year ended on 30/07/1425 AH. Therefore, the Committee upholds Zakat Payer's stance. Dissatisfied with this decision, Plaintiff (... Company) submitted to the Department a statement of appeal summarized as follows:

Zakat Payer objects to import variances added to its zakat base that were come up through reassessment made by ZATCA and with which Zakat Payer was notified in 1431 AH, after receiving observations by the General Court of Audit (GCA) due to the fact that there are import variances between information set out in Zakat Payer's declaration and customs declaration for years from 1425 to 1428. Accordingly, Zakat Payer was accounted for import variance that was not declared, by adding such variance to its zakat base in accordance with Resolution No. (2555) dated 19/10/1417 AH. Therefore, ZATCA believes that it is justified in making assessment on that basis after finding such information communicated by GCA after observing that there are variances in Zakat Payer's imports based on customs declarations and information provided by Zakat Payer. In addition, Zakat Payer's appeal was based on the fact that ZATCA zakat assessment relates to years prior to the amendment introduced to Company's memorandum of association, by entering new shareholders and exit of one shareholder, so that Company's Branch in Jeddah is allocated for the disassociated shareholder. Accordingly, the documents are no longer in the possession of ... Company and ... In addition, Jeddah flood disaster caused damages to Company Branch's documents and goods as stated by the disassociated shareholder. Moreover, the variances identified in zakat assessment based on the comparison between Company's external purchases as



per its accounts and external purchases according to customs declarations must take into account differences in foreign exchange rates, and that customs declarations do not reflect certain expenses related to imported goods, such as insurance, shipping and other costs. Furthermore, some orders related to the Company were not reflected in customs declarations because they were registered in the name of ... Trading Enterprise. However, the Company receives such goods that are mistakenly recorded in customs declaration. In addition, some goods are not reflected in customs declarations because such goods are directly received by one of the shipping companies operating in the Kingdom. Therefore, customs declaration is issued in the name of shipping company, rather than in the name of the Company.

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 order to ZATCA dated 07/09/1441 AH corresponding to 30/04/2020 AD. 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 item 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 replies included in the primary decision regarding the items, subject matter of appeal, shall be considered.

Having taken cognizance of the statement of appeal and documents included in Case file, the Department 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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On Merits: Having taken cognizance of reasons for appeal against the decision, the Department found that the dispute is document-based, and that Appellant did not provide the documents that support Appellant's claim that there are not overstated import variances to be calculated within Appellant's zakat base. Since Appellant's arguments in this regard are unsubstantiated with credible and strong evidence that supports its claim that there are not variances to be calculated within its zakat base, except for derecognizing an amount of SAR 1,056,057 by Primary Committee that outlines imports received via the shipping companies. Thereupon, the reliance on import statements prepared by customs is the origin that can be only disregarded if there is an evidence that supports disregarding such statements with regard to such overstated import variances when being added to Zakat Payer's zakat base. This shall not be affected by Zakat Payer's claim that there is exit process of shareholder and transfer of Jeddah Branch to the associated shareholder, in addition to Zakat Payer Company's inability to provide the documents that support validity of its position as claimed in light of Jeddah flood disaster, assuming that the Company shall maintain such documents as long as they are beneficial when requested to prove a right. In addition, Appellant's claim that the documents were damaged in Jeddah flood disaster is unsubstantiated. As such, the Department by majority dismisses Zakat Payer's appeal and upholds the primary decision that added import variances for years from 1425 AH to 1428 AH, except for the amount of SAR 1,056,057 for the year end on 30/07/1425 AH.

Decision

Based on the foregoing and considering the aforementioned reasons, the Department has decided by majority as follows:

First: Accept appeal in form filed by Zakat Payer (... Company), C.R. No. (...), against Decision No. (13) of 1439 AH rendered by the First Primary Committee for Zakat and Tax Objections in Riyadh.



Second: On Merits:

Dismiss Zakat Payer's appeal, and uphold the primary decision according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-88)
Delivered in Appeal No. (Z-
1827-2018)

Principle No. 14

Perfect ownership does not only imply getting title of the property, but also requires the establishment of practical control, by enabling owner to exercise rights of disposal, use and exploitation.

Facts:

On Monday, 25/02/1442 AH corresponding to 12/10/2020 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 05/09/1438 AH by ZATCA against First Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (20) of 1438 AH rendered in Case No. (12/37) filed by ... Company against ZATCA, in which the Primary Decision ruled as follows:

First: Accept objection in form filed by Company ... to ZATCA zakat assessment for years from 2008 to 2012.

Second: On Merits:

1. Accept Zakat Payer's objection to deduction of unrealized losses from local shares for 2008 from zakat base.
2. Accept Zakat Payer's objection to deducting value of ... Lands for 2008 amounting to SAR 1,207,547,539 from zakat base.
3. With respect to investments in shares:
 - A. Accept Zakat Payer's objection to deducting value of shares in ... Bank, ... Company, ... Group and ... Company from zakat base for years from 2008 to 2012.
 - B. Dismiss Zakat Payer's objection and uphold ZATCA in disallowing deduction of value of shares in ... Company from zakat base for years from 2008 to 2010.
4. Accept Zakat Payer's objection to deducting value of Venice Islands land from zakat base for years from 2008 to 2012.
5. Dismiss Zakat Payer's objection and uphold ZATCA in deducting value of ... land from zakat base for years from 2009 to 2012.
6. Accept Zakat Payer's objection to deducting value of ... Lands from zakat base for 2011 and 2012.
7. Dismiss Zakat Payer's objection and uphold ZATCA in disallowing deduction of carried forward losses amounting to SAR 7,265,104 from zakat base for 2008.
8. Dismiss Zakat Payer's objection and uphold ZATCA in adding retained earning variance for 2009.

Dissatisfied with the decision, ZATCA filed a statement of appeal summarized as follows:



ZATCA appeals against the primary decision with regard to the following items:

1. The item for which the primary decision ruled accepting Zakat Payer's objection to deducting unrealized losses of local shares for 2008 from zakat base.
2. The item for which the primary decision ruled accepting Zakat Payer's objection to deducting value of ... Lands for 2008 amounting to SAR 1,207,547,539 from zakat base.
3. The item for which the primary decision ruled accepting Zakat Payer's objection to deducting value of shares in ... Bank, ... Company, ... Group and ... Company from zakat base for years from 2008 to 2012.
4. The item for which the primary decision ruled accepting Zakat Payer's objection to deducting value of ... land from zakat base for years from 2008 to 2012.
5. The item for which the primary decision ruled accepting Zakat Payer's objection to deducting value of ... land from zakat base for 2011 and 2012.

Since the Department asked Zakat Payer to reply to claims set out in the statement of appeal regarding the items subject matter of appeal, the Department received from Zakat Payer Company, on 24/11/1441 AH, an answer to ZATCA statement of appeal, which included Company's reply to arguments raised by ZATCA in the statement of appeal regarding the contested items. In addition, the Company concluded such answer requesting the Department to uphold the primary decision and dismiss ZATCA appeal regarding the items 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

Having taken cognizance of Case documents and statement of appeal submitted 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 appeal is accepted in form for being filed by 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: Since the Case has become ripe for consideration based on the foregoing; therefore, the Department decided adjudicating appeal filed by ZATCA regarding the contested items. Having taken cognizance of reasons for ZATCA appeal against the items in question and answer to Zakat Payer's appeal, the Department found that both parties' statements did not differ from those provided at the time of hearing objection before the Primary Committee, serving as a reiteration of statements already made to express each party's stance on all the items that were contested at that time.

Since the Department may take the Grounds of appealed decision 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. 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 that rendered the decision has examined the source of dispute for each item and reached to the conclusion stated in its wording. Since the Appellate Department did not find any requirement for correction or further response in light of submissions and pleas presented thereto. Therefore, this Department satisfies to decide that the foregoing does not affect the conclusion of the decision regarding all items there were subject matter of appeal. In addition, the aforementioned is not affected by ZATCA claim for challenging the decision with regard to excluding amounts of (... land, ... land and ... land) from Zakat Payer's zakat base for years in question as outlined in the appealed decision. The conclusion reached by the appealed decision is not undermined by ZATCA arguments in its appeal with regard to its objection to the decision that upheld Zakat Payer



Company in deducting value of ... land from Zakat Payer's zakat base for 2008 in the amount of SAR 1,207,547,539 by stating that the land is intended for trade and sale according to the feasibility study provided by the Company regarding such lands. Accordingly, the lands shall be considered trading assets, and that their change in financial statement classification from real estate investments to fixed assets owned by the Company does not change the sale intention. In addition, this classification does not support Committee's ruling, which was based on the lack of perfect ownership, as long as the land is owned by the Company since ZATCA objection to the decision regarding such land does not contradict the facts established in the decision, which show that such lands include informal settlements, making their development unfeasible, as Company's acquisition of such land was for the purpose of organization, planning and preparation for development and eventual sale. Therefore, the perfect ownership does not only imply getting title of the property, but also requires the establishment of practical control, by enabling owner to exercise rights of disposal, use and exploitation. Since the land is not inherently a productive asset, and since there is no evidence or indication of intention to sell such land in its current state, nor any signs of such intention; therefore, such land cannot be considered as trading assets. Therefore, the land shall not be included in Zakat Payer's base. As for ZATCA reference to late Sheikh Abdulaziz bin Baz Fatwa No. (19382) dated 20/01/1418 AH, which stated that the assets intended for sale shall be subject to zakat when such assets and their profits complete a full year like other trading assets, this Fatwa does not apply to this dispute, as the dispute involves the fact that the land, in its current state, was not intended for sale due to its difficult development, in addition to Company's inability to improve, dispose of and sell such land afterward. Therefore, ZATCA appeal is not based on valid Grounds due to failure to prove Company's ability to manage its ownership as previously stated.

As for (...) land that ZATCA requests calculating its value amounting to SAR 202,509,823 within Zakat Payer's base for years from 2008 to 2011, in addition to value of (...) land amounting to SAR 15 million for 2011 and 2012 on the basis that the field inspection found that Zakat Payer Company's ownership of such land is a joint ownership with Mr. ... For ... Land. As for Zakat Payer Company's ownership of ... Land, is a joint ownership with ... Company that registered the ownership in its name. Therefore, ZATCA claim, which is based on the argument that the value of the land should be included in Company's base as it outlines trading assets in its current state, not acquisition assets, since it is intended for sale, and therefore should not be excluded from Zakat Payer Company's zakat base, does not change the true fact outlined in that Company's ownership of such lands was joint with others for the purpose of developing such lands and then selling them after development. Since the field inspection did not prove that the Company had sold its share in this collective real estate investment scheme or joint ownership, nor was there any material evidence that could be verified to identify the change in intention to sell the land in its current undeveloped state in either case. Therefore, there is no justification for including value of such lands in Company's zakat base, as there is no evidence to support calculating them as trading assets when assessing Zakat Payer Company's zakat base. Based on the foregoing, ZATCA appeal regarding the objection to the decision and requesting inclusion of the value of (... Land, ... land and ... Land) contrary to the ruling of Committee's decision, subject matter of appeal, is not based on valid Grounds and shall be dismissed.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept ZATCA appeal in form filed against Decision No. (20) of 1439 AH rendered by the First Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

Dismiss ZATCA appeal regarding all contested items 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 in Riyadh

Decision No. (IR-2021-190)
Delivered in Appeal No. (I-
13291-2020)

Principle No. 15

If a matter ceases to exist, that which is incidental to it shall also cease to exist.

Facts:

On Thursday, 09/02/1443 AH corresponding to 16/09/2021 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 02/08/1441 AH corresponding to 26/03/2020 AD by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (ID-2020-17) rendered in Case No. (I-32-2018) regarding tax assessment for years from 1999 to 2006 filed by Zakat Payer against ZATCA, in which the primary decision ruled as follows:

First: In Form:

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

Second: On Merits:

1. Overturn Defendant's decision regarding (Activity of Office that is not licensed to engage in any business activity in the Kingdom) item.
2. Overturn Defendant's decision regarding (Statutory Period for Tax Assessment for Years from 1999 to 2006) item.
3. Overturn Defendant's decision regarding (Statutory Period for Tax Assessment for 2011) item.
4. Overturn Defendant's decision regarding (Amending Returns and Applying Estimate Assessment by ZATCA) item.
5. Overturn Defendant's decision regarding (Subjecting Estimated Dividends to Withholding Tax by 5%) item.
6. Overturn Defendant's decision regarding (Late Payment Fines) item.

Dissatisfied with this decision, Appellant (ZATCA) submitted a statement of appeal summarized as follows:

ZATCA objects to all items mentioned in (Second) of the primary decision, affirming validity of its stance stated in the memorandum submitted to the Department that rendered the decision subject matter of objection with regard to all items. In addition, ZATCA challenges Department's reasoning and claims that such reasoning is invalid, particularly regarding the first item (Activity of Office that is not licensed to engage in any business activity in the Kingdom) and the other items because the decision violates the applicable regulations in this regard as elaborated in ZATCA stance. How can the Department state that the Company did not engage in any business activity that generates taxable income in accordance with Income Tax Law and its Implementing Regulations, despite the fact that Plaintiff declares engaging in business activities? Furthermore, the Department overstepped the actual scope of the Case by ruling that Plaintiff is not liable for



paying any tax. Therefore, ZATCA requests overturning decision, subject matter of appeal, regarding all contested items for the aforementioned reasons.

In addition, Taxpayer submitted an answer dated 17/09/1441 AH corresponding to 11/05/2020 wherein replies to ZATCA memorandum regarding the items subject matter of appeal. In Form: The decision was received on 25/02/2020, and ZATCA appeal notification was on 08/04/2020. Accordingly, the appeal was filed after thirty days from the date set for receiving decision. Therefore, the Case should be dismissed in form in accordance with Article (40) of Tax Dispute and Violation Committee Procedures. On Merits: Taxpayer replied to ZATCA objection to Department's reasoning regarding the first item that Taxpayer never declared engaging in business activity. In addition, Taxpayer states that the aim of obtaining license is only to provide technical support, and it is incorrect to describe the same as engaging in business activity. Regarding the remaining items, Taxpayer replies that due to the fact there is not any addition in ZATCA appeal to its arguments stated in the decision, subject matter of appeal; therefore, Taxpayer refers to objection memorandum submitted to the Primary Committee, insists on Department's decision and petitions the Honorable Department to dismiss the appeal and uphold the Department's decision subject matter of objection.

On Thursday 29/10/1442 AH corresponding to 10/06/2021 AD, the Department, having taken cognizance of the statement of appeal and documents included in Case file, decided to hold a 10-day e-hearings session. However, the period lapsed without receiving any further petitions from the parties to appeal.

On Tuesday, 19/11/1442 AH corresponding to 29/06/2021 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 on its merits. Therefore, the Department decided closing of pleadings and setting a date for adjudication.

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.

As for ZATCA appeal regarding (Activity of Office that is not licensed to engage in any business activity in the Kingdom) item, ZATCA appeal involves the petition to overturn the challenged decision due to violating regulations in this regard. On the other hand, Taxpayer argued that it never declared engaging in business activity, and attached the supporting documents. In addition, Taxpayer insists on Primary Department's decision. Since the Primary Department based its decision on the license issued from the Saudi Arabian General Investment Authority (SAGIA) that stipulates prohibiting Taxpayer from engaging in any business or investment activity. Since the Department reviewed the Convention of Double Tax Avoidance between the Kingdom and France that exempts Taxpayer's activities from tax, considering them to be of a preparatory or supporting nature. Since this Department found that the conclusion reached by the Primary Committee that rendered the appealed decision is valid, and that the reasons on which it based its decision are sufficient to support this decision. This is not affected by ZATCA argument that Taxpayer declared engaging in business activity. Since ZATCA did not provide evidence that can be relied. Since if a matter ceases to exist, that which is incidental to it shall also cease to exist. Thereupon, ZATCA appeal against the remaining contested items should be dismissed for association. Therefore, this Department dismisses ZATCA appeal and uphold the primary decision regarding this item based on its reasons and reasons of this decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:



First: Accept appeal in form filed by Appellant (ZATCA) against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (ID-17-2020).
Second: On Merits: Dismiss ZATCA appeal regarding (Activity of Office that is not licensed to engage in any business activity in the Kingdom) item, dismiss the appeal regarding all remaining contested items for association and uphold the primary decision according to reasons and Grounds stated herein



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-245)
Delivered in Appeal No. (Z-
13432-2020)

Principle No. 16

The financial guarantee does not, in itself, mean the settlement of debt.

Facts

On Tuesday, 14/02/1443 AH corresponding to 21/09/2021 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 the appeal filed on 07/08/1441 AH, corresponding to 21/03/2020 AD by ... Company's Branch and the appeal filed on 13/08/1441 AH corresponding to 06/04/2020 AD by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IRF-7-2020) of 2020 AD rendered in Objection No. (Z-127-2018) regarding zakat assessment for 2014 filed by Appellant against ZATCA, in which the primary decision ruled as follows:

First: Amend Defendant (ZATCA) decision regarding objection filed by Plaintiff (...Company), C.R. No. (...), to (Adjusted Net Profit) item, subject matter of the Case, to be (SAR 68,704,843) sixty-eight million, seven hundred and four thousand, eight hundred and forty-three Riyals, instead of (SAR 89,426,651) eighty-nine million, four hundred and twenty-six thousand, six hundred and fifty-one Riyals.

Second: Dismiss the objection filed by Plaintiff (... Company), C.R. No. (...), to Defendant (ZATCA) decision regarding (Loans and Financing Sources) subject matter of the Case.

Third: Dismiss the objection filed by Plaintiff (... Company), C.R. No. (...), to Defendant (ZATCA) decision regarding (Overdrafts) item subject matter of the Case.

Fourth: Dismiss the objection filed by Plaintiff (... Company), C.R. No. (...), to Defendant (ZATCA) decision regarding (Advance Payments) item subject matter of the Case.

Fifth: Dismiss the objection filed by Plaintiff (... Company), C.R. No. (...), to Defendant (ZATCA) decision regarding (Credit Retentions) item subject matter of the Case.

Sixth: Dismiss the objection filed by Plaintiff (... Company), C.R. No. (...), to Defendant (ZATCA) decision regarding (Provisions) item subject matter of the Case.

Seventh: Amend Defendant (ZATCA) decision regarding the objection filed by Plaintiff (...Company), C.R. No. (...), to (Investments) item, subject matter of the Case, to be (SAR 89,060,568) eighty-nine million, sixty thousand, five hundred and sixty-eight Riyals, instead of (SAR 77,279,182) seventy-seven million, two hundred seventy-nine thousand, one hundred and eighty-two Riyals.

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

As for Zakat Payer's appeal regarding (Loans) item, Zakat Payer objects to Primary Department's decision that upheld ZATCA procedure outlined in adding loans and other financing sources amounting to SAR 82,079,750. In addition, Zakat Payer pointed out that there was a calculation



error made by ZATCA outlined in the opening balance of loans amounting to SAR 166,415,250 instead of SAR 150,796,172. As for Zakat Payer's appeal regarding (Provision for Project Delay Penalties) item, Zakat Payer objects to the addition of the component amounting to SAR 42,462,225 to the adjusted net profit, arguing that these penalties are stipulated in contracts concluded with government agencies (customers). To avoid these penalties, a provision is made according to the prudence policy. After the project is handed over, these provisions are closed either by settling them against customers' accounts in case of deductions due to project delay, or by closing them in previous years' revenue accounts if no penalties or deductions are imposed regarding the project. As for Zakat Payer's appeal regarding (Provision for Supervision Fees) item, Zakat Payer objects to ZATCA procedure outlined in adding an amount of SAR 17,194,181 to the adjusted net profit. In addition, this amount pertains to provisions that their purpose is no longer existing as of 31/12/2014 AD and were closed in the miscellaneous revenue account, which was subject to zakat. As for Zakat Payer's appeal regarding (Retained Zakat Provision) item, Zakat Payer objects to ZATCA procedure outlined in adding an amount of SAR 15,761,489 to the positive base within (Carried Forward Provisions) item. In addition, this amount was formed prior to 2014 because it relates to ZATCA assessment for (2012-2013). Moreover, a bank guarantee was provided for the amount of provision formed in favor of ZATCA and related to previous years' assessments. Since this guarantee corresponds to zakat provision, it has become frozen assets (... funds), which cannot be disposed of and are not subject to zakat. As for Zakat Payer's appeal regarding (Spare Parts Inventory) item, Zakat Payer objects to ZATCA failure to include the inventory of spare parts and tires in the negative base, which amounts to SAR 37,253,072. As for Zakat Payer's appeal regarding (Advance Payments) item, Zakat Payer objects to ZATCA procedure outlined in adding advance payments amounting to SAR 190,343,129 due to a calculation error outlined that the opening balance was SAR 264,034,204 instead of SAR 288,462,140, and the amount of advance payments used was SAR 180,301,422 instead of SAR 98,862,140. As for Zakat Payer's appeal regarding (Credit Retentions) item, Zakat Payer objects to ZATCA procedure outlined in adding credit retentions, arguing that they are not a liability for the Company, as such retentions are contingent upon the proper completion of work and only become a liability when they fall due. In addition, the Company has not paid such retentions to the beneficiaries, and should not be handled as equity, as they cannot be disposed of in any way and must be returned to their owners once the purpose of withholding them (completion and acceptance of the works without any observations) is fulfilled. Furthermore, the debit retentions were not considered according to the principle of trading assets, as they were not added to the negative base, which represents the counterpart to credit retentions. As for Zakat Payer's appeal regarding (Investments) item, Zakat Payer objects to ZATCA procedure outlined in disallowing deduction of investment amount in full, as an investment amount of SAR 12,708,375 was not deducted, representing goodwill related to ... Company and is considered intangible assets. In addition, the investments listed in Investment Note No. (11) to the statement of financial position in value of SAR 101,678,942 are detailed in the value of real investment, including goodwill. Accordingly, Zakat Payer requests overturning Primary Committee's decision regarding the items subject matter of appeal for the aforementioned reasons.

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

As for ZATCA appeal regarding (Adjusted Net Profit) item, ZATCA states that the Primary Committee's decision, subject matter of appeal, stated that the amount of provisions that should be added to the net profit is SAR 63,212,048 instead of SAR 76,080,668 with a variance of SAR 12,868,620. In addition, ZATCA further states that Zakat Payer reported that the net profit is SAR 197,968,628, while ZATCA, in its statement of appeal, stated that the accounting net profit is SAR 184,582,645 million. This indicates that ZATCA added a lower accounting profit than the amount that Zakat Payer is claiming. In addition, it turns out from the appealed decision that this variance is the value of provisions that the Committee relied on in its decision. Therefore, ZATCA requests



that such variances, as mentioned in the decision, be added to the net profit and insists on adding an amount of SAR 76,080,668, which outlines the provisions formed throughout the year in accordance with Paragraph (6) of Article (6) of the Implementing Regulations for the Collection of Zakat. As for ZATCA appeal regarding (Investments) item, ZATCA states that the Department amended ZATCA decision by upholding deduction of the amounts payable to Zakat Payer by the companies in which the investments were made. In addition, ZATCA elaborates that these balances do not outline investments in the companies in which the investments were made, but rather outline loans or receivables due to Zakat Payer from such companies as a result of commercial transactions. Moreover, these amounts cannot be considered direct investments by Zakat Payer in the companies in which the investments were made to be deducted from Zakat Payer's zakat base. Furthermore, the amounts owed by the companies in which the investments were made are receivables resulting from transactions between the Company and such related companies. In addition, such receivables are the result of commercial transactions and debts owed to the Company by the related companies. Such debts cannot be deducted from zakat base according to Fatwa No. (19643) dated 23/05/1418 AH, which states in Clause (6) of the answer to the first question that "The deferred debts owed to the company by debtors shall be subject to zakat if one year has passed, and such debts are owed by a solvent debtor who is not delaying payment, and the creditor is able to collect his funds. However, if the debt is owed by an insolvent debtor, and the creditor is unsure whether he will receive payment, or if the debtor is solvent but delaying payment, and the creditor cannot collect his debt because he does not have sufficient proof to collect his right before the court, or if he has proof but cannot recover his right due to the lack of government assistance, as in some countries where rights are not supported, then no zakat is due on the creditor's funds unless it is received, and in that case, a new zakat cycle will begin". In addition, based on Fatwa set out in Letter No. (3077/2) dated 08/11/1426 AH, that states: "The evidence on the obligation of zakat, in general, includes all zakatable assets, and there is no valid evidence to deduct debts from the same. Zakat shall not be paid twice regarding the same asset because the creditor pays zakat on the funds that he owns, which are in debtor's possession, while the debtor pays zakat regarding other funds that he owns and can dispose of, in addition to the difference between the funds that are in a person's possession and properties money that are owed to him". Accordingly, ZATCA requests overturning Primary Committee's decision regarding the contested items and upholding ZATCA procedures for the aforementioned reasons.

Since the Department decided opening of pleadings, ZATCA submitted an answer dated 01/12/1441 AH corresponding to 21/07/2020 AD wherein replies to Zakat Payer's appeal. The answer is summed up in that ZATCA reiterates its previous position submitted before the Primary Department. Moreover, Zakat Payer's arguments do not differ from what previously submitted, to which ZATCA has already answered at that time. Therefore, ZATCA insists on validity and correctness of its procedure and requests upholding Primary Committee's decision for the aforementioned reasons.

In addition, Zakat Payer submitted, on 18/07/1442 AH corresponding to 02/03/2021 AD, a supplementary memorandum indicating that, in addition to appeal memorandum, Zakat Payer refers to Decision No. (IAR-2020-99) of 2012 AD and Decision No. (IAR-2020-100) of 2013 AD rendered by the General Secretariat, and requests applying the same rulings as stipulated in these decisions.

On Saturday, 09/11/1442 AH corresponding to 19/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes convened and decided to hold a 10-day e-hearings session. However, the period lapsed without receiving any further petitions from the parties to appeal.

Grounds





Having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer 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: As for ZATCA appeal regarding (Adding Provisions to Adjusted Net Profit) item, ZATCA appeal involves insisting on its procedure outlined in adding an amount of SAR 76,080,668 that represent the provisions formed throughout the year. On the other hand, Zakat Payer requests upholding Primary Department's decision. Since ZATCA appeal did not include reasons for challenging Primary Department's decision, and having taken cognizance of ZATCA stance included in the contested decision, the Department found that ZATCA claims the same amount without clarifying reasons for its claim to add such amount. Therefore, the Department dismisses ZATCA appeal and upholds Primary Department's decision based on its reasoning.

As for Zakat Payer's appeal regarding (Provision for Project Delay Penalties) item and (Provision for Supervision Fees) item, and having taken cognizance of Zakat Payer's appeal regarding such two items, the Department found that such items pertain to adjustments introduced to the net profit and the amounts added to the base from the carried forward balances formed throughout the year and shown in the statement of financial position. Since the Department asked Zakat Payer to clarify why there are two items in its objection: One for profit adjustments related to provisions and another for provisions. Since Zakat Payer did not clarify the relationship between the provisions and both the adjustments to net profit and the amounts added to zakat base from the statement of financial position, and did not provide evidence that would justify overturning conclusion reached by the Primary Department. Therefore, this Department decides by majority to dismiss Zakat Payer's appeal and uphold Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Retained Zakat Provision) item, the Department found that the retained zakat provision, as shown in the financial statement, outlines a liability for Zakat Payer that was not paid by the end of the fiscal year for which zakat is due, similar to Zakat Payer's other liabilities. Therefore, the Department concludes that Zakat Payer's claim outlined in not adding this provision to zakat base is unfounded. In addition, this is not undermined by Zakat Payer's reference to providing ZATCA with a financial guarantee in this regard, as the financial guarantee does not mean paying such debt. Since this Department found that Primary Department's decision that is challenged is valid. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Loans and Other Financing Sources) item, the Department, having taken cognizance of Zakat Payer's appeal regarding this item, found that Zakat Payer argues that there is a material error made by ZATCA and related to the opening balance of loans and financing sources. Since the material errors do not constitute a substantive dispute, Zakat Payer may approach ZATCA to correct such errors, if they exist, based on the relevant statutory rules. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Advance Payments) item, the Department, having taken cognizance of Zakat Payer's appeal regarding this item, found that Zakat Payer argues that there is a material error made by ZATCA and related to the opening balance of loans and financing sources. Since the material errors do not constitute a substantive dispute, Zakat Payer may approach ZATCA to correct such errors, if they exist, based on the relevant statutory rules. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Credit Retentions) item, the Department, having taken cognizance of Zakat Payer's appeal, found that there was no dispute over the passage of a full year regarding the amount in dispute. Since these retentions outline a liability for Zakat Payer that was not paid by the end of the fiscal year for which zakat falls due, the Department concludes that



ZATCA procedure outlined in adding such amounts to Zakat Payer's zakat base is correct and valid. This is not undermined by Zakat Payer's argument that there are debit balances of retentions owed by third parties, as Zakat Payer did not provide evidence that both credit and debit retentions outline transactions with the same party. Accordingly, there is no basis for offsetting the two balances. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Spare Parts Inventory) item, the Department, having taken cognizance of Primary Department's decision, found that the challenged decision did not address this argument in its Grounds and reasoning. In addition, Zakat Payer's statement of appeal did not include any reference that this argument had been previously presented to the Primary Department, despite the fact that the Department granted Zakat Payer sufficient time to do so, as Article (186) of the Law of Civil Procedure states: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion". Therefore, the Department dismisses considering this item and the objection thereto.

As for Zakat Payer's appeal regarding (Investments) item, the Department, having taken cognizance of Zakat Payer's appeal regarding this item, found that the principal rule states that the investments in Saudi companies registered with ZATCA shall be fully deducted according to the figures set out in Zakat Payer's financial statements. Since ZATCA did not provide any evidence that could support considering amounts in dispute as a loan from Zakat Payer to the company in which the investments were made, nor did the Primary Department provide a reason for exempting deduction of some of Zakat Payer's investments from zakat base. Therefore, the Department accepts Zakat Payer's appeal, allows deduction of Zakat Payer's investments in the Saudi companies according to its declaration and overturns Primary Department's decision.

As for ZATCA appeal regarding (Investments) item, the Department, having taken cognizance of ZATCA appeal regarding this item, found that the principal rule states that the investments in Saudi companies registered with ZATCA shall be fully deducted according to the figures stated in Zakat Payer's financial statements. Since ZATCA did not provide any evidence that could support considering amounts in dispute as a loan from Zakat Payer to the company in which the investments were made. Therefore, the Department dismisses ZATCA and upholds Primary Department's decision regarding this item.

Decision

Based on the foregoing and considering the aforementioned reasons, the Department has decided by majority as follows:

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), and ZATCA appeal against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-7-2020) rendered in Objection No. (Z-127-2018) regarding zakat assessment for 2014.

Second: On Merits:

1. Dismiss ZATCA appeal regarding (Adding Provisions to Adjusted Net Profit) item and uphold Primary Department's decision according to reasons and Grounds stated herein.
2. Dismiss Zakat Payer's appeal regarding (Provision for Project Delay Penalties) item and (Provision for Supervision Fees) item and uphold Primary Department's decision according to reasons and Grounds stated herein.
3. Dismiss Zakat Payer's appeal regarding (Retained Zakat Provision) and uphold Primary Department's decision according to reasons and Grounds stated herein.
4. Dismiss Zakat Payer's appeal regarding (Loans and Financing Sources) item and uphold Primary Department's decision according to reasons and Grounds stated herein.
5. Dismiss Zakat Payer's appeal regarding (Advance Payments) item and uphold Primary Department's decision according to reasons and Grounds stated herein.



6. Dismiss Zakat Payer's appeal regarding (Credit Retentions) and uphold Primary Department's decision according to reasons and Grounds stated herein.
7. Dismiss Zakat Payer's appeal regarding (Spare Part Inventory) item for failure to be submitted before the Primary Department initially according to reasons and Grounds stated herein.
8. Accept Zakat Payer's appeal regarding (Investments) item and overturn Primary Department's decision according to reasons and Grounds stated herein.
9. Dismiss ZATCA appeal regarding (Investments) item and uphold Primary Department's decision according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-61)
Delivered in Appeal No. (2018-
1602-Z)

Principle No. 17

If it turns out that Zakat Payer applies accrual principle, the existence of variances in the financial period between subsidies paid by the Ministry of Finance and those recorded in the financial statements does not imply the lack of sufficient disclosure by Zakat Payer.

Facts

First: Accept the objection filed by Zakat Payer (... Company) to zakat assessment for 2008 and subsidy variances for years from 2004 to 2007 according to decision Grounds.

Second: On Merits:

1. Uphold ZATCA entitlement to recalculate zakat due on subsidy variances received for years from 2004 to 2007 according to decision reasons and method stated therein.
2. Uphold Zakat Payer in accepting damaged goods item (miscellaneous expenses and fodder subsidies) as an expense deductible from zakat base according to decision Grounds.
3. Resolution of the dispute between the parties over (End-of-Service Gratuity Provision) item according to decision Grounds.
4. Uphold Zakat Payer stance in accepting allowable expenses as expenses deductible from its zakat base according to decision Grounds.
5. Uphold ZATCA stance in not accepting allowable deduction and damaged goods as deductible expenses from Zakat Payer's zakat base according to decision Grounds.
6. Uphold ZATCA stance in adjusting overstated retention variance according to decision Grounds.
7. Uphold Zakat Payer's claim to exclude half of the compensation for disposed assets amounting to SAR 3,751,325 from the adjustments of year's profit for zakat purposes according to decision Grounds.
8. Not to respond to Zakat Payer's claim to deduct fixed assets by more than their balance in the audited financial statements, and allow their deduction as stated in decision Grounds, while upholding ZATCA stance on disallowing deduction of foreign investments from Zakat Payer's zakat base according to decision Grounds.
9. Not to uphold Zakat Payer's claim to deduct debt current account from zakat base and uphold ZATCA assessment of this item according to decision Grounds. Dissatisfied with this decision regarding the contested items, Plaintiff (... Company) submitted to the department a statement of appeal summarized as follows:
 1. Zakat variances related to subsidy variance for years from 2004 to 2007 amounting to SAR 194,474,871 with a zakat amount of SAR 4,861,872: The Company objects to ZATCA procedure outlined in raising a revised zakat assessment after lapse of six years from the date of filing declaration subject matter of appeal, arguing that this procedure violates the Ministerial Resolution No. (2555) dated 19/10/1417 AH since the Ministerial Resolution



granted ZATCA the right to raise a revised zakat assessment only within five years from the date in which Zakat Payer receives a final certificate. In addition, Zakat Payer argues that the Company complied with submitting all documents in a timely manner. Therefore, ZATCA procedure outlined in raising a revised zakat assessment does not align with what is stipulated in the Ministerial Resolution.

2. Adding an amount of SAR 61,144 as an allowable deduction and damaged goods within general expenses to zakat base: The Company objects to this addition to zakat base, as it is related to its operations and results from Company's business activities, was disclosed based on supporting documents and was written off from the accounting books for 2008.
3. Adding an amount of SAR 462,754 to zakat base as overstated depreciation variance unlawfully, since the said amount was incorrectly added and contradict asset and depreciation schedule prepared and approved by ZATCA Branch in Jeddah. Since this constitutes a material error, the Company requests its exclusion from zakat base, as there is a variance between depreciation recorded in Company's balance sheet for 2008, which is an amount of SAR 1,390,301, while the depreciation amount according to the schedule prepared by ZATCA Branch in Jeddah is SAR 2,673,811, and the variance is SAR 1,283,510. However, ZATCA Branch in Jeddah added an amount of SAR 462,754 to zakat base. Accordingly, the Company requests canceling such addition and deducting collected variance between the depreciation amount as per Company's balance sheet and the schedule prepared by ZATCA Branch in Jeddah.
4. Disallowing deduction of an amount of SAR 3,340,500 that outlines the value of investments in ... Company from zakat base for 2008, as the intention behind purchasing such shares was to benefit from their returns, rather than being intended for trade. In addition, the return from this investment amounting to SAR 468,617.73 was recorded in Company's income statement for 2008. Accordingly, the investment shall be subject to zakat on revenue-yielding property and zakat due on the return realized from investment.
5. Disallowing deduction of an amount of SAR 4,499,422 from zakat base that outlines the net balance of shareholders' current accounts at the beginning of the period, which is a credit balance, since ZATCA added an amount of SAR 1,200,000 to the credit balance of one shareholder's current account, while disregarding deduction of the debit balance amounting to SAR 5,699,422 for another shareholder as at the beginning of the period.

Since the Department requested ZATCA to reply to Appellant's memorandum regarding the contested items. Since ZATCA submitted its answer on 01/01/1442H by affirming its support for the primary decision and rejecting Plaintiff Company's appeal, as nothing in Company's appeal undermines validity of the conclusion reached by the Primary Committee that rendered the 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 taken cognizance of Case documents and statement of appeal submitted by Zakat Payer Company, found that the 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: The Department, having taken cognizance of Case file, documents included therein, Zakat Payer's statement of appeal and ZATCA stance included in the primary decision regarding the contested items, and after reviewing Appellant's entire arguments, found that the appeal is limited to five items as follows: 1. Zakat variances related to subsidy variance for years from 2004 to 2007 amounting to SAR 194,474,871 and zakat due amounting to SAR 4,861,872. The dispute involves Appellant's claim that ZATCA is not entitled to raise a revised



assessment after lapse of more than (5) years, and that it is not entitled to add government subsidy variance to zakat base since it was disclosed in zakat declarations. On the other hand, ZATCA believes that it is entitled to raise a revised assessment and add government subsidy variance to zakat base, regardless of whether the value of government subsidy has been received or not, based on accrual principle. ZATCA relied in raising a revised assessment on (First) of Ministerial Resolution No. (2555) dated 19/10/1417H that states: “ZATCA shall be entitled to raise a revised assessment in the following cases without being bound by a specific period:

1. When it is proven that taxpayer has evaded paying tax or zakat in full or in part. 2. When ZATCA comes to know new data or information that was not known to ZATCA at the time of assessment, and such information would affect zakat or tax assessment. 3. There are material or accounting errors in the final assessment, which ZATCA corrects on its own initiative, based on a request from taxpayer, or as a result of an observation received from the General Court of Audit ...” Since the said Ministerial Resolution was misapplied by ZATCA, given that this information was available during the assessment, particularly after the Department had taken cognizance of the financial statements for years from 2000 to 2004, in addition to “Government Subsidies (Ministry of Finance)” account statement for years from 2004 to 2007, it turned out that Appellant applies accrual principle. Accordingly, the variance in the financial period between subsidies paid by the Ministry of Finance and subsidies recorded in the financial statements does not imply insufficient disclosure by Zakat Payer. Furthermore, after matching Company’s receivables and amounts received by the Company, considering that Zakat Payer Company applied accrual principle, it turns out that Appellant had disclosed, through its zakat assessment, the entire subsidy due in the years in question. Thereupon, there is no basis for the assertion that there was an undisclosed government subsidy variance as claimed by ZATCA. Moreover, ZATCA reply to the statement of appeal did not differ from the primary decision that upheld its stance. Accordingly, the Department did not find that the assessment in this regard was invalid as previously detailed. Therefore, the Department decides to accept information disclosed by Zakat Payer in its declaration regarding this item, not to raise revised zakat assessments that include this item and overturn the primary decision regarding this item.
2. (Allowable Deduction and Damaged Goods within General Expenses Amounting to SAR 61,144) item: The dispute involves Appellant’s claim that ZATCA is not entitled to add the amount of SAR 61,144 as an allowable deduction and damaged goods within general expenses to zakat base. ZATCA believes that its addition is valid due to the lack of actual supporting documents for their exclusion from Zakat Payer’s Zakat base. ZATCA argues that handling such bad debts does not meet the conditions for being considered deductible expenses as stated in Paragraph (3) of Article (5) of the Implementing Regulations for the Collection of Zakat. Furthermore, the amounts related to damaged goods and their price variances were handled through an unusual accounting procedure, without Zakat Payer providing any explanation for the same. Having reviewed the financial statements for the fiscal year 2008, it turned out that the amount of SAR 61,144 was closed as an allowable deduction and damaged goods within general expenses. Having taken cognizance of write-off certificate issued by ... Office, i.e., chartered accountant, confirming writing off the amount of SAR 61,144 from Company's accounting books. Given that the amounts in dispute are minimal compared to Zakat Payer's zakat base, and in light of the effort to find additional evidence beyond what Zakat Payer has already submitted. Since the acquittance is the rule. Since this presumption necessitates reviewing information provided by Zakat Payer in its declaration regarding the amounts in dispute. Since the Department did not find conclusive evidence or strong indications to challenge this presumption of acquittance, it is deemed necessary to adhere to it under the given circumstances. Therefore, the Department considers Zakat Payer’s declaration, upholds its appeal regarding this item and overturns the primary decision in this regard.



3. (Overstated Depreciation Variance Amounting to SAR 462,754) item: The dispute regarding this item involves Zakat Payer's request not to add the amount of SAR 462,754 as an overstated depreciation variance and to deduct an amount of SAR 1,283,510 as a replacement variance between asset and depreciation schedule attached to the declaration and the depreciation calculated within balance sheet for 2008. On the other hand, ZATCA decided not to accept deducting these variances, as they were added to the fixed assets that were already deducted from zakat base. In addition, ZATCA maintains its position in line with the reasoning of the primary decision regarding this item. Having taken cognizance of the primary decision related to this item, the Department found that the Primary Committee that rendered the decision examined the existence of this overstated depreciation variance and concluded that accounting for this item does not affect zakat base, considering that, according to the provisions of the Regulations, any unapproved depreciation variances shall be added back to the fixed asset balance for the purpose of deduction from zakat base. Thereupon, the Department concluded that the primary decision is valid regarding this item, especially since Appellant did not provide any basis for revising or challenging conclusion reached in the primary decision regarding this contested item. Therefore, the Department dismisses Zakat Payer's appeal regarding this item.
4. Disallowing deduction of SAR 3,340,580 as value of investments in ... Company from zakat base for 2008: The dispute involves Zakat Payer's request to exclude foreign investments from zakat base, arguing that such investments are non-traded investments. On the other hand, ZATCA, insists on subjecting such investments to zakat due to failure to provide a certificate issued by a chartered accountant, confirming that zakat on investments was paid in the country of investment. Having taken cognizance of stock movement report issued from ... Stock Market, the Department found that there was not transaction over stock account, indicating that such investment are non-traded investments. Having reviewed the financial statements for 2008, the Department found that stock profits amounting to SAR 468,618 were recorded in income statement. This is not undermined by ZATCA answer to Zakat Payer's appeal that such investments had not been proven to be subject to zakat in the country of investment under the pretense that Zakat Payer did not provide the documents required for deducting such profits from zakat base. Since the Department, having found there are other evidence from the effect of such investments, by recognizing their profits in Zakat Payer's financial statements, and the lack of transaction over such investments, concluded that such investments were not acquired for trading and shall be handled as long-term investments. Accordingly, zakat shall be only applicable to the profit (yields) rather than the principal investment. Therefore, failure to provide a certificate issued by a chartered accountant has no effect. In addition, the investment amount should not be included within Zakat Payer's zakat base and be limited to its profits as declared by Zakat Payer. Therefore, the Department upholds Zakat Payer's appeal and overturns the primary decision regarding this item.
5. (Disallowing Deduction of Shareholder's Debit Current Account Amounting to SAR 4,499,422 from Zakat Base) item: The dispute is limited to Zakat Payer's claim to deduct an amount of SAR 5,699,422 from zakat base, which pertains to debit current account of shareholder, ..., at the beginning of the period. On the other hand, ZATCA argues that this deduction is not allowable because the balance of shareholder (... Company) was added at the beginning of year, which is the lower balance. In addition, ZATCA argues that the amount that Zakat Payer claims to be deducted and related to shareholder (...) requires an overall settlement between shareholders' current accounts, which involves deducting debit balance from zakat base, which is contrary to zakat regulations. Having taken cognizance of Zakat Payer's objection and ZATCA answer in this regard, the Department found that the shareholder (...) injected funds, as reflected in the variance between the opening and closing balances for 2008, resulting in a credit balance. Since the proper handling of such balance, given the circumstances, is to add the lower balance related to that shareholder, i.e., deducting debit balance as it is the lower one. Since the shareholder injected funds into the company that



resulted in debit balance and a credit balance by year-end. Since the total amount injected into the Company did not complete a full year. Therefore, the Company is entitled to deduct the debit balance of that shareholder at the beginning of year from its zakat base. Therefore, the Department upholds Zakat Payer's appeal.

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company) against Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (19) of 1438 AH. Second: On Merits:

1. Accept Zakat Payer's Appeal regarding (Zakat Variances of Government Subsidy for years from 2004 to 2007 Amounting to SAR 194,474,871 and its Zakat Amounting to SAR 4,861,872) item based on information stated in the declaration regarding this item, and overturn the primary decision in this regard according to reasons and Grounds stated herein.
2. Accept Zakat Payer's Appeal regarding (Allowable Deduction and Damaged Goods within General Expenses Amounting to SAR 61,144) item and overturn the primary decision in this regard according to reasons and Grounds stated herein.
3. Dismiss Zakat Payer's appeal regarding (Overstated Depreciation Variances) item and uphold the primary decision in this regard according to reasons and Grounds stated herein.
4. Accept Zakat Payer's appeal regarding (Disallowing Deduction of External Investment of Stocks Amounting to SAR 3,340,580) item and overturn the primary decision in this regard according to reasons and Grounds stated herein.
5. Accept Zakat Payer's appeal regarding (Disallowing Deduction of Shareholders' Debit Current Account Amounting to SAR 4,499,422 from Zakat Base) 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-2020-93)
Delivered in Appeal No. (Z-
1617-2018)

Principle No. 18

The religious rule (Zakat money is not subject to zakat) means that wealth on which zakat has been paid is not subject to zakat again during the same year in which zakat is paid. However, if the wealth remains in the possession of Zakat Payer for another year, zakat shall be due on it for that subsequent year.

Facts

On Saturday, 30/02/1442 AH corresponding to 17/10/2020 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 05/01/1438 AH by ... Company against Decision No. (32) of 1437 AH rendered by the Second Primary Committee for Zakat and Tax Objections in Riyadh in Objection No. (22/37) filed by Appellant against ZATCA, in which the Primary Decision ruled as follows:

First: Accept the objection in form filed by (...) Company to zakat assessment for the year ended on 31/12/2013 AD.

Second: On Merits:

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

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

1. (Unrealized Gains from Investments) item: 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. (Profits from a Subsidiary under Liquidation) item: Appellant Company points out that its customers hold shares in ... Company equal to 88% of capital, which is a Saudi company currently under liquidation. Upon completing liquidation, such Company realized profits from liquidation. In addition, Appellant Company recorded such profits in its books based on “equity method”. According to the declaration submitted by ... Company, these profits have already been subject to zakat. To prevent double taxation, the profits realized from such investments shall be deducted from Appellant Company’s zakat base.
3. (Retained Zakat Provision) item: 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. (Creditors of Shares for 2012 and 2013) item and (Creditors of Dividends for 2012 and 2013) item: Appellant Company points out that ZATCA did not verify the balance of the dividends that had not yet completed a full year at the Company, and that it added dividends to creditors to zakat base twice in the amount of SAR 153,201,225, whereas the amount that completed a full year is significantly less than such amount. Accordingly, ZATCA did not verify the balance that had completed a full year at the Company. In addition, Appellant Company stated that it segregated this amount into a separate bank account. Furthermore, there is no zakat obligation on (Creditors of Dividends) as such amount did not complete a full year, and no zakat is due on (Creditors of Shares) since the entire amount was kept separate from Company’s accounts by being deposited into a special account for shareholders. Furthermore, Appellant Company pointed out that it will provide the Committee with a bank certificate confirming the amount related to (Creditors of Shares), which is SAR 4,026,387.

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

Since 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 answer to Zakat Payer’s objections before the Primary Committee. Given that the appeal shall bring the case back to its original state existing at the time of consideration when hearing appeal. Since the Department received a supplementary 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) item (Creditors of Shares and Creditors of Dividends) item, 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

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



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. (Unrealized Gains from Investments) item: Having taken cognizance of Appellant Company's appeal as previously mentioned regarding this item, and after reviewing primary decision that included ZATCA position regarding this item upon its discussion before the Primary Committee that rendered the appealed decision and the conclusion reached by that Committee regarding the item in question, the Department found that there is no dispute between both parties over the principle that any addition of unrealized gains to zakat base would result in deducting investments at their market value from zakat base. Since the dispute, as indicated, is related to the extent of applying this principle, as Zakat Payer believes that ZATCA did not deduct such amounts in accordance with this principle and provided a comparison between the amount of investments deducted in ZATCA assessment and the amount reflected in the financial statements. Since the Department found that the remaining amount, which Zakat Payer believes that ZATCA did not deduct from the investments, was deducted in the assessment, classified as "Zakatable long-term investment revenues" thus confirming application of the principle governing accounting for investments available for sale according to accounting standards. Therefore, the Department upholds the primary decision and dismisses Zakat Payer's appeal on merits of this item.
2. (Profits from a Subsidiary under Liquidation) item: Since Zakat Payer Company based its argument on the fact that it owns 88% in (... Company), and that the profits from that Company's activities had already been subject to zakat, as is the case with Saudi companies that file their zakat declarations to ZATCA and are assessed accordingly. Since Zakat Payer Company's profits at the company in which the investments were made would result in double payment of zakat when ZATCA asks Zakat Payer to pay zakat due on such profits again if Zakat Payer files its zakat declaration. Since the Committee that rendered the decision was convinced that Zakat Payer had not provided the supporting documents for its claim when objecting to ZATCA assessment regarding this item. Since it is a well-established fact that Saudi companies file their zakat declarations to ZATCA. Since ZATCA did not refute Zakat Payer's claim that the profits had already been subject to zakat by the company in which Zakat Payer had invested. Since this matter was feasible for ZATCA to refute this claim by confronting Zakat Payer with evidence that such profits had not been subject to zakat in the company, in which the investments were made, based on zakat declarations filed by Zakat Payers to ZATCA. Alternatively, ZATCA could have proven that the Company had been fully liquidated and no longer had a zakat file after liquidation, and that it had settled any liabilities with ZATCA through a final clearance process, in such cases. Therefore, the Department accepts Zakat Payer's appeal regarding the deduction of (Profits from a Subsidiary under Liquidation) item from its zakat base and overturns the primary decision regarding this item.
3. 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). Since these allocated amounts have completed a full year while still held by the Company. Since 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. (Creditors of Shares for 2012 and 2013 and Creditors of Dividends for 2012 and 2013) Item: Regarding this item, the Department, having taken cognizance of ZATCA zakat assessment for the year ended on 31/12/2013 AD, noted that ZATCA added both the closing balance of (Creditors of Dividends) and (Creditors of Shares - Capital Adjustments) to zakat base, in addition to the beginning balance of the same two accounts. Since the dispute between the parties involves whether the balances of (Creditors of Dividends and Creditors of Shares) was held in a separate bank account, independent from Company's funds, or not. Since Zakat Payer, within the attachments to its supplementary memorandum submitted the Department on 20/02/1442H, provided a sample of transfers made by the Company from its bank account to an account in another account for the purpose of dividends. Since ZATCA reply dated 20/01/1442 AH to Department's inquiry about the item in question was that the dispute between ZATCA and Zakat Payer is document-based. Therefore, ZATCA added the balance in question due to the lack of documents proving that such funds were held in a separate account, independent of Company's funds and not under its control. Thereupon, the Department concluded that such account balances were not under Company's control, whether referring to the closing balance of 2012 added to zakat assessment for 2013, or the lower balance for 2013 added to zakat base based on Department's conviction by Zakat Payer's evidence that the funds related to (Creditors of Shares and Creditors of Dividends) were held in accounts separate from Company's funds, and thus, were not under Company's ownership or subject to its control. Therefore, the Department concludes that such balances for 2012 and 2013 are not subject to zakat, thereby accepting Zakat Payer's appeal regarding this item and overturning the primary decision in this regard.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept the appeal in form filed by Zakat Payer (... Company) against Decision No. (32) of 1437 AH rendered by the Second Primary Committee for Zakat and Tax Objections in Riyadh.
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 in Riyadh

Decision No. (IR-2020-5)
Delivered in Appeal No. (Z-1575-2018)

Principle No. 19

If Zakat Payer cancels the commercial register of business activities, there is no room for calculating profits on such business activities, as the cancellation serves as evidence that no profits are realized.

Facts

On .././1441 AH corresponding to .././2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to 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 28/03/2016 AD by ... Enterprise, C.R. No. (...), against Decision No. (21) of 1439 AH dated 09/02/1439 AH rendered by the Second Primary Committee for Zakat and Tax Objections in Jeddah rendered in Case No. (Z-1575-2018) filed by Appellant against ZATCA, in which the primary decision ruled as follows: First: Accept the objection in form filed by Zakat Payer ... Enterprise owned by ... regarding zakat assessment for years from 01/05/1435 AH to 29/04/1437 AH according to decision Grounds. Second: On Merits:

- Uphold ZATCA position in calculating zakat base and zakat due on Zakat Payer's business activity related to purchase and sale of gold and precious metals for years in question according to decision Grounds.
- Recalculate zakat base and zakat due on Zakat Payer's contracting activity as concluded by the Committee in determining net revenue for years in question according to decision Grounds.
- Uphold ZATCA position in calculating zakat base and zakat due on Zakat Payer's business activity related to accessories for years in question according to decision Grounds.
- Uphold ZATCA stance in calculating zakat base and zakat due on Zakat Payer's business activity related to catering for years in question according to decision Grounds.

Dissatisfied with the decision, Plaintiff, Saudi national, holder of National ID No. (...), submitted to the Department a one-page statement of appeal summarized as follows:

This objection was filed within the statutory period without paying amount, as we do not have this amount or any portion thereof. In addition, the supporting documents for validity of our objection were submitted, as we did not object to the basis upon which ZATCA relied, but rather requested a review of the submitted documents, identifying activities and an audit of the amounts paid for 1436 AH, 1437 AH and 1438 AH.

Having presented the statement of appeal to Appellee (ZATAC), Appellee submitted an answer summarized as follows: Appellant did not provide any new arguments in the appeal. ZATCA



elaborates that Zakat Payer was requested to fill out and submit the declarations for the years subject matter of objection, report the sales of licenses and commercial registers, declare the net profit of business activities and provide a printout that elaborates the number of workers. However, Zakat Payer did not provide such printout. Based on the field inspection, data and information available to ZATCA regarding the volume of Zakat Payer's business activities, an estimate assessment was made in accordance with Article (13) of the Implementing Regulation for the Collection of and in application of Paragraph (3) of Article (20) of the same regulations. Therefore, ZATCA insists on validity and soundness of its procedure.

On Wednesday, 04/06/1441 AH corresponding to 29/01/2020 AD, the Department held its session to consider the Case. Having called the litigants: ..., holder of National ID No. (...) appeared in his capacity as the owner of Enterprise, while ZATCA representative did not appear. The Department asked Appellant about the reasons for challenging decision. Appellant answered that he had nothing to add beyond what was submitted before the Primary Committee to challenge the decision on the Grounds that ZATCA estimate method for calculating zakat base does not reflect reality. In addition, the reasons for violating such estimation were outlined in the reply memorandum submitted to the Objection Committee that rendered the decision. Having asked Appellant about the final request, Appellant replied seeking to overturn the decision rendered against the Enterprise and overturn its conclusion regarding the estimate assessment. Therefore, we request calculating an annual zakat base amounting to SAR 21,000 for each year, as that is the correct estimate for the two years and is the amount paid for 1440 AH. In addition, Zakat Payer stated that "I desire to provide the Department with evidence of deferred sale invoices, consignment agreements and copies of some canceled commercial registers, which were included in zakat base". Based on the statements made, the transcript was closed, and the Department decided to continue considering the Case after further deliberation.

The Department, having taken cognizance of memorandums 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

Having taken cognizance of documents included in Case file, statement of appeal submitted by Zakat Payer and the argument submitted by Zakat Payer as previously outlined, the Department found that the conditions for hearing appeal in form have been met in accordance with the conditions stipulated in the relevant laws, regulations and resolutions.

On Merits: Having taken cognizance of Case file, documents included therein, statement of appeal memorandum, answer thereto and statements made during the hearing session, the Department found that Zakat Payer's appeal involves claim for overturning primary decision rendered for the years subject matter of objection. Zakat Payer requests that its zakat base be calculated in the amount of SAR 21,000 for each year, considering that it is the correct estimation based on the documents provided, and that ZATCA estimation does not align with Enterprise's profits and losses. Since ZATCA believes that Zakat Payer was asked to fill out and file the declarations for years in question, disclose licenses and commercial registers, report net profits of business activities and provide the supporting documents and a printout of worker number, in addition to a statement of revenues and expenses for each activity. However, Zakat Payer failed to provide such documents. Based on field inspection, data and information available to ZATCA, the estimate assessment was made, which included various activities of Zakat Payer involving a total of (10) shops outlined in jewelry and gold sales, contracting, catering services, perfume sales and garment sales.

It turns out from the attached certificates of canceling commercial registers that:



- As for ... (Contracting) Enterprise, C.R. No. (...), dated 16/03/1434 AH, the commercial register was canceled on 29/03/1436 AH. In addition, its zakat base was determined based on estimate assessment in the amount of SAR 50,000.
- As for ... Enterprise, C.R. No. (...), dated 02/05/1435 AH, the commercial register was canceled on 10/06/1436 AH. In addition, its zakat base was determined based on estimate assessment in the amount of SAR 20,000.
- As for ... Enterprise Branch, C.R. No. (...), dated 23/01/1435 AH, the commercial register was canceled on 14/11/1437 AH for the purpose of activity liquidation. In addition, its zakat base was determined based on estimate assessment in the amount of SAR 500,000.
- As for ... Enterprise Branch, C.R. No. (...), dated 24/04/1430 AH, the commercial register was canceled on 14/11/1437 AH for which Zakat Payer was not accounted until the date of closing. In addition, its zakat base was determined based on estimate assessment in the amount of SAR 100,000.
- Two commercial registers of (2) garment branches, C.R. No. (...) and C.R. No. (...), dated 14/11/1437 AH. In addition, their zakat bases were determined in the amount of SAR 100,000 and SAR 30,000 respectively.

Since the principal rule is that zakat base should be calculated based on Zakat Payer's declaration, and it is their responsibility to provide the supporting documents. If there are not statutory books and records, ZATCA shall be entitled to use estimate method to calculate zakat by collecting all available information to come up with the closest estimate of Zakat Payer's actual business activity. This is typically done through field inspections, assessments by ZATCA and through any information that ZATCA obtains from other parties, "such as the volume of Zakat Payer's imports, contracts, workers, loans and subsidies received".

Having taken cognizance of Case documents, facts of the Case, and the attached documents concerning Zakat Payer's business activities and their operational status (whether continuing or ceased), the Department found that the estimate assessment did not fairly reflect the true nature of Zakat Payer's business activity in light of the circumstances and facts related to the case. Since ZATCA did not consider the working capital cycle, the estimated profit margin from total sales, and did not verify the existence of goods owned by third parties. Since the Department's review of the documents revealed that Zakat Payer possesses goods under consignment agreements, as shown through contracts and invoices related to gold and precious metals business activity. Since Zakat Payer's main objection involves objecting to including gold balances within zakat base, as gold was not owned by him but rather under consignment agreements, in addition to Zakat Payer's objection to including activities related to certain businesses for which the commercial registers had been canceled. Since the Department found that there was no evidence justifying ZATCA inclusion of gold balances within zakat base, given Zakat Payer's valid contracts for the consignment of gold with others, proving that the gold was not owned by Zakat Payer. Therefore, the Department ruled that the gold and precious metals should not be included within zakat base, and that only the estimated profits from consignment activity should be calculated as outlined in the wording of this decision.

As for activities for which Zakat Payer's commercial registers were canceled, no profits should be calculated for such activities, as the cancellation serves as an evidence that no profits were realized throughout the years in question as stated by Zakat Payer in light of ZATCA failure to provide any evidence to suggest otherwise, which confirms inaccuracy of zakat base estimation as claimed by ZATCA and as ruled in the primary decision in this regard.

As for Zakat Payer's other ongoing activities (other than gold-related activities), the Department did not find any reason to deviate from ZATCA estimate assessment in this regard, as Zakat Payer failed to provide credible evidence that supports its stance to challenge the primary decision.



Therefore, the estimated zakat base for such activities shall be upheld as will be detailed in the wording of this decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept the appeal in form filed by Zakat Payer (... Enterprise), owned by ..., against Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (21) of 1439 AH dated 09/02/1439 AH.

Second: On Merits:

Uphold the primary decision regarding ZATCA procedure outlined in making estimate assessment for Zakat Payer and amend its wording to be as follows:

1. Calculate zakat base and zakat due on Zakat Payer's ongoing commercial registers related to purchase and sale of gold and precious metals based on the capital specified for such registers and estimated profits according to ZATCA assessment, while derecognizing inventory balance according to reasons and Grounds stated herein.
2. Calculate zakat base and zakat due on Zakat Payer's activities related to purchase and sale of gold and precious metals for the canceled registers based on the capital specified in such canceled registers according to reasons and Grounds stated herein.
3. Calculate zakat base and zakat due on Zakat Payer's ongoing activity related to contracting (... Contracting) as stipulated by the primary decision according to reasons and Grounds stated herein.
4. Calculate zakat base and zakat due on Zakat Payer's canceled contracting activity (... Contracting) based on the capital specified in the register of such activity according to reasons and Grounds stated herein.
5. Calculate zakat base and zakat due on Zakat Payer's ongoing activity related to perfume trade in accordance with ZATCA assessment of that activity according to reasons and Grounds stated herein.
6. Calculate zakat base and zakat due on Zakat Payer's canceled activity related to catering services based on the capital specified in the register of this activity according to reasons and Grounds stated herein.
7. Calculate zakat base and zakat due on Zakat Payer's canceled activity related to garment trade based on the capital specified in the register of this activity according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-49)
Delivered in Appeal No. (1601-
2018-Z)

Principle No. 20

Zakat Payer's claim, after Company liquidation, to continue submitting certified copies of financial statements in order to deduct expenses of such financial statements is not feasible. It is not possible to apply previous conditions as a basis for approving and deducting such expenses from Zakat Payer's zakat base.

Facts

On Wednesday, 07/01/1442 AH corresponding to 26/08/2020 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 16/07/1436 AH corresponding to 05/05/2015 AD by ... Company against First Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (22/7) of 1438 AH rendered in Objection No. (113) dated 17/03/1434 AH filed by Appellant against ZATCA, in which the primary decision states:

First: Accept the objection in form filed by ... Company

Second: On Merits:

1. Uphold ZATCA decision that disallowed deduction of additional financing in the investee companies from zakat base of the Company (Zakat Payer) for years from 2005 to 2008.
2. Uphold Zakat Payer's position in deducting investment in ... Company (...) from Zakat Payer's zakat base for years from 2005 to 2007.
3. Uphold ZATCA position in disallowing deduction of investments in investment funds from Zakat Payer's zakat base for years from 2005 to 2008.
4. Resolution of the dispute between Zakat Payer and ZATCA regarding (Depreciation) item charged to a subsidiary for 2006 and 2007 based on Zakat Payer agreement on ZATCA position regarding this item.
5. Uphold Zakat Payer's position in deducting translation variance of ... Company (...) financial statements form Company's zakat base only for years from 2005 to 2007, and uphold ZATCA position in disallowing deduction of translation variance of ... Company (...) financial statements form Zakat Payer's zakat base for 2008.
6. Resolution of the dispute between Zakat Payer and ZATCA regarding (Accounting Error for 2007) item based on Zakat Payer agreement on ZATCA position regarding this item.
7. Uphold ZATCA position in disallowing deduction of ... Company (... Company) losses form Zakat Payer's zakat base for 2008.
8. Uphold ZATCA position in adding dividends that completed a full lunar year, while being in Zakat Payer's possession, to Zakat Payer's zakat base for 2008.



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

1. (Additional Investment for Years from 2005 to 2008) Item: Zakat Payer objects to this item regarding the decision's upholding of ZATCA stance of disallowing deduction of investments in (... Company) and (... Company) despite the fact that Appellant Company has provided additional contributions that constitute an investment by increasing its equity in such two investee companies. In addition, the amounts of such additional investments should not be considered as amounts paid as if they were a loan or debt from the Company to the investee companies. Company's investment is outlined in its recording in shareholders' current accounts with the investee companies. Accordingly, there is no room for considering such investments as a liability arising from loans or commercial transactions, but they are long-term investments related to equity. Moreover, such investment is not comparable to investment in securities, which requires, as stated by the Committee that rendered the decision, the documented intention of the authorized person prior to making investment decision and the lack of trading activity throughout the year regarding such investments. Accordingly, such additional investments were made by the Company in its capacity as a shareholder, and consequently, such additional investments should be deducted from Zakat Payer Company's zakat base.
2. (Investments in Investment Funds for the Period from 2005 to 2008) Item: Zakat Payer objects to ZATCA position, upheld by the Committee, regarding disallowing deduction of investments in investment funds from zakat base for such years despite the fact that there are certificates issued by the investee companies, as such shares are held for more than a year. Accordingly, such shares are categorized as investments in acquisition assets rather than trading assets. Therefore, such investments should be deducted from zakat base, as they are collectively long-term investments in investment funds, with the Company's intention to retain them for their returns rather than for speculative purposes. Accordingly, such investments should be deducted from zakat base.
3. (Financial Statement Translation Variance of a Subsidiary for 2008) Item: Zakat Payer objects to Committee's decision regarding disallowing deduction of the balance of translation variance expense of the financial statements based on the premise that zakat due on the foreign investment in (... Company) has not been paid, as this expense is an actual cost incurred by the Company and was reflected in income statement under expenses for 2008. Since the investment in the Company remains active and has not been liquidated. Therefore, ZATCA should accept its deduction from zakat base, especially after Zakat Payer provided a copy of the financial statements of the said company and calculated zakat on such expense.
4. (Net Losses of Subsidiaries under Liquidation for 2008) Item: The Committee upheld the adjustment of business results for 2008 regarding the net losses of a subsidiary under liquidation (... Company), considering that the entire share was closed with losses included in year's expenses as reflected in income statement. However, this does not imply, from ZATCA stance, that zakat is entirely exempted on such investments. In addition, Zakat Payer Company asserts that this amount is an actual expense incurred by the Company and is thus deductible from zakat base. If the investment had continued and not been liquidated, ZATCA would have had to accept its deduction, especially since the Company provided a copy of the financial statements of the said Company. However, when the investee company is liquidated, it is illogical for ZATCA to insist on deducting loss amount from zakat base while continuing to request that a copy of the audited financial statements is provided and calculating zakat as if the Company's business activity was ongoing.
5. (Dividends Completed Full Year) Item: Zakat Payer objects to Committee's approach in upholding ZATCA procedure outlined in adding dividends amounting to SAR 5,000,000 to zakat base, as such dividends have completed a full lunar year. This approach does not align with the stability of transactions and relationship between ZATCA and Zakat Payer. This also does not assist Zakat Payer in arranging its relationship with third parties, including



shareholders on a consistent and stable basis when ZATCA selectively applies the lunar year to some items and exempts others. The crucial factor is whether the amounts of such dividends are at the disposal of shareholders if they were distributed on the last days of Company's fiscal year. If ZATCA found that such amounts have been removed from Company's liabilities and become at shareholders' disposal, leading to a situation where the Company cannot dispose, withdraw or charge a commission on them, then this situation requires accepting deduction of such amounts from the retained gains. Furthermore, if the regulation allows deducting announced but unpaid dividends until the end of the fiscal year because they have been at shareholders' disposal, it is even more justified to deduct dividends that have actually been paid to the shareholders on the last days of the fiscal year. Therefore, there is no valid ground for subjecting this amount, which is now under shareholders' disposal, to zakat, as the consideration should be based on the completion of the fiscal year, rather than the completion of lunar year, as indicated in ZATCA stance.

Since the Department asked ZATCA to answer to claims included in Appellant's memorandum regarding the item, subject matter of objection, within (10) days from the date of sending such order to ZATCA on 30/04/2020 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 replies included in the primary decision regarding the items, subject matter of appeal, shall be disregarded.

Having taken cognizance of appeal memorandums, primary decision and documents included in Case file, the Department 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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

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 found the following:

1. (Additional Investment for Years from 2005 to 2008) Item: Since the appeal regarding this item was based on what was previously presented. Since Zakat Payer's argument for deducting such investments in ... Company for years from 2005 to 2008, and in ... Company for 2008, was as stated in Zakat Payer's statement of appeal statement. Having taken cognizance of reasons for Zakat Payer Company's objection, the Department found that the additional investments are investments recorded as equity of Zakat Payer Company in the investee companies, in addition to their investments in main or primary capital. Since the financing of such additional investments was recorded in shareholders' current account with the investee companies. Since the nature of the investment in this form cannot be classified as a debt, loan or a balance of receivables arising from commercial transactions. In addition, it is not merely an investment in financial securities to be classified as such for zakat purposes as acquisition assets. Instead, it outlines a direct investment in the form of equity for Zakat Payer Company in the investee companies. As such, it is not appropriate to add the amounts of such investments to Zakat Payer's zakat base on the Grounds used by ZATCA in handling and calculating such investments within zakat base. Therefore, the Department upholds Zakat Payer's position in deducting amounts of such investments as stated in its zakat declarations, and overturns the primary decision regarding this item.



2. (Investments in Investment Funds for the Period from 2005 to 2008) Item: Having taken cognizance of Appellant's reasons and arguments for not including amounts of such investments in the funds, based on Appellant's claim that such investments are long-term investments and not speculative, with the aim of receiving returns. Since the Committee that rendered the decision reviewed the issue of investment in these funds and examined whether these investments should be classified as acquisition assets or as speculative investments; therefore, the Department determined that the nature of transactions, whether carried out directly by Zakat Payer or by Fund Manager on behalf of subscribers, does not change the classification as speculative investments. 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 the item 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 Appellate 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, the Department dismisses Zakat Payer's appeal and upholds the primary decision regarding this item.
3. (Financial Statement Translation Variance of a Subsidiary for 2008) Item: Having taken cognizance Zakat Payer's appeal regarding this item, the Department found that this item pertains only to 2008. Since ZATCA accepts Zakat Payer's declaration regarding this item for prior years based on submitting certified copies of the financial statements of the subsidiary (... Company), and had allowed deduction of translation expenses as an expense. Since ZATCA continuing in asking Zakat Payer to provide certified copies of the financial statements in order to deduct translation expenses for the year in question is deemed impractical after Company's liquidation. Given the circumstances, it is no longer possible to submit financial statements for a company that has been liquidated in order to deduct such translation expenses. Accordingly, it is inappropriate to apply the same previous requirements for approving and deducting this expense from Zakat Payer's zakat base, as the conditions have changed, and the company has been liquidated with no financial statements being issued. Therefore, the Department accepts Zakat Payer's appeal by deducting translation expenses of Subsidiary's financial statements for 2008 from zakat base and overturns the primary decision regarding this item.
4. (Net Losses of Subsidiaries under Liquidation for 2008) Item: Zakat Payer objects to the approach of the Committee that rendered the decision outlined in disallowing deduction of investment loss in (... Company) that was under liquidation after its accounts were closed. Since Committee's adjustment to business results of the subsidiary under liquidation does not align with the reality of continuation of its business activity due to liquidation. Since Committee's dismissal to deduct the result of that investment, as stated in the primary decision, was based on the requirement to provide copies of subsidiary's financial statements duly certified by the relevant authorities, in order to deduct the value of such investments from the Zakat Payer's zakat base. However, such a request cannot be fulfilled, as the Company no longer exists due to its liquidation. Therefore, it is impossible to submit the audited financial statements and official certifications in the country of investment, given Company's dissolution. Thereupon, it is necessary to allow deduction of such losses from zakat base, as they outline actual expenses incurred by the Company.
5. The Department, having taken cognizance of reason for appeal regarding this item, found that the Committee that rendered the decision of disallowing deduction of losses related to subsidiary's investment balance, which was closed, from Zakat Payer's zakat base was based on



the requirement to provide the documents and financial statements of such investment for 2008. This approach does not take into account the reality of Company's liquidation, but rather handles the investment as if it was still existing, while Zakat Payer did not provide supporting evidence to justify the deduction of losses on which the investment balance was closed upon liquidation of the Company. Since such claim imposes an unjustified burden on Zakat Payer without any effective result, given Company's dissolution and cessation of business activity. Therefore, the Department accepts Zakat Payer's appeal, allowing closure of investment losses balance for the investee company and adding it to the allowable deductions from zakat base as stated in Zakat Payer's declaration, and overturns the primary decision regarding this item.

6. (Dividends Completed a Full Year for 2008) Item: Having taken cognizance of Appellant's objection to this item as previously detailed, the Department found that the primary decision upheld the inclusion of dividends amounting to SAR 5,000,000 in Zakat Payer's zakat base for 2008. Since the primary decision has given sufficient response to Appellant's arguments, whereby it attempted to challenge Committee's decision to adopt the lunar year for levying zakat on funds held in possession of Zakat Payer for a full lunar year. Since the Department did not find any requirement for correction or further response to the conclusion reached by the appealed decision in light of the arguments submitted by the Appellant that don't bring anything new beyond the arguments raised before the Primary Committee at the time of discussing Zakat Payer's objection regarding this item. This conclusion is not affected by ZATCA approach that was upheld by the Committee, considering that there is an alleged unjustified selectivity in using the Gregorian fiscal year to prepare the financial statements while disregarding it for zakat purposes in favor of the lunar year, does not alter the outcome, as zakat obligation is tied to the retention of funds by Zakat Payer until the end of lunar year. In addition, the law allowance for Zakat Payers to select the Gregorian fiscal year is intended to facilitate the organization of accounting matters related to their business activities and does not impact their obligation to pay zakat when it becomes due under Sharia. Since such amounts considered as dividends remained in Company's possession and had not been distributed by the end of the lunar year, such amounts shall be considered funds subject to zakat by Zakat Payer Company. Therefore, the Department dismisses Zakat Payer's appeal regarding this item and upholds the primary decision in this regard.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept appeal in form filed by Zakat Payer (... Company), C. R. No. (...), against First Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (7/22) of 1438 AH.

Second: On Merits:

1. Uphold Zakat Payer's position regarding (Additional Investment for years from 2005 to 2008) item, by deducting amounts of such investments as stated in its zakat declarations, and overturn the primary decision in this regard according to reasons and Grounds stated herein.
2. Dismiss Zakat Payer's appeal regarding (Investments in Investment Funds for the Period from 2005 to 2008) item, and uphold the primary decision based on its reasons stated in the primary decision regarding this item.
3. Accept Zakat Payer's appeal regarding (Financial Statement Translation Variance of a Subsidiary for 2008) item, by deducting translation expenses of the financial statements of (... Company for 2008) from zakat base, and overturn the primary decision in this regard according to reasons and Grounds stated herein.
4. Accept Zakat Payer's appeal regarding (Net Losses of a Subsidiary (... Company) under Liquidation for 2008) item, and overturn the primary decision in this regard according to reasons and Grounds stated herein.



5. Dismiss Zakat Payer's appeal regarding (Dividends Completed a Full Year for 2008) item, and uphold the primary decision based on its reasons stated in the primary decision regarding this item.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Dispute in Riyadh

Decision No. (IR-2021-71)
Delivered in Appeal No. (I-1639-2018)

Principle No. 21

The interpretation of the contract (any contract) and identifying intention of the contracting parties shall not be limited to the literal meaning of terms set out therein. However, the purposes and meanings shall be derived from the context in which such terms are mentioned, and this context shall be used to infer the essence of intended meaning, which reflects the true will of parties thereto.

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 filed on 08/05/1437 AH by ... Company against First Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (8) of 1437 AH rendered in Case No. (4/36) regarding tax assessment for 2012 and 2013 filed by Appellant against ZATCA, in which the primary decision ruled as follows:

First: Accept the objection in form.

Second: On Merits:

Uphold ZATCA stance in making Taxpayer subject to tax on the basis that the contract is a management contract.

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

Taxpayer objects to Primary Committee's decision that upheld ZATCA in making Taxpayer subject to tax on the basis that the contract made by and between Taxpayer and ... Company is a technical service contract, rather than a management contract. In addition, Taxpayer asserts its right to be subject to tax on this contract at an estimated profit rate of only 20%, considering that the contract subject matter of the Case is a technical service contract, and not as classified by ZATCA as a management service contract, which makes such contract subject to a tax with an estimated profit rate of 80%. Therefore, the Company requests overturning Primary Committee's decision in this regard.

Since the Department decided opening of pleadings. Therefore, Taxpayer was addressed on 05/11/1441 AH corresponding to 25/06/2020 AD to submit any additional submissions to its appeal within the period set by the Department or to be satisfied with its earlier submissions, in addition to submitting all supporting documents for its claim, but the period lapsed without any further submissions by Taxpayer.

In addition, ZATCA submitted, on 21/03/1442 AH corresponding to 06/11/2020 AD, an answer wherein replies to Taxpayer's appeal, by reiterating its previous position presented before the Primary Committee. The answer is summed up in that ZATCA reiterates its previous position submitted before the Primary Committee. Moreover, Taxpayer's arguments do not differ from



such arguments previously submitted, to which ZATCA has already answered at that time. In addition, ZATCA insists on such Grounds stated in the primary decision, and affirms, in the conclusion of its answer, its request to dismiss Taxpayer's appeal.

On Thursday, 29/06/1442 AH corresponding to 11/02/2021 AD, the First Appellate Department for Income Tax Violations and Disputes convened to consider the appeal filed by Company. The Department, having reviewed the facts of the case, and since the dispute is related to the identification and characterization of the nature of work and services provided by ... Company based on the contract concluded with Company, and since the identification and characterization of the nature of this contract requires that contract be studied and examined, and since GAZT decided to disregard the Taxpayer's declaration and to base its assessment on its interpretation of that contract; the Department requested GAZT to provide the Department with a copy of that contract and its appendices within a period of (10) days from the date of notification of request. However, the specified period has passed without a response

On 10/08/1442 AH corresponding to 23/03/2021 AD, the Department received from GAZT the contract between the Taxpayer..... Company and On the provision of technical services, which was executed on 02/06/2007 AD. In the said contract, "Technical Services" are defined in Article 1.1 as follows: "the technical assistance in the fields of water and wastewater systems in the Kingdom of Saudi Arabia's territory provided through (1) long- and short-term expert teams specified in more detail in Schedule No. (A) attached hereto". The received documents also included the appendices that include the Taxpayer's technical services, including: "Network management, work distribution management, asset data and information management, project and program management, wastewater and sludge treatment management, administrative and organizational advice in the construction phase, management and supervision of workers, and cost control".

On Tuesday, 10/08/1442 AH corresponding to 23/03/2021 AD, the Department after having reviewed the litigants' submissions under this appeal as well as the documents included in the case file, established that the case was ripe for adjudication and decision.

Grounds

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

As on Merits, the Taxpayer contested the primary decision for considering the contract signed between the Taxpayer andcompany as a management contract and not a technical services contract. The Department found that the appealed decision concluded to uphold GAZT's decision to impose tax on the Taxpayer considering the contract a management contract, whereupon the Taxpayer is required to pay a tax on that contract at an estimated profit rate of (20%) and not (80%), while the Taxpayer insisted on classifying the contract as a technical services contract.

The Department, having examined the litigants' submissions and reviewed the contract in dispute and its appendices, found that the word "management" was recurrently mentioned in the contract in dispute in the context of describing the technical work provided by the Taxpayer. Additionally, Paragraph 2.2 indicated thatCompany is required to provide technical services toCompany, and the contract has explicitly stipulated thatCompany may not interfere in the direction, management, control or supervision of the work carried out by the experts appointedCompany, nor shall the first bear any responsibility or obligation regarding the implementation of the work carried out by any expert based on the direction, management or supervision of the latter. Accordingly, the word "management" in the contract in dispute does not denote the management meaning as intended by GAZT. Given that the interpretation of a contract and determination of the contracting parties' intention is not limited to the literal meaning of the words, but rather the purposes and meanings are inferred from the context in which those words



appear and since GAZT did not provide in its plea any proof for its interpretation; therefore, This Department concludes to accept the Taxpayer's appeal and overturn the primary decision in this respect.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept in form the appeal submitted by the Taxpayer.....Company, C.R. No....., against the decision of the Primary Zakat and Tax Objection Committee in Riyadh No. (8) for the year 1437 AH.

Second: On Merits:

Accept the Taxpayer's appeal against the primary decision and overturn the primary decision as per the Grounds stated.



Appeal

Appeal Committee

First Appellate Department for Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-43)
Delivered in Appeal No. (1656-2018-Z)

Principle No. 22

It is not the Department's duty to search for evidence for the taxpayer but rather to determine the dispute in light of the evidence presented and to examine the same to verify the validity of taxpayer's claims.

Facts

On Wednesday 24/11/1441 AH corresponding to 15/07/2020 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 15/03/1438 AH, corresponding to 14/12/2016 AD byCompany, against the Decision No. 23 of 1437 of the Second Primary Zakat and Tax Objection Committee in Jeddah delivered in Case No. (1656-2018-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 filed by the Zakat Payer.....Company to the zakat assessment for the years 2009 to 2012.

Second: On Merits:

Uphold GAZT's decision regarding the import differences for the years 2009 to 2012 as per the Grounds stated in the decision.

Dissatisfied with the decision, the PlaintiffCompany filed a statement of appeal, the summary of which is as follows.

The Appellant objected to the Zakat Assessment issued by GAZT for recording the import differences in the name ofEstablishment ... whose Zakat was paid to GAZT, and not in the name ofCompany, claiming that this unintentional mistake is committed by the employee working with the customs broker resulting into recording the Company's imports in the Establishment's records.

On Wednesday, 18/06/1441 AH, corresponding to 12/02/2020 AD, the Department held its session to consider the case. Having called the parties to the case appeared for the Appellant Mr....., National ID No....., in his capacity as the Appellant's attorney, while for GAZT appeared Mr....., national ID No..... by virtue of GAZT's Authorization No. dated 19/05/1441 AH. The Department, having examined the appeal filed by the Appellant, found that the Appellant stated that it received the decision on 18/01/1438 AH. The Department then asked GAZT's representative about their identification of the date of filing the appeal against the appealed decision by the Company, and if they had any document that contradicts the Appellant's statement, he replied that they would provide the Department with any document or record they



had that indicate the date of receipt of the decision by searching in their mails and by checking with the Saudi Post within two weeks from the date of that session.

Having asked the Appellant's attorney about the date of his receipt of the appealed decision, he replied that he had no supporting document for that and that he requested to be granted a period of time to search for any document showing the date of receipt of that decision, and accordingly the session was adjourned pending submission of the required documents by the case parties.

On Wednesday, 03/11/1441 AH, corresponding to 24/06/2020 AD, the First Appellate Department convened to hear the appeal filed by the Taxpayer. After the conclusion of the hearing dated 12/02/2020 AD, and after deliberation between the Department members regarding the acceptance of the appeal, and since the Department did not receive a document that specifies the date for notifying the Appellant of the appealed decision and receipt thereof, therefore, the Department determined that the date of objection to the appealed decision is the date on which the Appellant was notified and received the decision and thus found that the decision is admissible in form.

Given that the dispute between the two parties was a documentary dispute related to the import differences that the Taxpayer claims belong to another establishment (..... Establishment), and that the customs broke, when clearing the consignment, mistakenly recorded these differences in the name ofestablishment and the Appellant Company. Accordingly, the Department requested the Appellant Company to submit the documents it has regarding its imports and the establishment with which the mistake has been occurred, as per the following:

1. Submit the customs declarations for the years in dispute, i.e., 2009 to 2012 for the Appellant Company andEstablishment.
2. Submit the import declarations for the years from 2009 to 2012 for the Appellant Company andEstablishment.
3. Submit a settlement between the customs declarations and import declarations of the Appellant andEstablishment for the years in dispute, to validate the Appellant's claim that the increase in the amounts of the import declarations in dispute is matched by a decrease in those amounts for the establishment's import declarations or vice versa.

The Department ordered that those submissions be provided by the Taxpayer within (10) days from the date of notification to submit, in order for the Appeal Studies Department to examine the submissions and give an opinion regarding them and if they match the appellant's claims or not. The Department then adjourned the session.

The Department, having reviewed the appeal submissions as well as the statements made before the Department and having examined the documents contained in the case file, and after the 10-day period set by the Department for receiving the submissions had passed, this Department determined that the case was ripe for adjudication and delivery of its decision.

Grounds

Having reviewed the case documents and the statement of appeal submitted by the Appellant Company, the Department found that the formal requirements for accepting the appeal are met as stipulated in the relevant laws, regulations and decisions. Accordingly, this appeal is accepted 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 contained therein, the statement of appeal and the statements of the parties, and after examining the submissions provided by the Appellant during the period granted to him, which have been uploaded to the General Secretariat's website on 25/06/2020; and since the Department has ordered that the Appellant submit a comparison between the customs declarations and import declarations of the Appellant to prove that the increase in the import declarations subject matter of dispute is matched by a decrease in those amounts pertaining toEstablishment or vice versa in order to verify the validity of its claim accompanied by the declarations of both the Company and the Establishment; and given that the Taxpayer has submitted import declarations for the years in



dispute and invoices and statements of various accounts in addition to the company's declarations; and since the Taxpayer did not submit the documents requested from it in order for the Department to verify its claims that those import differences are caused by a mistaken mixing between the imports of the Appellant and the Establishment; and given that the Taxpayer didn't submit a statement that shows the imports of both the Appellant and the Establishment for the years in dispute to prove its claims, and given that the Appellant has submitted the import declarations without providing its arguments that support its claims, therefore, this Department established that the Appellant has failed to prove invalidity of apparent fact that there is differences in the import declarations registered in the Appellant's name. Given that it is not the Department's job to collect evidence for the Taxpayer, but rather to resolve the dispute in light of the evidence it receives in order to verify the validity of the Taxpayer's claims. The submission of unrelated declarations does not deem those declarations as conclusive evidence that help determine the case. Rather, the Appellant should have done its duty by providing evidence that prove his case as the Department requested. Based on the foregoing, this Department decided to dismiss the appeal of the Appellant Company and uphold the primary decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept in form the appeal filed by the Taxpayer.....Company, C.R. No..... against Decision No. 23 of 1437 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

Dismiss the Taxpayer's appeal and uphold the primary decision regarding the import differences for the years in question for the Grounds stated.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-107)
Delivered in Appeal No. (Z-2018-1831)

Principle No. 23

The Zakat Payer has the right to any claim that fulfills its duty to preserve the Company's funds by not paying more than the amount required to be paid to the Authority.

Facts

On Wednesday 18/03/1442 AH corresponding to 04/11/2020 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 and amended by Royal Decree No. (M/113) of 02/11/1438 AH convened at its headquarters in Riyadh to hear the appeal filed on 06/06/1438 AH by the General Authority of Zakat and Tax (GAZT) against the decision of the First Primary Zakat and Tax Objection Committee in Riyadh, No. (12) for the year 1438 AH delivered in Case No. (37/15) instituted byCompany against ZATCA, in which the Primary Decision ruled as follows:

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

Second: On Merits:

Accept the Zakat Payer's claim for not taxing the indirect share ofEstablishment in the capital ofCompany.

Dissatisfied with the decision, ZATCA filed a statement of appeal summarized as follows:

GAZT appeals the primary decision being based on the Sahria 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. GAZT 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. GAZT 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 Appellee is not authorized to submit such request, and any determination to the contrary would result in an endless loop of exemptions based on that premise, namely the Zakat Payer claim that its shares held in a company should be exempted from zakat.

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



Having taken cognizance of Case documents and statement of appeal submitted 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 appeal is accepted in form for being filed by party having capacity and within the prescribed statutory period.

As on Merits, the Department, having reviewed the case file and the 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 GAZT'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 thatCompany which is the company that is directly invested in by the charity did not request for the exemption. On this ground, GAZT 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 GAZT, as long as such claims are based on sound Grounds. This conclusion is not impaired by the fact the company which the Zakat Payer hold shares in did not claim its right before GAZT as to deducting the contribution of the charity from its zakat. Accordingly, this Department concluded to dismiss GAZT's appeal for not being based on valid Grounds and to uphold the primary decision in this respect.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

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. (IR-2020-90)
Delivered in Appeal No. (Z-
2018-1837)

Principle No. 24

The zakat to be collected is related to the business activity of the zakat payer that he runs through his establishment.

Facts:

On Wednesday 27/02/1442 AH corresponding to 14/10/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH 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) dated 02/11/1438 AH convened at its headquarters in Riyadh to consider the appeal filed on 07/02/1438 AH by the General Authority of Zakat and Tax (GAZT) against the decision of the Second Primary Zakat and Tax Objection Committee in Jeddah No. (1) of 1438 AH, issued in Objection No. (1436/24/2713) filed by Establishment. against ZATCA, in which the Primary Decision ruled as follows:

First: Accept in form the objection filed by Establishment against the zakat assessment for the years from 1433 to 1435 AH.

Second: On Merits:

1. Accept the Zakat Payer' claim for specifying the imports of the year 1432 AH at the amount of SAR 45,160,993 within the import base for the following years only as per the Grounds stated in the decision.
2. Accept the Zakat Payer's claim for not including the rentals received by..... within his zakat base as per the Grounds stated in the decision.

Dissatisfied with the decision, ZATCA filed a statement of appeal summarized as follows:

GAZT challenges the primary decision for accepting the Zakat Payer's request for not adding the amount of SAR 44,430,713 to the zakat base of the Appellee. GAZT based its claims on Grounds that upon reviewing the accounts of company for the years from 2009 to 2011, it found that the said company has paid that amount as a rental to the Zakat Payer (the Appellee). Accordingly, the adding of that amount to the Zakat payer's zakat base is consistent with the law and the Royal Decree No. (M/40) of 02/07/1405 AH, which stipulates the zakat is collected from all companies, establishments and all individuals who are eligible for paying zakat. This is further confirmed by the fact that the financial liability of the establishment and its owner is the same and hence that amount is revenues that were not disclosed by the Zakat Payer. Given that the Zakat Payer is engaged in business activity being a partner inCompany and that the leasing transaction he carried out is considered a commercial activity according to the interpretation of the Law of Commercial Courts, which excludes the purchase, sale, or leasing of property from being a commercial activity only if it is for personal use, which is not the case in the lease transaction



carried out by the Zakat Payer and accordingly, the rental amount received by the Zakat payer should be added to his zakat base.

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

Having taken cognizance of Case documents and statement of appeal submitted 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 appeal is accepted in form for being filed by party having capacity and within the prescribed statutory period.

As on merits, the Department, having reviewed the statement of appeal, the case file and the appealed judgment, has reached the following conclusions. The appealed decision was based on the fact that it was not established -after conducting due investigation- if the amount received by the Zakat Payer is intertwined with its business upon which the assessment was made, which is the activity of the establishment owned by the Zakat Payer. GAZT also did not provide evidence of that in order for the department to accept its claim to add the amount to the zakat base. Accordingly, and since this 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 the argument submitted by GAZT that the financial of the establishment owner and the establishment and its funds are the same, as the zakat to be collected is related to the business activity of the Zakat payer. Given that there is not proof for a connection between the establishment activity and the receipt of those amounts, GAZT's claim to add those amounts to the zakat base is inadmissible. That conclusion is not also affected by the argument that the receipt of rentals by the establishment owner is a business transaction as claimed by GAZT invoking the Law of Commercial Courts in its provision that such lease transactions are considered commercial activity if not intended for personal use, given that the purpose of commercial characterization of activities as per that law is to apply the rules of the commercial system to those who carry out those activities. Even if we assume that GAZT's conclusion is correct considering these transactions as commercial activity, this conclusion is not sufficient for adding those amounts to the zakat base without examining the connection of those amounts to the zakat base of the Zakat Payer, which is the commercial establishment that practices the commercial activity. Accordingly, this Department determined that GAZT's decision was based on ill Grounds and therefore it is refutable.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept in from the appeal filed by GAZT against Decision No. (1) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

Dismiss the appeal filed by GAZT and uphold the primary decision for not adding the amount of SAR 44,430,730 (rentals received from...) to the zakat base of the Zakat PayerEstablishment for the Grounds stated in this decision.



Appeal

Appeal Committee

First Appellate Department for Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-18)
Delivered in Appeal No. (1880-2018-Z)

Principle No. 25

If the intent is uncertain between acquisition and trade, the intent of acquisition takes precedence

Facts:

On Thursday 15/05/1442 AH, the First Appellate Department for Income Tax Violations and Disputes formed pursuant to Royal Order No. (65474) of 23/12/1439 AH convened at its headquarters in Riyadh to consider the appeal filed on 23/01/1437 AH by GAZT against the decision of the Second Primary Zakat and Tax Objection Committee in Riyadh No. (36) of 1436 AH delivered in objection No. (23/36) filed by the Zakat Payer.....Company against GAZT regarding the zakat assessment for the years from 2006 to 2010 AD, in which the primary decision ruled as follows:

First: Accept in from the objection of the Zakat Payer.....Company for being filed by a person with a capacity and with the period prescribed by law.

Second: On Merits:

First: End dispute regarding the item “Net Fixed Assets Differences” for the Grounds stated in the decision.

Second: End dispute regarding the item “Retained Earnings Differences” for the Grounds stated in the decision.

Third: End dispute regarding the item “Technical Supervision Services from Multiple Parties” for the Grounds stated in the decision.

Fourth: Dismiss the Zakat Payer's objection to the item “Investments in Available-for-sale Securities” for the Grounds stated in the decision.

Fifth: Accept by majority the Zakat Payer's objection to the decision regarding the item “Investments in Real Estate Properties” for the Grounds stated in the decision.

Sixth: End dispute regarding the item “Aggregation Error” for the Grounds stated in the decision.

Seventh: Regarding the item “Foreign Investments”: Dismiss the Zakat Payer's objection to the “loans” and accept it my majority for the “real estate investments” for the Grounds stated in the decision.

Eighth: End dispute regarding the item “Withholding Tax” for the Grounds stated in the decision.

Ninth: Dismiss by majority the Zakat Payer’s objection to the item of “calculating zakat on adjusted net profit (the higher value) rather than on the zakat base (the lower value)” for the Grounds stated in the decision.

Dissatisfied with the decision, GAZT filed with this Department a statement of appeal expressing its objection to the primary decision regarding the items of Investments in Real estate Properties and Foreign Investments, which is summarized as follows:

With regard to the item (Investments in Real Estate Properties), GAZT stated that it refused to deduct real estate investments from the zakat base for the year 2008, amounting to SAR



28,548,470, as having referred to the financial statements for the year 2008, Note (9), it found that the real estate investments are the value of a plot of land that was acquired by one of the Zakat Payer's affiliates for the purpose of generating profit by leasing it out or for realizing capital gains, and this investment did not appear in the financial statements for the years 2009 and 2010, and the phrase (or for realizing capital gains) contained in the note suggests an intention to trade by sale wherever it had a good price and thus this property was not for the purpose of acquisition but rather for the purpose of trading, and therefore it should not be deducted from the zakat base according to the Fatwa No. (19382) of 20/01/1418 AH, as well as Ministerial Letter No. (4/8676) of 24/12/1410 AH. In the Grounds of its decision, the primary committee also stated that the intention to trade was not established as to these investments without reviewing the documents supporting the acquisition of these investments to identify their nature and duration, and it only reviewed Note No. (9) of the financial statements.

ZATCA, regarding (Foreign Investments) Item, stated that it did not deduct real estate investments, as it was found that there had been activity on this item in 2010 amounting to SAR (138,139) according to the cash flow statement. Therefore, it is not considered an acquisition asset to be deducted from the zakat base, but rather a trading asset subject to zakat pursuant to Fatwa No. (19382) dated 20/1/1418 AH and Ministerial Letter No. (4/8676) dated 24/12/1410 AH. ZATCA pointed out that the primary decision stated that: "It was found that Zakat Payer did not have a clear intention to engage in trade with respect to these investments, based on Note No. (2) in the financial statements". The Committee did not review the acquisition deed of these investments to ascertain its nature and holding period.

The Appellee Company also submitted its response to ZATCA's statement of appeal through a Reply, summarized as follows: The Appellee Company, regarding its response to ZATCA's appeal against (Investments in Real Estate Properties), stated that in (2008 AD), it invested in ... Company with a 36.67% share. The land owned by ... Company (the investee company), when preparing the company's financial statements for 2008 AD, was classified under "Investments in Real Estate Properties". Subsequently, in 2009 AD, the Company reclassified the "Investments in Real Estate Properties" item under "Investments in Associates" for the purposes of consolidating the financial statements. It should be noted that this investment remains listed in the Company's financial statements for the two years ending on December 31, 2009, and 2010 AD, and subsequent years. Accordingly, Zakat Payer confirms that the real estate investments have not been sold or disposed of and are still listed in the audited financial statements under "Investments in Associates," contrary to ZATCA's viewpoint. Therefore, these real estate investments represent long-term investments and were retained as acquisition assets. The Company also responded to ZATCA's assertion that the phrase "to achieve capital gains" in Note No. (9) of the 2008 financial statements indicates that the investment in question was intended for trading rather than acquisition. The Company argued that ZATCA's reliance on the phrase in Note No. (9) is misplaced. By following the same logic as ZATCA, in interpreting the phrase "to achieve capital gains" as a disclosure of the Company's intention to treat the investment as a trading asset, the sale of these investments would not negate the Company's intention to retain the real estate investments as acquisition assets. The Company emphasized that the investment remains classified under "Investments in Associates" and has not been sold or disposed of. The Appellee Company, regarding its response to ZATCA's appeal against (Foreign Investments) Item, stated that ZATCA, in its appeal, mentioned that it did not accept the deduction of the real estate investment balance from the zakat base for the foreign investee company for the years 2009 and 2010 AD, amounting to SAR (2,691,947) and SAR (2,553,808) respectively, due to the fact that there was movement on the account during 2020 AD amounting to SAR (138,139), as indicated by the cash flow statement, which ZATCA argued was evidence that the investment was not for acquisition purposes. The Company requested upholding the Primary Committee's decision that accepted the deduction of the real estate investments from the zakat base of the foreign investee company, as the same



principles apply to these real estate investments as those in the subsidiary company being appealed by ZATCA, confirming that they are not trade assets.

The Department decided opening pleadings, so ZATCA subsequently submitted a supplemental memorandum and mentioned, regarding (Investments in Real Estate Properties) item, that the Committee overlooked the statement of Note No. (9) of the financial statements, which included the phrase "(or to achieve capital gains) and Zakat Payer failed to present supporting documents to prove that these investments were used in the same way as fixed assets, such as building staff accommodation, company office spaces, or even real estate projects for rental purposes, such as residential buildings, or any other items that could be classified as fixed assets, in accordance with the conditions outlined in Article (4), Item (Second) of the Implementing Regulations for Zakat Collection, which states (the following shall be deducted from the zakat base, including Paragraph (1): Fixed assets include the following:... provided that these assets are owned by Zakat Payer — unless there is an obstacle preventing the transfer of ownership—and that they are used in the activity). ZATCA stated, regarding (Foreign Investments), that it is unclear on what basis the Committee based its decision regarding Zakat Payer's lack of clear intention to trade. ZATCA asserted that the correct interpretation is that these investments were not for acquisition but for trade, as evidenced by the activity on the account. Furthermore, Zakat Payer failed to provide supporting documents to substantiate their claim. If Zakat Payer fails to do so, ZATCA has the right to reject the deduction of these investments from the zakat base pursuant to Article (20) of the Implementing Regulations for Zakat Collection, which states that the burden of proof lies with Zakat Payer to verify the accuracy of the information provided in its declaration.

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 ZATCA (Appellant), 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.

In Merits, The Department, regarding ZATCA's appeal against (Investments in Real Estate Properties) and after considering the appeal on this matter, found that ZATCA's appeal lies in request not to deduct the item "Investments in Real Estate Properties" from the zakat base, claiming that they are trade assets. Meanwhile, Appellee Company maintains that these investments are deductible acquisition assets. The Department determined that these investments are classified under non-current assets, leading it to conclude that there was no intention to trade these investments when they were acquired. The Department noted that ZATCA's argument—that Zakat Payer disposed of these investments in the following year, which ZATCA viewed as evidence of intent to trade—does not change the conclusion. It is established that when intent is uncertain between acquisition and trade, the preference is given to acquisition, as a firm intent to trade those assets is required for zakat to be applicable. The Department further noted that it could rely on the reasons provided in the appealed decision regarding the item under consideration without adding any new arguments, as it considered those reasons sufficient and conclusive. The appealed decision was in line with the sound and sufficient reasons to support its judgment, as the Committee that delivered thereof examined the core of the dispute and reached a conclusion that was reflected in its ruling, supporting the deduction of these investments from Zakat Payer's zakat base. Since the Department did not observe any requirement for correction or further comment based on the evidence provided. Therefore, the Department dismisses ZATCA's appeal and upholds the primary decision regarding this item.



The Department, regarding ZATCA's appeal against (Real Estate Investments) and after considering the appeal on this matter, found that ZATCA's objection centers on the Committee's decision to support Zakat Payer in deducting foreign investments related to real estate and requests non-deduction of the same item from the zakat bas, arguing that it constitutes trade assets. Meanwhile, Appellee Company maintains that these investments are deductible acquisition assets. The Department determined that these investments are classified under non-current assets, leading it to conclude that there was no intention to trade these investments when they were acquired. The Department noted that ZATCA's argument regarding the decrease in the value of these investments in the following year, which ZATCA viewed as evidence of intent to trade, does not change the conclusion. It is established that when intent is uncertain between acquisition and trade, the preference is given to acquisition, as a firm intent to trade those assets is required for zakat to be applicable. The Department further noted that it could rely on the reasons provided in the appealed decision regarding the item under consideration without adding any new arguments, as it considered those reasons sufficient and conclusive. The appealed decision was in line with the sound and sufficient reasons to support its judgment, as the Committee that delivered thereof examined the core of the dispute and reached a conclusion that was reflected in its ruling, supporting the deduction of these investments from Zakat Payer's zakat base. Since the Department did not observe any requirement for correction or further comment based on the evidence provided. Therefore, the Department dismisses ZATCA's appeal and upholds the primary decision regarding this item.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept appeal in form filed by/ "GAZI" (Currently ZATCA) against Decision No. (36) of 1436 AH of the Second Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Dismiss Zakat Payer's appeal by majority regarding the item (Investments in Real Estate Properties) 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 (Foreign Investments) 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-2021-176)
issued in Appeal No. (Z-12429-2020)

Principle No. 26

The issuance of the assessment by ZATCA on a specific date does not necessarily mean that Zakat Payer was notified on that same date, unless there is evidence to substantiate the claim that Zakat Payer was indeed notified of the notice on its issuance date.

Facts:

On Tuesday, 16/01/1443 AH, corresponding to 24/08/2021 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 17/07/1441 AH, corresponding to 12/03/2020 AD by/ (...) Company against decision of the First Department for the Determination of Income Tax Violations and Disputes in Dammam, Decision No. (ZD-2-2020), issued regarding Case No. (Z-2018-15), filed by the Appellant against ZATCA. The primary decision included the following rulings:

- Dismiss the claim filed by ... Company, CR No. (...), regarding zakat assessment for the years 2004 to 2011 AD in form due to the expiration of the statutory period.

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

Zakat Payer stated that it did not receive the assessment in a timely manner due to circumstances beyond its control related to postal procedures and further asserted that it provided official documents as attachments to the Case confirming ZATCA's acceptance of the objection in form. Additionally, ZATCA acknowledged the appeal and will not raise any procedural defenses in the reassessment stages or before the committee. Zakat Payer clarified that the zakat assessment included an unjustified base, specifically accounting for estimated profits on four government contracts that were canceled after being signed and were not executed. In light of the above, Zakat Payer requests cancellation of the Primary Department's decision and issuance of a revised assessment based on the information submitted to the General Secretariat of Tax Committees.

The Appellee (ZATCA) was contacted through the e-portal of the General Secretariat of Tax Committees on 04/11/1441 AH, corresponding to 25/06/2020 AD, to provide a response to the appeal. ZATCA subsequently submitted a memorandum dated 06/11/1441 AH, corresponding to 27/06/2020 AD, reaffirming its position as outlined in the memorandum previously submitted to the committee. ZATCA requested dismissing Zakat Payer's appeal and upholding the committee's decision delivered in this regard.

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. Subsequently, Zakat Payer submitted a supplemental memorandum referencing the issuance of the Commercial Court ruling in Dammam, No. (1744) for 1441 AH, which stated the dissolution of the company by force of law.



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

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

As for the merits of case, the Department, upon reviewing the dispute, noted that the statutory periods established for submitting objections begin from the date Zakat Payer becomes aware of the assessment or when it is presumed to be aware thereof, while ZATCA failed to provide evidence to prove the date on which Zakat Payer received the assessment letter in question, which confirms the validity of Zakat Payer's position. The Primary Department's reliance on the claim that Zakat Payer was notified of the assessment letter on the date of its issuance is not sufficient, as the mere issuance date of the assessment does not establish Zakat Payer's knowledge unless it is corroborated by evidence that can substantiate its awareness of the issuance of the assessment letter. Consequently, the Department concluded to cancel the primary decision and refer the case back to the First Department for Determination of Income Tax Violations and Disputes in Dammam for substantive consideration.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept appeal in form filed by Zakat Payer/ (...) Company, CR (...) against Decision No. (ZD-2-2020) of the First Department for Determination of Income Tax Violations and Disputes in Dammam.

Second: On Merits:

- Cancel the primary decision and remand the case to the First Department for Determination of Income Tax Violations and Disputes in Dammam for substantive consideration, in accordance with the reasons and justifications stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-155)
issued in Appeal No. (Z-13314-2020)

Principle No. 27

The intention behind engaging in business ventures is to seek profit from the project, not to dispose of it at a loss.

Facts:

On Tuesday, 24/12/1442 AH, corresponding to 3/08/2021 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 04/08/1441 AH, corresponding to 28/03/2020 AD by/ (...) Company against decision of the First Department for the Determination of Income Tax Violations and Disputes in Riyadh, Decision No. (IRF-2020-4), issued regarding Case No. (Z-2018-167), filed by the Appellant against ZATCA. The primary decision included the following rulings:

- Dismiss the objection filed by Plaintiff/ ... Company, CR No. (...), regarding the failure of the Defendant/ ZATCA to deduct the item "Construction in Progress" from the zakat base for the years 2012 to 2015 AD.

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

Zakat Payer challenges the Primary Committee's decision, which upheld ZATCA's decision not to deduct the "Construction in Progress" item from the zakat base for the years 2012 to 2015 AD. Zakat Payer requests the acceptance of the deduction of the costs of the projects in progress from the zakat base (. 1, ... 2) for the years in question, as well as the acceptance of the deduction for (...3) project from the zakat base for the years 2012, 2013, and 2014 AD. Zakat Payer argues that leasing is one of its primary activities. Regarding Note No. (7) of the company's financial statements for 2012 AD, which stated that the balance of projects in progress includes the value of land purchased from one of the shareholders, mortgaged to a bank and not registered in Zakat Payer's name and that the land for (Project 1) is registered in the name of a partner, Zakat Payer clarifies that it owned a plot (Project 1) and mortgaged it to ... Bank to obtain financing, which was then transferred to ... Bank. An attached document verifies the ownership of the land. As for the field report regarding the sale of part of Project No. (1) to ... Company and the sale of the entire Project No. (3), the reason for the sale was Zakat Payer's need for liquidity to finance Project No. (1). Therefore, a portion of the project was sold to a sister company. As for Project No. (3), Zakat Payer was forced to sell it in its entirety at a realized loss due to the need for liquidity.

Despite repeated attempts to contact ZATCA for a response to Zakat Payer's appeal, no answer was obtained.

On Thursday 24/09/1442 AH corresponding to 06/05/2021 AD, the Department decided to hold a 10-day e-hearing. Subsequently, Zakat Payer submitted a supplemental memorandum dated 14/10/1442 AH corresponding to 26/05/2021 AD, reaffirming that Project No. (3) is a rental



project, and the land was purchased on 31/12/2012 AD. The project was initially intended to be the development of a residential and commercial building as a long-term investment for acquisition. However, the company was forced to sell the project at a loss in 2015 AD. The memorandum also included a number of documents supporting Zakat Payer's statement of appeal. 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 Thursday 14/11/1442 AH corresponding to 24/06/2021 AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds

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

As for the merits of case, upon reviewing the financial statements of the Appellant Company and the contents of the field inspection report of the Appellee, along with the attached documents, it is evident that the projects in progress for the years in question consist of three projects, as follows:

A. Project (... 1): It is clear that the land registered in the name of the partner, Mr. (...), was purchased by the company for an amount of SAR (53,075,371). The company secured a loan from ... Bank and mortgaged the land to the bank in exchange for financing, in accordance with the land purchase agreement signed between the seller (partner) and the purchaser (company) on 22/04/2010 AD (Annex No. 10). The bank's letter, issued after transferring financing, confirms that the plot of land, identified by Deed No. (...), is owned by ... Company and is mortgaged to ... Company in exchange for the facilities granted to the company, as per the attached letter. The accompanying declarations are strong evidence that the company owns the land, and the fact that the company could not register ownership of the land due to it being mortgaged to ... Bank does not negate the apparent ownership by the company. Therefore, the lack of formal registration in the company's name does not justify including its value or part thereof in the company's zakat base. The Appellee's argument that a portion of Project (... 1) was sold to an associate company on 25/12/2013 AD, thus rendering the project intended for trade rather than long-term investment, is not supported by the evidence. The sold portion constituted only 23% of the total project area due to Appellant's need for liquidity at the time. The company's intention to invest in the project is further substantiated by the Board of Directors meeting Minutes No. (...) dated 17/04/2017 AH, which confirmed the decision to offer Project (...) (1) for leasing, as well as Appellant's letter issued to the Ministry of Culture and Information No. (...) dated 28/10/2014 AD, which included an offer to lease the building within the project. These documents collectively indicate that the project was originally intended as a long-term investment, rather than for trading purposes.

B. Project (... 2): It is clear that the company owns the land of the project under Deed no. (...) dated 29/06/1432 AH and the company still retains the project. The partners, according to Board of Directors meeting Minutes No. (...) dated 17/04/2017 AH, agreed to offer Project (... 2) for lease, which is supported by the leasing offer made to ... city on 09/10/1440 AH. Given the established ownership of the land by the Appellant Company and its retention of the project throughout the years under objection, there is no valid reason for the Appellee to refuse the deduction of the value of this project from the zakat base.

C. Project (... 3): It is evident that the land was purchased on 31/12/2012 AD and the entire project was sold in 2015 AD at a realized loss of SAR (418,832) to one of the partners, as per the 2015 income statement, due to the company's need for liquidity to finance Project (... 1) according to the Appellant. The sale of the property at a loss serves as evidence of the Company's need for liquidity, rather than an intention to trade, as trading projects is typically driven by the pursuit of profit, not by selling at a loss, which is confirmed by the Company's retention of the project for more than two and a half years before



sale. A review of the Company's Articles of Association, Memorandum of Association, commercial registration, and the financial statement disclosures reveals that one of its the company's activities is (leasing for the company's benefit), which strongly suggests that the company's activities are not limited to sales but also include investment. Additionally, the continuous investment in the balance of projects in progress, as reflected in the financial statements under objection, serves as further evidence of the company's intent to invest in the projects in question, rather than sale or exit. Therefore, this Department concluded to accept the Company's appeal and overturn the contested decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept appeal in form filed by Zakat Payer/ (...) Company, CR (...), against Decision No. (IRF-2020-4) of the First Department for Determination of Income Tax Violations and Disputes in Riyadh.

Second: On Merits:

- Accept Zakat Payer's appeal regarding the item (Construction in Progress from the Zakat Base for 2012 to 2015 AD) and overturn 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-2021-174)
issued in Appeal No. (Z-14525-2020)

Principle No. 28

Zakat Payer's right to have errors corrected is not extinguished by the dismissal of its objection before the adjudication committees.

Facts:

On Tuesday, 16/01/1443 AH, corresponding to 24/08/2021 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 05/09/1441 AH, corresponding to 28/04/2020 AD by/ (...) Establishment against decision of the First Department for the Determination of Income Tax Violations and Disputes in Jeddah, Decision No. (IZJ-2020-20), issued regarding Case No. (Z-2019-4553), filed by the Appellant against ZATCA. The primary decision included the following rulings:

Dismiss the claim filed by Plaintiff/ ... Est., CR No. (...), in form due to expiration of the statutory period.

Since the aforementioned decision was not accepted by Zakat Payer/... Est., it presented a statement of appeal to the Department, summarized as follows:

Zakat Payer challenges the Primary Committee's decision to dismiss its claim in form due to expiration of the statutory period, arguing that there is an error in the Department's decision, where it stated that the date of issuance of zakat assessment for 2017 AD was 01/07/1439 AH, while the correct date was 12/03/1440 AH. Zakat Payer filed an objection thereto on 15/05/1440 AH, which was two days after the expiration of the statutory period for filing objections. Additionally, Zakat Payer pointed out that the Department failed to examine the case from a substantive perspective, despite the presence of a clear factual error in ZATCA's assessment, and requested a reconsideration of the primary decision and a substantive examination of the case.

On Thursday, 29/10/1442 AH corresponding to 10/06/2021 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 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

Upon reviewing Case documents and appeal Brief submitted by Zakat Payer, the Department found that conditions for hearing the appeal are fulfilled in form in accordance with conditions



stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law.

As for the merits of case, it has been established that after reviewing the case file, Zakat Payer was notified of the amended assessment decision dated 11/03/1440 AH corresponding to 20/11/2018 AD and subsequently filed its objection to ZATCA on 15/05/1440 AH, corresponding to 22/01/2019 AD, which confirms expiration of the statutory period for filing objections. Zakat Payer's right, regarding its claims of factual errors, since the factual and computational errors do not constitute a substantive dispute and are not related to the statutory periods established for filing objections before the adjudication committees, to correct these errors is not forfeited by the dismissal of its objection before the committees. Moreover, Zakat Payer may refer to ZATCA to rectify these errors if they exist, based on provisions of Paragraph (9) of Article (21) of the Implementing Regulations for Zakat Collection. Since the Department confirmed the validity of the conclusion reached by the Committee that delivered the decision, it unanimously concluded to dismiss Zakat Payer's appeal and uphold the primary decision delivered in this regard.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept appeal in form filed by Zakat Payer/ (...) Establishment, CR (...), against Decision No. (IZJ-2020-20) of the First Department for Determination of Income Tax Violations and Disputes in Jeddah.

Second: On Merits: Dismiss Zakat Payer's appeal 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-2021-427)
issued in Appeal No. (Z-30689-
2020)

Principle No. 29

ZATCA's circulars are limited to procedural aspects and do not extend to imposing substantive rules that define the inclusions and exclusions from the zakat base.

Facts:

In from:

Accept the Plaintiff's (... Co.), CR No. (...) claim) in form.

On Merits:

1. Dismiss Plaintiff's objection regarding overpaid salaries, as per merits of the decision.
2. Dismiss Plaintiff's objection regarding carried-forward losses, as per merits of the decision.
3. Confirm the resolution of the dispute between the Plaintiff and the Defendant regarding the partners' current accounts, as per merits of the decision.

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

Zakat Payer challenges the primary decision, claiming that, regarding (Overpaid Salaries), these differences are actual expenses for salaries and wages. Zakat Payer explained that one reason for these differences is that the company, during its early years of operation from 2010 to 2012 AD, had employees whose sponsorship had not been transferred to the company, and thus they were not registered with the General Organization for Social Insurance (GOSI). Additionally, there were contracted employees from 2013 to 2016 AD, and the wages paid to these employees are subject to social insurance through the hiring entity. Zakat Payer, regarding (Carried-Forward Losses), claims that ZATCA did not deduct the full losses, and that the deductions should be based on the financial statements rather than the losses as adjusted by ZATCA, therefore, Zakat Payer requests overturning of the primary decision for the aforementioned Grounds.

Since the Department decided opening of pleadings, ZATCA submitted a Reply dated 05/08/1442 AH corresponding to 18/03/2021 AD in response to Zakat Payer's appeal, insisting on accuracy and correctness of its procedures. ZATCA, regarding (Unauthorized Salaries), clarified that a comparison between Zakat Payer's declaration and the social insurance records revealed unsupported discrepancies. As a result, the deduction of these salaries was denied pursuant to Article 9 (1/a) of the Tax Regulations. Regarding (Carried-Forward Losses), the losses were deducted in accordance with ZATCA's amended assessment. ZATCA bases its actions on Paragraph (9) of Article (4), Item (Second) of the Implementing Regulations for Zakat Collection. Consequently, ZATCA requests dismissing Zakat Payer's appeal and upholding the primary decision for the aforementioned Grounds.

Grounds



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

Zakat Payer's appeal, regarding (Overpaid Salaries) item, is based on the objection to the Primary Department's affirmation of ZATCA's failure to recognize the actual wages and salaries that were documented and relying solely on the social insurance certificate. 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.

After reviewing Zakat Payer's appeal and examining the contents of the case file, and given that Zakat Payer submitted payroll statements and a certificate from a chartered accountant confirming the accuracy of these amounts, it has not been demonstrated to this Department that contradicts the supporting documents provided by Zakat Payer. Therefore, this Department concluded to accept Zakat Payer's appeal and overturn the primary decision delivered in this regard.

With regard to Item (Carried Forward Losses), Zakat Payer's appeal centers on the fact that the deduction should be made based on the audited financial statements, not based on the loss adjusted by ZATCA. However, ZATCA argued that it maintains the validity and correctness of its action, and requested dismissal of Zakat Payer's appeal and upholding of the primary decision.

After the Department reviewed Zakat Payer's appeal and examined the contents of the Case file, and considering that the treatment of carried-forward losses or profits as one of the elements of Zakat base requires consideration of the extent to which they are affected by ZATCA's adjustments to the net accounting profit or loss for the year, which has a cumulative effect and leads to temporary differences between the net accounting profit or loss and the adjusted net profit or loss for Zakat purposes, and whereas ZATCA has not argued that there are items that have been used to adjust the accounting profit or loss for Zakat purposes and have cumulative effects resulting in temporary differences between the net accounting profit or loss and the adjusted net profit or loss for Zakat purposes, and whereas it appears from reviewing the items of Zakat Payer's appeal for the assessment years that they include an item for overpaid salaries, which the Department accepted Zakat Payer's appeal in this regard. This implies Zakat Payer's right to deduct the carried-forward losses according to its declaration. This does not impact ZATCA's argument that it applied the circulars issued by it, since ZATCA's circulars are limited to procedural matters and do not extend to imposing substantive rules that determine what should be added to or excluded from Zakat base. Likewise, this does not impact the reliance on the Implementing Regulations of Zakat Collection Law, as it was issued on a later date than the disputer year, and its provisions apply only to what occurs from the date of its entry into force, and its effects do not retroactively apply to what occurred before it, in application of the principle of non-retroactivity of laws. In view of this, this Department has decided to accept Zakat Payer's appeal and overturn the primary decision regarding this item.

Decision

First: In form: Accept the appeal filed by Taxpayer/Company..., CR. No. (...), against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No (IZJ-2020-131) delivered in Case No (Z-6520-2019) in connection with Zakat assessment for the period 2009-2016.

Second: On Merits:

1. Accept Zakat payer's appeal regarding item (Salaries Overpaid), and overturn the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah, based on the Grounds and merits mentioned herein.
2. Accept Zakat payer's appeal regarding item (Carried Forward Losses), and overturn the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah, based on the Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 30

There is no dispute over the principle of deducting adjusted carried forward losses according to the adjusted assessments.

Facts:

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) 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 15/10//1438 AH, corresponding to 09/07/2017 AD, by (...) Company against Decision No. (14) of 1438 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh in Case No. (1474-2018-Z) filed by the Appellant against ZATCA, in which the Primary Decision stated as follows:

First: In form: Accept the appeal filed by Zakat Payer/Company ..., regarding Zakat assessment for the period from 2011 to 2013 AD.

Second: On Merits:

1. Accept Zakat Payer's objection to the non-deductibility of the investment-backed loan, for the merits stated in the decision.
2. Regarding Item (calculation of Zakat on foreign companies):

First: Reject Zakat Payer's objection to the calculation of the Sharia-compliant Zakat on Zakat Payer's share in the investment in Company..., for the merits stated in the decision.

Second:

- a. Settle the dispute regarding calculation of Zakat on the profits of Company ... amounting to (SAR 12,016,875) twice for 2012, for the merits stated in the decision.
 - b. Reject deduction of deferred expenses from Zakat base of Company... for 2012 and 2013, for the merits stated in the decision.
 - c. Reject calculation of Zakat on the adjusted profit, rather than on Zakat base for 2012, for the merits stated in the decision.
3. Reject Zakat Payer's objection to item deduction of provision for deficiency in equity, for the merits stated in the decision.
 4. Accept Zakat Payer's objection to item non-recognition of Company's share in the losses of its subsidiary companies, for the merits stated in the decision.
 5. Reject Zakat Payer's objection to item adjusted carried forward losses, for the merits stated in the decision.

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



1. Company's appeal is primarily based on its objection to the calculation of Sharia-compliant Zakat on its foreign investments in ... Co. Ltd for 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, as mentioned in paragraphs (b) and (d) of (First) in Clause (2) of the appealed decision issued by the Committee.
2. The Company is appealing the calculation of the adjusted carried-forward losses for 2011, 2012, and 2013 due to a contradiction. While the decision does not explicitly exclude these losses from the calculation, the various clauses within the decision's reasoning and findings indicate that ZATCA has agreed with Zakat Payer's objection and the Committee has acknowledged this. However, this agreement is not reflected in the operative part of the appealed decision.
3. The Company is appealing the imposition of Zakat on the profits of Company ... at (SAR 12,016,875), which has been carried out twice: once by ZATCA assessing Zakat Payer Company, and again by ZATCA assessing Company ... for 2012.
4. Reject the deduction of a provision for the deficiency 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 the rejection of this deduction.
5. The Company's share of losses incurred by its subsidiary companies in 2011, 2012, and 2013 was not recognized as an ordinary expense, despite the fact that the reasons and merits for this decision, as stated in the clauses related to these losses, support their inclusion and recognition when calculating Zakat base for the purpose of deducting them when calculating Zakat owed by Zakat Payer Company.

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

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

On merits: Having reviewed the Case file, its contents, and the statement of appeal, and upon considering all of the Appellant's arguments, the Department finds the following:

First: Regarding the calculation of Zakat on foreign companies in which the Company has invested for 2012 and 2013, the Company's appeal is primarily based on its objection to the calculation of Zakat on foreign investments in Company... for 2012 and 2013. The Company's appeal essentially requests that Zakat not be calculated on these foreign investments for 2012 and 2013, arguing that the purpose of these investments was to generate income, and therefore Zakat is not due on them in its argument, citing a number of fatwas and decisions to support its position, and considering them as fixed assets, and also due to the absence of an intention to trade with them, and that they were acquired for their income. However, after considering the reasons presented by Zakat Payer, which it believes justify not considering these investments as assets subject to Zakat, and



considering that Zakat Payer's claim regarding these investments, denying the obligation of Zakat on them 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 the equity of these invested companies based on the financial statements of those invested companies, which ZATCA has done in accordance with the primary decision. Therefore, Zakat Payer's request not to subject these investments to Zakat obligation based on its financial statements is unfounded, and consequently, Zakat Payer's appeal against the imposition of Zakat on these investments is rejected from the outset, as previously stated.

Given the Company's objection that the proper treatment for calculating Zakat on these investments should be by considering the deduction of deferred expenses for 2012 and 2013, and by calculating Zakat based on net Zakat base rather than on the adjusted net profit, taking into account accumulated losses, and arriving at Zakat base without the impact of purchasing acquisition assets from 2012 profits, Zakat Payer demands that Zakat be calculated on Zakat base and not on the adjusted profit. Regarding deferred expenses, the Department found that Zakat Payer stated in its statement of appeal that this item appeared in the financial statements under two names, one being prepaid expenses and the other being long-term prepayments, and that both are considered deferred expenses, and that ZATCA and the Committee did not specify the legal basis on which they relied for not deducting these deferred expenses from Zakat base, especially since Zakat Payer indicates in its appeal that these expenses are clearly shown in the audited financial statements of Company ..., and that the primary committee did not request any additional documents from the Company to clarify the nature of these expenses. Furthermore, ZATCA's rejection of these expenses was based on the absence 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 prepayments). The Department found that the dispute was over the principle of the existence of these expenses, not their amount. The Committee confirmed the existence of these expenses in the financial statements, which necessitates supporting Zakat Payer in deducting these expenses in accordance with its Zakat declaration.

Regarding Zakat Payer's request to calculate Zakat on Zakat base rather than on the adjusted profit of Company ... in 2012, Zakat Payer stated in its appeal that it is entitled to reduce the adjusted profit for 2012 by the adjusted accumulated losses, citing a Fatwa and a circular from ZATCA in this regard. It also pointed out in its appeal that the Primary Committee did not mention in its decision the Company's request to reduce the adjusted profit by the adjusted accumulated losses. It further added that the Company's use of profits to purchase acquisition assets during the year necessitates the calculation of Zakat on Zakat base rather than on the adjusted profit, citing a Fatwa and a number of appellate decisions. Given that the established principle for calculating Zakat base and determining the amount due based on it requires the existence of the money subject to Zakat with Zakat Payer at the end of the year, and given that the calculation of the net Zakat base requires taking into account accumulated losses and excluding acquisition assets, regardless of how they were financed, to arrive at Zakat assessment without being affected by whether the net amount is less than the adjusted profit; therefore, the Department has concluded in this matter to uphold Zakat Payer's argument of calculating Zakat based on the net taxable base without considering the amount of the adjusted profit, which does not necessarily reflect the existence of the money subject to Zakat that Zakat Payer is obligated to pay. This does not affect ZATCA's objection in support of its argument of subjecting the net profits of the Company to Zakat, as these profits are with the Company at the end of the financial year and have not been spent. Given that such a conclusion, as stated by ZATCA, does not mean that the cash remains with the Company when it classifies it as its profits as long as it has been proven that the Company has invested it in fixed assets, and does not change the fact that it does not exist as a financial result of the Company recorded as a profit in its financial statements.



Second: Regarding Zakat Payer's objection to the item in the primary decision titled (approval of adjusted deferred losses), Zakat Payer's objection was based on the inconsistency in the primary decision's conclusion regarding this item, despite the decision's upholding in the fourth paragraph of its operative part and acceptance of Zakat Payer's objection to deducting the Company's share of losses of subsidiary companies as stated in the conclusion of that item and the Committee's upholding of Zakat Payer in this regard. The Department has concluded on this objection to accept the appeal Zakat Payer Company regarding the approval of deducting the adjusted deferred losses to confirm the committee that issued 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 disputed item. The Committee accepted the deduction of these amounts by determining their amount as shown in the details and reasons for its discussion of the item of approving the Company's share of losses of subsidiary companies as it was in the statement of reasons for its decision when discussing that item. Regarding the deduction of the provision for the deficiency in equity from the adjusted losses of 2011, the Committee that issued the decision, during its discussion of this item and the reasons for reaching its conclusion, concluded that ZATCA would reduce the amount of the Company's share in the 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 the error in recording the value of the provision is eliminated, and although the committee concluded in this regard to reject 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 to deduct the amount of (SAR 5,031,813), and acknowledged that the dispute between it and Zakat Payer had ended, and therefore it was necessary for this conclusion to be reflected in the adjustment of the total amount of adjusted losses in the manner in which the dispute with ZATCA was resolved, as well as the Committee's ruling, upholding Zakat Payer's argument in this regard, which came within the statement of facts and reasons in order to achieve the removal of the contradiction with what was decided in its operative part in this regard, and to achieve the committee's conviction and justification for what it came to within its decision. It is judicially established that if the conclusion of the operative part of the decision 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 the operative part of the judgment alone but rather is what achieves the adjudication of the case wherever it may be, whether it is stated in the reasons or the operative part, because the judgment constitutes a single, indivisible unit, based on the aforementioned and since the reasons of the decision included ZATCA's agreement to resolve what was the subject of the 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 issuing the decision confirming that conclusion regarding that item, requiring deduction of those losses included in the discussion of item (deduction of the provision for the deficiency in equity from the adjusted losses of 2011), by an amount of (SAR 5,031,813), the Department has concluded to accept Zakat Payer's appeal in approving the adjusted deferred losses, taking into account the impact of ZATCA's approval of what was included in the discussion of item (3) in the facts and reasons of the primary decision, and what also entails the upholding of the primary decision in favor of Zakat Payer in item (4) included in the operative part of the primary decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: In form: Accept the appeal filed by Zakat Payer/ Company ..., CR. No. (...), against Decision No. (14) of 1438 AH issued by Second Primary Committee for Zakat and Tax Objections in Riyadh.



Second: On Merits:

- a. Regarding Zakat Payer's appeal on item (calculation of Zakat on foreign companies):
 1. Reject Zakat Payer's appeal regarding its request to exempt its foreign investments in Company ... from Zakat calculation as a condition for deducting these investments from Zakat base for 2012 and 2013, for the reasons and merits detailed in this decision.
 2. Accept Zakat Payer's appeal regarding its request to deduct deferred expenses from Zakat base of Company ... for 2012 and 2013, for the reasons and merits detailed in this decision.
 3. Accept Zakat Payer's appeal regarding its request to calculate Zakat on net Zakat base rather than on the adjusted profit of Company for 2012, for the reasons and merits detailed in this decision.
- b. Accept Zakat Payer's appeal regarding its request to calculate adjusted deferred losses for the Company for 2011, 2012, and 2013, after making the following adjustments:
 1. Following the resolution of the dispute with ZATCA: Given ZATCA's support for Zakat Payer in the reasons provided for Item 2 of the primary decision, in connection with the Company's objection to imposing Zakat on the profits of company ... At (SAR 12,016,875), which has been carried out twice: once by ZATCA assessing Zakat Payer Company, and again by ZATCA assessing Company ... for 2012, for the reasons and merits detailed in this decision.
 2. Following the resolution of the dispute with ZATCA: Given ZATCA's support for Zakat Payer in the reasons provided for Item 3 of the primary decision, in connection with (Deduction of the provision for deficiency in equity from the adjusted losses for 2011), for the reasons and merits detailed in this decision.
 3. Following the primary decision's upholding for Zakat Payer with regard to Item 4 of the decision titled (Non-recognition of the Company's share in the losses of subsidiary companies, in which Zakat Payer has investments, as deductible expenses for 2011, 2012, and 2013), for the reasons and merits detailed in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-47)
issued in Appeal No. (1482-
2018-IW)

Principle No. 31

Ignorance of the law or a mistake in understanding its interpretation is not a valid excuse, as knowledge of the law and its correct interpretation is presumed for everyone.

Principle No. 32

There is no justification for imposing an arbitrary assessment on Taxpayers if they have declared their contracts in accordance with accounting standards and submitted their returns based on systematic accounts.

Facts:

On Sunday, 26/12/1441 AH, corresponding to 16/08/2020 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 11/07/1438 AH, corresponding to 08/04/2017 AD, by ... Company against Decision No. (10) of 1438 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh in Case No. (13/37) filed by the Appellant against ZATCA, in which the Primary Decision stated as follows:

First: Accept the appeal of ...Company against the estimated tax assessment for the period from 2009 to 2014 in form.

Second: On Merits:

1. Uphold ZATCA's view on the estimated assessment.
2. Uphold ZATCA's view regarding the late payment fine, but not uphold ZATCA's view regarding the imposition of a concealment fine.

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

The Plaintiff Company is objecting to the estimated assessment for the period from 2009 to 2014. The Company's branch states that the first project contract signed between the Parent Company in ... and ... for an amount of (SAR 97,819,000), where a Saudi Enterprise inside KSA carried out the warranty maintenance work. Given that the branch was not established at the time of the contract signing (since the branch's establishment date was 23/01/1432 AH, corresponding to 29/12/2010 AD), the contract revenue was not declared. This is because the complete supply of the contract items was finished before the branch was established, and the Company was unaware of the tax laws in KSA. Therefore, the Appellant Company requests a reduction in the estimated profit margin of (25%) for the estimated taxable profit on the accompanying work, based on Article (34) which stipulates that the maximum taxable profit should be (15%) of the project contract amount.



As for the second project contract signed between the branch and ... for an amount of (SAR 54,333,800), and the third project contract signed between the branch and ... for an amount of (SAR 99,935,000), these were not declared within the disputed years. This is because revenue is recognized upon receipt of payment, not from the date of delivery. Furthermore, revenue is not recognized based on the percentage of completion as per ZATCA's view, since the final delivery of the goods occurred in years subsequent to the disputed years. Therefore, the revenue of the second project was declared in 2015, and the revenue of the third project was declared in 2016. Consequently, the branch requests that the declared amounts for the two projects in the 2015 and 2016 tax returns be accepted. The Company's treatment of these contracts and the calculation of tax based on the percentage of completion, as demanded by ZATCA, does not align with the nature of these contracts, which are applicable to contracting and manufacturing projects, not contracts related to commercial activities based on the delivery of ready-made goods to the other party. The disputed contracts are based on the supply of goods to the customer (vehicles equipped with computers and sensors) after the supplying company adds this equipment to the vehicles, which it does not originally manufacture. Therefore, recognizing the Company's revenue is subject to what is similar to the supply of any ready-made goods, and thus it is recognized in accordance with the standards applicable in KSA. This is what the Taxpayer Company has adhered to in its tax returns for these contracts in the years 2015 and 2016. Moreover, ZATCA's calculation of tax on the contract revenues necessary for the delivery of the goods related to these contracts does not make the Taxpayer liable for it, considering that these contracts (maintenance and training) were signed with Saudi companies within the country.

The Department requested that ZATCA respond to the Appellant's memorandum regarding the disputed items. ZATCA's response dated 21/07/2020 was received, including merely reaffirming ZATCA's view presented before the Objection Committee when considering the Taxpayer Company's objection, as well as upholding the appealed decision, confirming the correctness and validity of ZATCA's procedure, given that what the Taxpayer raised did not go beyond what was previously stated during the consideration of its objection before the Primary Committee and ZATCA had responded to it 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

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

On merits: Having reviewed the case file and its contents, as well as the statement of appeal, and after the Department examined the subject of the appeal filed by Taxpayer Company against the primary decision, which included ZATCA's view regarding the Taxpayer's objection to the tax calculation for the disputed years, and given that it became clear to the Department that the source of the dispute between the Taxpayer and ZATCA centers on the first project for which ZATCA made an estimated assessment, in that the Taxpayer requests a reduction in the profit calculated for tax purposes from (25%) to (15%) on the accompanying activities, because Article (34) of the law has set that percentage at this maximum rate. Upon referring to that article of the law, the Department found that it refers to Article (16) of the Regulations for determining the estimated tax to arrive at the estimated profit for calculating the Taxpayer's tax. That article of the Regulations included a list of profit percentages for revenues related to the Taxpayer's activities, specifying those percentages for specific activities. Those activities associated with determining the Taxpayer's tax base are correctly described as being among "other activities" for which the estimated profit percentage is calculated at (15%). ZATCA has not presented evidence of similar



contracts on which a similar profit percentage was imposed, exceeding that estimate, based on explicit provisions for imposing that percentage as a profit on the revenues of accompanying activities. Based on the aforementioned, the Department, after considering the subject of these contracts, did not find any basis to support ZATCA in determining the percentage of these profits at (25%), for the purpose of calculating the tax on them based on ZATCA's determination. Therefore, the Department concluded by upholding the Taxpayer's argument in calculating the tax by estimating the profits on the accompanying activities in that item at (15%), and that this percentage as a basis for determining the net profit on the accompanying activities is the one that must be adopted for calculating the tax based on the direct application of what is stated in Article (16) of the Implementing Regulations of the Tax Law, taking into account that these accompanying activities are of the type of "other activities" for which a profit percentage of (15%) is imposed, which results in a decision to reject the primary decision in that regard.

As for the estimated assessment contested by the Taxpayer regarding the second and third projects, the Taxpayer requests that the contract be treated as a supply of goods, rather than a project that is constructed in stages as described by the Taxpayer in the contract. These contracts have no relation to the concept of calculating tax based on the percentage of completion as ZATCA believes, as the contract consists of delivering the goods (equipped vehicles) to the requesting party. After reviewing Taxpayer's appeal regarding the second and third projects, the Department did not find a reason for ZATCA's classification of these two contracts as projects that are executed in stages, which would require the Taxpayer to submit its tax returns based on the percentage of completion without considering their commercial nature, for which the tax calculation cannot be based on the standard applied by ZATCA to their situation. Based on the aforementioned, and in light of ZATCA's failure to provide any substantial response based on evidence or indications that would lead it to subject the content of the contract to tax calculation as if it were related to a project executed in stages, it has been decided by the Department to accept the apparent nature of the contract and to uphold the Company's position in determining the nature of these two contracts, given that they are supply contracts for goods and not for projects that are completed over a period of time.

Since the Department has ascertained that the Taxpayer has disclosed its contracts in the years during which revenue was realized from these contracts in accordance with accounting standards, and has submitted its tax returns based on systematic accounts, there is no justification for imposing an arbitrary assessment on them as ZATCA did when dealing with these contracts in estimating the tax due.

As for the maintenance and training activities accompanying these two contracts, the Taxpayer believes that the profit margin does not exceed 15% of the value of these activities, instead of the 25% margin imposed by ZATCA, based on the provisions of Article (34) of the Tax Law. Upon reviewing that article, the Department found it refers to Article (16) of the Implementing Regulations of the Tax Law in determining the estimated tax to arrive at the estimated profit for calculating the Taxpayer's tax. That article of the regulations included a list of profit margins on revenues related to the activities of taxpayers who determine that margin for specific activities. Those activities related to determining the Taxpayer's tax base are correctly described as being among "other activities," for which the estimated profit margin is calculated at 15%. Since ZATCA has not provided evidence of the existence of similar contracts for which it imposed profit margins equal to what it did with this Taxpayer that exceed that estimate, in light of the nature and subject matter of those contracts, the Department did not find any basis to support ZATCA in determining the rate of those profits at 25% for those contracts for the purpose of calculating the tax thereon based on ZATCA's determination, therefore, the Department concluded by upholding the Taxpayer's argument in calculating the tax by estimating the profits for the accompanying activities in that item on the basis of 15%, and rejecting the primary decision in this regard.

As for the Taxpayer's appeal against the imposition of withholding tax on the profits of the three disputed contracts amounting to (SAR 504,176), after examining the primary decision and relating



objection, the Department found that it did not include an examination of this objection. Taxpayer's appeal did not include anything indicating its objection to failure to examine the subject of that objection during the consideration of the dispute before the primary committee, which leads the Department to consider the Taxpayer's dispute over the amount of withholding tax as a new request, which results in disregarding the examination of its subject.

As for the Taxpayer's objection to the imposition of late payment fines on the unpaid tax amount in the primary decision, the Taxpayer has claimed that such fines should not be imposed on it due to the absence of any violation on its part. After carefully considering Taxpayer's appeal regarding the late payment fine imposed on it pursuant to the appealed decision, the Department has concluded that the assessment of Taxpayer's tax should be as previously stated in its returns regarding the second and third contracts. Accordingly, it follows that the imposition of a late payment fine on Taxpayer is not due as the original basis for it has lapsed. As for the late payment fine related to the tax amount for the first contract, the basis of Taxpayer's appeal was to justify its position in delaying the payment of the tax due to its ignorance of the obligation to pay tax on the profits of that contract, due to the existence of a double taxation avoidance agreement that the Taxpayer believed it had benefited from. Such excuse is not sufficient to establish Taxpayer's exemption from paying the tax on time, as it is established that ignorance of the provisions of the law is not considered to exempt from the obligation to comply with its provisions. Therefore, the Department concluded by upholding the imposition of the late payment fine on the Taxpayer with respect to the tax related to its payment for the first contract only, and calculating the beginning of Taxpayer's delay in paying it as of the beginning of the day following the end of the prescribed period for the Taxpayer to submit its tax return for the year in which the income for the first disputed contract was realized.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: In form, Accept the appeal filed by Taxpayer/Company ..., C.R. No. (...), against Decision No. (10) of 1438 AH, delivered by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Estimate the profit margin on ancillary works for each of the three contracts at a rate of (15%), based on the reasons and merits stated in this decision.
2. Accept Taxpayer's appeal requesting cancellation of the estimated tax on the second and third contracts, and to assess the Taxpayer according to its returns, based on the reasons and merits stated in this decision.
3. Reject Taxpayer's appeal regarding the late payment fine on the unpaid tax for the first contract, and the ancillary works thereof, the profit of which is estimated at (15%), and to calculate it from the beginning of the Taxpayer's delay in paying it, starting from the day following the end of the regular period for the Taxpayer to submit its tax return for the year in which the income for the first disputed contract was realized, based on the reasons and merits stated in this decision.
4. Accept Taxpayer's appeal requesting non imposition of late payment fine on the unpaid tax for the second and third contracts as the original right to collect it has lapsed, based on the reasons and merits stated in this decision.
5. Disregard Taxpayer's appeal regarding Withholding Tax based on the reasons and merits stated in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

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

Principle No. 33

In order to prove the non-existence of balances that the trial balance showed as zeros at the beginning of the period, ZATCA shall prove the inaccuracy of Zakat Payer's claim that the balances shown in its trial balance are correct. It is not sufficient to simply state that Zakat Payer has not provided evidence to support the accuracy of its trial balance, as this would shift the burden of proof.

Principle No. 34

The emphasis should be placed on what is shown in the audited financial statements, not the trial balance, which is an initial internal draft that is subject to modification before the financial statements are prepared based on the balances contained therein.

Facts:

On Wednesday, 02/03/1442 AH corresponding to 19/10/2020 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 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 08/07/1439 AH, by Showroom..., against Decision No. (18) of 1439 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Objection No. (38/31) filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

First: In form: Accept the appeal filed by Showroom..., regarding Zakat assessment for 2013 AD and 2014 AD.

Second: On Merits:

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

Since this decision was not accepted by Zakat Payer (Showroom ...), Zakat Payer filed a statement of appeal that can be summarized as follows:

1. Zakat Payer is objecting to the difference in external purchases for 2013 and 2014. Zakat Payer is contesting ZATCA's comparison of external purchases as per the financial statements with the purchases recorded for import by the Customs Authority. The comparison revealed differences of (SAR 2,472,891) in one year, which was added Zakat base, and (SAR 26,636,641) in the other year, 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 regulatory and Sharia



requirements in a fair manner. ZATCA did not notify Zakat Payer of these differences, nor did it discuss the reasons for the differences with Zakat Payer. Furthermore, ZATCA did not conduct a field audit to verify the accuracy of these differences, and ZATCA is demanding documents that the Establishment does not possess to prove ZATCA's error. Therefore, it is necessary to form a team from ZATCA to examine and audit Zakat Payer's accounts to verify the accuracy of these differences before Zakat Payer can respond.

2. Zakat Payer is objecting to items (trade creditors, other creditors, and long-term debt for 2013). Zakat Payer is contesting ZATCA's inclusion of these items in Zakat base on the Grounds that ZATCA considered these liabilities to have completed a lunar year and disregarded the audited trial balance, as it showed opening balances for all these accounts. The committee relied on the argument that Zakat Payer did not cooperate in providing evidence to prove whether or not the lunar year had passed. However, Zakat Payer presented the trial balance to support its position and stated that it is willing to provide any information requested by ZATCA regarding this matter. Zakat Payer argues that, as it is well known, Zakat is only due on money when a lunar year has passed.
3. Zakat Payer is objecting to item (owner's current account), Zakat Payer is contesting ZATCA's inclusion of 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, and while it acknowledges that a lunar year had passed for 2014, it is willing to have its documents and position verified regarding this item and to subject the money to Zakat once it is confirmed that a lunar year has passed.
4. Zakat Payer is objecting to item (undeclared revenues for 2013), Zakat Payer is contesting ZATCA's inclusion of (SAR 2,171,026) in Zakat base, claiming that this is undeclared revenue. Zakat Payer argues that its financial statements are audited by an accredited chartered accountant and that the trial balance shows the sale of vehicles. Therefore, it is unclear how ZATCA reached the conclusion that there was undeclared revenue. The Establishment is willing to allow ZATCA's employees to examine its accounts to verify this matter.

The Department requested ZATCA to respond to the points raised by the Appellant in its memorandum regarding the disputed 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 response from ZATCA regarding the reasons for appeal included in Zakat Payer Company's statement of appeal in connection with the items Zakat Payer is contesting their assessment by ZATCA, after the expiration of the granted period, and without stating a reason for the delay in ZATCA's response. Given that the appeal returns the case to the state it was in before the appealed decision was issued with respect to what the appeal was filed against, then this entails relying on ZATCA's statements and responses included in the primary decision regarding the disputed items. 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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

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. With respect to the difference in external purchases for 2013 and 2014: after careful consideration of Zakat Payer's appeal against the decision regarding this item, it appears that Zakat Payer's objection centers on its disagreement with the reliance on the import data provided by Customs for its external purchases, which ZATCA used as a basis for assessing



Zakat Payer in light of the information included therein. Given that this data represents information from an impartial source and constitutes evidence that can be relied upon to prove what it contains, and that the Appellant was given the opportunity to present any documents to prove the contrary of its claim that this data does not accurately reflect the differences in the amounts for which ZATCA held Zakat Payer accountable in 2013 and 2014, this Department has determined that Zakat Payer has not provided any documents that would lead to a departure from accepting the data issued by Customs, and that its objection consists of mere unsupported allegations repeating what it stated before the primary committee, claiming the inaccuracy of the amounts of these differences without providing any credible evidence to support its claim. As such, the Department has decided to reject Zakat Payer's appeal regarding this item and uphold the primary decision in this regard.

2. With respect to items (trade creditors, other creditors, and long-term debt for 2013), after careful consideration of Zakat Payer's appeal against the decision regarding these items, it appears that Zakat Payer's reliance is on the audited trial balance which showed no opening balances for these creditor items. Accordingly, ZATCA demands from Zakat Payer a proof that the balances shown as zeros in the opening balance of the trial balance do not exist. It has been established in similar disputes that it is ZATCA's 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 proof to support what its trial audited 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 claims. Based on the aforementioned, the Department is convinced to accept what Zakat Payer has presented and not to add the creditor balances for these items for 2013 in the manner demanded by ZATCA and upheld by the committee in its decision regarding these items. As such, the Department has decided to accept Zakat Payer's appeal, approve what was stated in its declaration regarding these items when assessing due Zakat, and reject the primary decision in this regard.
3. With respect to item (owner's current account), after careful consideration of Zakat Payer's appeal against the decision regarding this item, it appears that Zakat Payer is requesting not to add an amount of (SAR 6,511,997) for 2013 to that item as it has not completed a full lunar year. Zakat Payer's appeal acknowledged that the balance of the owner's current account for 2014 has completed a full lunar year, which necessitates accepting the addition of the balance of that account for 2014. The cash flow statement showed that the entire amount of the account appearing at the end of the disputed year 2013 was generated during that year, which means that it has not completed a full lunar year, because the emphasis should be placed on what is shown in the audited financial statements, not the trial balance, which is an initial internal draft subject to modification 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 add the owner's current account item for 2013 in the manner requested by ZATCA and upheld by the committee in its decision, and consequently the Department concluded by accepting Zakat Payer's appeal, and rejecting the primary decision in this regard.
4. With respect to item (undeclared revenues for 2013), after careful consideration of Zakat Payer's appeal against the decision regarding this item, it appears that Zakat Payer's objection centers on its request to accept its financial statements approved by an accredited chartered accountant, as these statements are the final conclusion of Zakat Payer's financial position. Meanwhile ZATCA's only document to support its position is based on the conclusion obtained from the information included in the trial balance. However, the emphasis should be placed on what is shown in the audited financial statements, not the trial balance, which is an initial internal draft that is subject to modification before the financial statements are prepared based on the balances contained therein. Therefore, the Department is convinced to accept what was presented by Zakat Payer, and not add any revenue for 2013, other than what Zakat



Payer declared, and consequently the Department concluded by accepting Zakat Payer's appeal, and rejecting the primary decision in this regard.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: In form: Accept the appeal filed by Zakat Payer/ Showroom..., against Decision No. (18) of 1439 AH, delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Reject Zakat Payer's appeal concerning Item Difference in External Purchases for 2013 and 2014 AD and uphold the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.
2. Accept Zakat Payer's appeal concerning Items Trade Creditors, Other Creditors, and Long-Term Debt for 2013, approve Zakat Payer's declaration regarding these items when assessing due Zakat, and dismiss the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.
3. Accept Zakat Payer's appeal concerning Item Owner's Current Account for 2013, approve Zakat Payer's audited financial statements, and dismiss the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.
4. Accept Zakat Payer's appeal concerning Item undeclared Revenues for 2013, approve Zakat Payer's audited financial statements, and dismiss the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-42)
issued in Appeal No. (1489-2018-W)

Principle No. 35

If the primary committee's ruling did not address the actual dispute or did not comply with the Appellant's original request in its appeal, then the matter must be returned to the same primary committee that issued the decision for reconsideration in light of the Appellant's original request.

Facts:

On Wednesday, 22/12/1441 AH, corresponding to 12/08/2020 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 06/06/1439 AH, corresponding to 22/02/2018 AD, by ... Branch against Decision No. (10) of 1439 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh in Case No. (16/38) filed by the Appellant against ZATCA, in which the Primary Decision stated as follows:

First: In form: Accept the objection filed by Taxpayer/ Company Branch ..., against tax assessment for 2014.

Second: On Merits:

Reject Taxpayer's objection and uphold ZATCA's decision to determine that Company ... (Head Office) is a permanent establishment of a non-resident in KSA and is subject to income tax. It is therefore required to register with ZATCA, file tax returns, and declare its income from contracts executed within KSA, including the income from the Riyadh metro contract, subject matter of the dispute. The withheld tax of (SAR 856,606) for 2014 is considered as a payment on account of income tax.

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

The Company paid a 15% withholding tax on payments made to Company ...

- France- (Branch's Head Office) for technical services. After paying withholding tax, Branch of Company ... on behalf of Company ..., filed a request for a refund of the withheld tax on amounts paid for services rendered outside KSA. The Company argued that the conditions for imposing the withholding tax were not met according to the laws and that the provisions of the tax treaty between the Kingdom of Saudi Arabia and the French Republic should be taken into 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



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

On merits: Having examined the Case file, its contents, and the statement of appeal, and upon careful consideration and deliberation regarding the Appellant's request, it is apparent to the Department that the Appellant's request was based on a claim for a refund of the withholding tax that was paid by the Company's branch (a permanent establishment of a non-resident), and received by ZATCA, in exchange for payments made to the Head Office in France for services rendered to that branch to execute contracts within KSA. This claim is based on the Appellant's assertion that the payments made were not obligatory and that the withholding tax should not have been withheld on these payments made to the Head Office. In its statement of appeal dated 06/06/1439H, the Appellant insisted on its request for a refund of the withholding tax paid to ZATCA on the amounts paid to the Head Office. Upon reviewing the primary decision, the Department found that the issuing committee did not examine this request in light of the evidence presented by the Appellant to support its position that ZATCA was not entitled to the withholding tax because the conditions for its imposition were not met. Given that the source of the dispute was centered on the examination of this request, and whereas the committee issuing this decision examined ZATCA's defense regarding its right to retain the amounts paid as income tax for the non-resident company, the Department was not able to ascertain why the case and dispute were examined in the manner requested by ZATCA during the proceedings. Additionally, it was not proven that the committee responded to ZATCA's request, assuming its validity as an incidental request related to the Appellant's original request. Thus, the committee's decision does not reflect or conform to the original request, which was the Appellant's claim for a refund of the withholding tax paid by the branch to the Head Office of the non-resident company. Consequently, the committee's decision was based on a matter that was not the subject of the dispute and did not address the manner in which the Appellant originally requested in its appeal. The basis for the withholding tax is completely different from the income tax that the Taxpayer is required to pay when calculating its tax base, and the examination of the dispute and the conclusion reached in the decision deviated from the Appellant's original request without addressing its outcome except for a reference in the decision's ruling to including the amount requested for a refund in the income tax base of another taxpayer, which makes the basis upon which the decision was rendered invalid for failing to adjudicate and investigate the appeal filed by the taxpayer. Based on the aforementioned, the Department decided to cancel the primary decision and to return the matter of the appeal for reconsideration in light of the Appellant's request to determine its entitlement to a refund of the amounts paid as a branch of the company (a permanent establishment of a non-resident) to the non-resident company (Head Office), and whether this tax is due on these amounts allegedly paid without the conditions for its imposition being met, as claimed by the Appellant in light of the provisions of the Tax Law and its Implementing Regulations and the provisions of the agreement for the avoidance of double taxation between the Government of the Kingdom of Saudi Arabia and the French Republic when making these payments to the non-resident in France, and to limit the examination to this request when considering the subject matter of the appeal, unless there are incidental requests related to the original request that are raised before the Department by any of the parties to the dispute in light of the Department's assessment of its acceptance or rejection when considering the subject matter of the dispute and closing the pleadings after the final question is directed to the parties to specify their final requests, and to adjudicate on the subject matter of these requests as required by the judicial examination thereof in accordance with the Department's conviction when deciding on these requests.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:



First: In form, Accept the appeal filed by Taxpayer/ Company Branch ..., C.R. No. (...), against Decision No. (10) of 1439 AH, delivered by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

Cancel the primary decision, and refer the appeal to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for a new hearing on its merits, in light of the Appellant's request regarding its entitlement to a refund of the amounts paid as withholding tax from the Company's branch (a permanent establishment of a non-resident) to the non-resident company (Head Office), for the reasons and merits included in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

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

Principle No. 36

Ticket, travel, and accommodation expenses paid for partners in a professional company whose activities rely on the efforts of partners or employees to achieve the company's business are considered necessary for the company's operations and are therefore deductible.

Facts:

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 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 19/10/1438 AH, corresponding to 13/07/2017 AD, by Company ..., against Decision No. (23) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Jeddah in Case No.(1435/22/4791) filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

First: In form: Accept the appeal filed by Zakat Payer/Company ..., regarding Zakat assessment for the period from 2009 to 2011 AD.

Second: On Merits:

1. Uphold ZATCA's decision regarding the treatment of annual bonuses exceeding 5% of net profit, as per the merits of the decision.
2. Uphold ZATCA's decision to include the difference in social security contributions and employee housing allowances in zakat base, as per the merits of the decision and the amounts specified therein.
3. Uphold ZATCA's decision to include the costs of private housing rents and medical insurance for Zakat Payer's partners in zakat base, as per the merits of the decision.
4. Uphold ZATCA's decision to include ticket, travel, and accommodation expenses in Zakat Payer's zakat base, as per the merits of the decision.
5. Uphold ZATCA's decision to include the costs of gifts, gratuities, donations, and administrative expenses in Zakat Payer's zakat base, as per the merits of the decision.
6. Uphold Zakat Payer's claim to accept the cost of medical insurance for employees and their families as a deductible expense from its zakat base, as per the merits of the decision.
7. Uphold ZATCA's decision to include zakat paid in 2009 and 2010 in Zakat Payer's zakat base, as per the merits of the decision.
8. Resolution of the dispute between the parties regarding item "profit from sale of fixed assets", as per the merits of the decision.
9. Uphold ZATCA's decision to include the adjusted current balance in Zakat Payer's zakat base, as per the merits of the decision.



10. Resolution of the dispute between the parties regarding item “investments”, as per the merits of the decision.

Since this decision was not accepted by (...Company ...), Zakat Payer filed a statement of appeal that can be summarized as follows:

1. Zakat Payer is objecting to ZATCA's refusal to deduct the annual bonuses exceeding 5% of net profit for 2009, 2010, and 2011. ZATCA has adjusted the net profit without excluding the amounts paid for these bonuses, even though they were expenses incurred under a bylaw that is applied at the office and approved by the Ministry of Labor. Zakat Payer argues that the variation in these amounts from one year to another is due to the fact that these bonuses are based on the performance evaluation of employees who carry out the office's audit-related tasks. Consequently, there is a difference in the amount of these bonuses from one year to another depending on the effort and performance evaluation. Therefore, ZATCA's action of not excluding the amounts of these bonuses and adjusting the net profit without considering them as expenses incurred by the office is inconsistent with the correct procedure, which requires considering them as deductible expenses.
2. Regarding item (difference in social security contributions, salaries, and employee housing for the period from 2009 to 2011), Zakat Payer is objecting to failure to calculate full difference in social security contributions, salaries, and employee housing for the period from 2009 to 2011 as stated in Zakat Payer's declaration, but rather based on the amount ZATCA assessed. These amounts did not include the difference due to the existence of salaries for temporary employees during 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 the exclusion of the difference between the salaries subject to contributions, consisting of the 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.
3. Zakat Payer is objecting to item (housing allowance and medical insurance costs for partners 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 and their medical insurance. Therefore, there is no reason to exclude these expenses incurred by the office in pursuit of its business and activities. The argument that the leased properties were for transactions between related parties does not change the fact that they are expenses.
4. Zakat Payer is appealing regarding item (unapproved tickets and travel & accommodation expenses for the period from 2009 to 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 the 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 ZATCA's decision not to deduct them from zakat base not valid, especially since we have provided ZATCA with a detailed statement of these travel and accommodation expenses, including names of each beneficiary and related payments.
5. Regarding item (expenses for gifts, gratuities, donations, and administrative expenses), Zakat Payer is contesting ZATCA's failure to approve expenses for gratuities and donations at (SAR 204,767) and (SAR 153,693) for 2009 and 2010, respectively, and expenses for gifts and gratuities at (SAR 204,167) and administrative expenses at (SAR 485,995) for 2011. Zakat Payer



argues that these expenses include the costs of work lunches and group breakfasts for employees during Ramadan, the costs of coffee and tea provided to employees during work, as well as incentive gifts. Donations were made to various charities and organizations. Zakat Payer claims to have previously submitted a detailed statement of the donations and gratuities paid, thus there is no reason not to deduct these expenses from zakat base in the disputed years.

6. Regarding item (Zakat provision for 2009 and 2010), Zakat Payer's appeal centers on its objection to ZATCA's inclusion of (SAR 101,586) and (SAR 39,804) as Zakat differences for 2009 and 2010, respectively, resulting from ZATCA's adjustment of the net profit subject to Zakat. However, Zakat Payer asserts that financial statements and allocated expenses were submitted during the account discussion phase for 2009 and 2010, and the office did not allocate these amounts to the expenses of the disputed years. Consequently, the net income included in Zakat base does not include Zakat provision, as Zakat is calculated by adding the net income before deducting its provision. Therefore, Zakat differences that ZATCA deduced and adjusted the net profit by were not based on the facts and reality shown by the office's accounts, in light of ZATCA's failure to provide any evidence to prove the exclusion of these provision amounts, based on the office's explained approach in dealing with these provisions and their inclusion within Zakat base, and the manner in which the office dealt with these provisions.
7. Regarding item (partners' current accounts amended by partners' rent) for 2011. Zakat Payer is objecting to the decision upholding ZATCA's position to add the balance of the partners' current account for 2011, despite the fact that it did not complete a full lunar year. This is because the rule for calculating Zakat on partners' current accounts is to add the lower balance at the beginning or end of the period to Zakat base. Since these balances were recorded during 2010 as evident in the partners' accounts previously submitted to ZATCA, this means that it is incorrect to add them to the base, as the lunar year has not fully passed on them. Even assuming that ZATCA adjusted the balance of that account, the lower balance at the beginning of the period has been excluded, and the balance at the end of the period, which is higher than the balance at the beginning of the period amounting to (SAR 985,586) according to our calculations has been added.

In addition to its requests, the Appellant has emphasized that the Department should order ZATCA to implement the primary decision regarding Zakat Payer's objection to the approval of amounts related to medical insurance for the families of partners and employees for the period from 2009 to 2011. Furthermore, Zakat Payer has requested that the Department order ZATCA to amend the assessment by adding salaries of Riyadh branch and deducting them from Zakat base, as stated in the decision issued by the Primary Objections Committee.

Based on the aforementioned arguments, objections, and requests raised by Zakat Payer regarding the appeal under consideration, the Department requested ZATCA to respond to the objections included in the Appellant's statement of appeal regarding the items raised. Upon examination of ZATCA's Reply dated 01/11/1441 AH regarding the appeal under consideration and the items addressed in the Appellant's statement of appeal, it became clear to the Department that ZATCA reaffirms its position presented regarding these objected items during the consideration of Zakat Payer's objection before the primary committee. ZATCA maintains correctness and validity of its procedures regarding the items subject to the appeal, and that the committee's decision was in accordance with the provisions of the law. Therefore, ZATCA adheres to the 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 ZATCA had responded to it at that time. As such, ZATCA requests the Department to uphold the primary decision and reject Zakat Payer's appeal regarding the 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

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

On merits: it has been determined that the appeal is now ready for consideration, as the Department believes that the statement of appeal, Reply, and accompanying documents of the Case file are sufficient to form its conviction to adjudicate on the disputed items. Therefore, the Department has decided as follows:

1. Annual bonuses exceeding 5% of net profit for 2009, 2010, and 2011: After the Department reviewed Zakat Payer's appeal and ZATCA's response, which was based on its reliance on the arguments made during the hearing and pleadings before the Objection Committee, it was found that these bonuses paid by Zakat Payer to its employees—exceeding the amount accepted by ZATCA as the maximum deductible expense—do not fundamentally represent a dispute over the principle of considering them as an expense. Therefore, this dispute shall not be considered a documentary issue related to providing evidence proving the actual amounts paid as bonuses. ZATCA's 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 the zakat base, as long as the dispute is not over the actual expense itself, as previously stated. Consequently, exceeding this percentage to nearly (24%), as assessed by the Primary Department, does not justify excluding this expense from zakat base within this percentage, especially when considering the nature of the bonuses linked to 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 what Zakat Payer presented in their declaration.
2. Differences in social security, salaries, and employee housing for the period from 2009 to 2011: After the Department reviewed Zakat Payer's appeal and ZATCA's response, which was based on its reliance on the arguments made during the hearing and pleadings before the Objection Committee, it was found that Zakat Payer does not object to all that is included in this item. Rather, its objection is based on the non-exclusion of amounts related to temporary employment contracts for employees who were on probationary period, which are not covered by social security contributions, given that they were probationary employees and the office did not determine their suitability for employment and contract with them until after the completion of the probationary period. Since the lack of social security contributions for such temporary employees is not sufficient reason for the non-occurrence of this expense and its payment by the office to these employees during the probationary period, especially since the contribution ZATCA is a presumption that can be outweighed by other evidence or indications proving the existence of these expenses as wages for temporary employees paid during the probationary period, and since the Appellant has provided evidence that convinces the Department of the occurrence of these expenses and their payment, it is therefore decided by the Department to consider these expenses related to the wages of temporary employees as deductible expenses for the disputed years.
3. Housing allowance and medical insurance costs for partners for the period from 2009 to 2011: Following the Department's review of Zakat Payer's appeal and ZATCA's response, which referenced the arguments presented during the hearing and discussions 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, ZATCA argues that the 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 the housing of some partners. Furthermore, Zakat Payer's recording of these rental values in its books and counting them as a debit on partners' current account results in exclusion of these amounts from the zakat base for the partner Mr. ... Moreover, ZATCA argues that since these properties are owned by the partners themselves, the transaction is not independent and lacks impartiality in determining a fair rental value. Moreover, such rent constitutes additional income for the partners, which shall be recognized in their zakat declaration; therefore, it cannot be considered a deductible expense. After reviewing the dispute as outlined above, the Department finds that, in the case of companies, any payments made by a company to its partners are generally considered a profit distribution. The only payments that may be considered deductible expenses are those that can be recognized as such when paid to a partner managing the business, which would be treated as compensation for management services rather than as profit distribution. This is because 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, however, can only be considered a profit distribution to the partner, regardless of the label 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 the 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, given the nature of partners' professional work, it is evident that their collective efforts rely on individual contributions of each partner, which are ultimately represented under office name. The deductible expense is defined as one that is directly tied to the 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 does not meet this criterion as a deductible expense when provided to a partner, it is not related to generating company's revenue. An example of a deductible expense would be when a partner travels to review the files and accounts of a client outside company's location, as such expenses are directly connected to generating company's income. However, the housing allowance provided to the partner is, in essence, a benefit offered by the company to the partner. Moreover, the amount paid in this manner cannot be considered part of the compensation given to the partner for contributing to management and operation of the company to enable partners at the office to perform their professional accounting duties, which justify existence of the company. The justification for granting and allocating this allowance to the partners is not tied to their direct participation in the management of the office, which is centered around the professional activities carried out by all partners. 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. The Department's decision that the housing allowances given by the company to partners shall not



be treated 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 partner shall be deducted from zakat base, just like employee salaries and allowances, considering what their peers receive. This is because the essence of the fatwa indicates that treating such allowances as wages and salaries, similar to what is given to employees, is contingent on partner's involvement in managing and running the company. Thus, applying the fatwa to every amount given to the partners by the company, without linking it to partner's role in managing the company and separating it from their professional work as a partner, would be a misapplication. It would incorrectly compare what is given to the partner as if it were equivalent to employee wages, since what the partner receives for their professional work is considered a share of 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 partners when they perform their professional duties under the company's framework, for which they receive fees for their professional work, and the resulting profit is then divided among partners according to their agreement. The validity of this conclusion is not undermined by issuing committee's argument regarding ZATCA's decision not to deduct rental amounts on the Grounds that they 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 a profit distribution from the company to partners, as previously detailed. It is established in the appeals judiciary that a decision may be upheld in its conclusion with modification to its reasoning. As a result, it is evident that treating these allowances as a profit distribution to the partners, rather than as wages comparable to those received by office employees, is appropriate since a partner is not considered an employee when carrying out their professional responsibilities at the office. Therefore, the majority of the Department concurs with decision's conclusion that the housing allowances granted by the company to the partners shall not be classified as a deductible expense from Zakat Payer's zakat base.

As for the other element related to the disputed item, namely (health insurance amounts paid by the office to the partners), and Zakat Payer's request to deduct these paid amounts as deductible expenses from Zakat base, after examining the Appellant's objection in this regard, the Department found that these expenses provided as health insurance by the Company to the partners cannot be treated in the manner demanded by Zakat Payer, unlike health insurance for employees. There is no relationship between the realization of revenue for the office and the existence of health insurance for partners, as measuring this against what is spent on employees to attract them to work for the office is different from what is spent on partners by the Company. The Company's relationship with the partners is not governed by the same rules as the employment relationship between the office and its workers and employees, and therefore the ruling on this relationship cannot be applied to the relationship between the partners and the office when they exercise their professional work. Accordingly, it is not appropriate to deduct the health insurance amounts paid by the office for the partners as a deductible expense. In reality, these amounts are a benefit provided by the company to its partners and shall be considered as distributed profit rather than treated as an expense similar to health insurance paid for company's workers and employees, as the partner is not an employee when performing their professional duties at the office. Therefore, the majority of the Department agrees with decision's conclusion that the health insurance amounts paid by the company for its partners shall not be treated as a deductible expense from Zakat Payer's zakat base.

4. Unapproved tickets and travel & accommodation expenses for the period from 2009 to 2011: Zakat Payer provided a detailed statement of the beneficiaries of these tickets and payments made for travel and accommodation expenses. During Zakat Payer's objection hearing before the committee, ZATCA argued that there was a lack of detailed information regarding these expenses. However, after examining the evidence submitted by Zakat Payer, the Department



found that the details included a list of beneficiaries and the entities to which these expenses were paid, which led the Department to be convinced of the validity and reasonableness of these expenses as necessary for office operations when engaging with its clients and verifying accuracy of their financial statements during reviews conducted at their various locations across the Kingdom. ZATCA's objection that the list of beneficiaries included the partners themselves does not affect this conclusion. This is because the professional activities of the company rely on personal efforts of the partners to carry out audit and review work for office clients. Therefore, partners' benefit from travel tickets and accommodation expenses is justified by the nature of office business and connection of these expenses to generation of revenue arising from partners' professional activities. As such, these expenses are considered allowable deductible expenses.

5. Expenses for gifts, gratuities, donations, and administrative expenses: After evaluating Zakat Payer's appeal regarding the specifics of this item, particularly the expenses for gifts, gratuities, and donations, the Department determined that Zakat Payer failed to present any credible evidence to support these expenses as eligible deductions from the zakat base. Zakat Payer simply classified these expenses with the intention of deducting them from zakat base. Accordingly, the Department decided to reject Zakat Payer's claim to deduct these expenses from the zakat base. However, the department concluded that these amounts shall be treated as a profit distribution and funds utilized by Zakat Payer in the manner claimed. Therefore, these expenses shall be considered as a profit distribution that reduces the balance of retained earnings 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 the disputed years.

As for administrative expenses, the dispute between Zakat Payer and ZATCA is primarily based on documentation. The committee supported ZATCA's position of not accepting these expenses because Zakat Payer did not provide any supporting documents. The Department requested Zakat Payer to provide a clear breakdown of these 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 listing these expenses and some documents that, in his view, support his claim. The Department did not find sufficient evidence to confirm that these expenses meet the criteria of allowable deductible expenses, especially since some of them were stated as having been incurred by one of the partners. 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 partners. Therefore, the Department concluded that these amounts shall be treated as a profit distribution and funds utilized by Zakat Payer in the manner claimed. Consequently, these expenses shall be considered a profit distribution that reduces the retained earnings 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 the disputed years.

6. Zakat Provision for 2009 and 2010: Zakat Payer's appeal regarding this item, as previously outlined in the summary of its arguments included in this decision, was based on the fact that ZATCA concluded that Zakat Payer had accounted for zakat as an expense for the disputed years without verifying this from the various financial statements provided by Zakat Payer for the years under objection. Merely stating that zakat is not a deductible expense is not enough to dismiss the Zakat Payer's claim based on his declaration. Consequently, ZATCA did not present any evidence to substantiate its conclusion that Zakat Payer incorrectly deducted zakat as an expense in the disputed years. Thus, the initial stance remains valid, which is to accept Zakat Payer's submission on this matter due to the lack of evidence disproving it and insufficiency of ZATCA's conclusions to overturn that stance. Therefore, the Department accepted Zakat Payer's appeal on this item and ruled against adjusting the profit as suggested by ZATCA and stated in the primary decision by adding it back to zakat base.



7. Partners' current account amended by partners' rent for 2011. Zakat Payer appealed this item as previously stated in its defense. Given the established principle in Zakat calculations for partners' current accounts stating to add the lower balance at the beginning or end of the period to Zakat base, and since ZATCA did not add the lower balance without providing a reason for deviating from this established principle in calculating Zakat base for the partners' current account, in addition to the fact that the amount on which this account was based has not been confirmed to have completed a full lunar year; therefore, the Department has decided to accept Zakat Payer's appeal regarding this item, reject the conclusion reached in the primary decision, and approve the calculation of the lower balance of this account at the beginning of the period as shown in the financial statements submitted by Zakat Payer with connection to this account. As for Zakat Payer's appeal regarding its request for ZATCA to confirm what was concluded in the primary decision, which favored Zakat Payer in some items or particulars, the Department has decided to disregard it as it is not a subject of dispute. Rather, the matter is related to ZATCA's implementation of what was included in the primary decision regarding it, which is a matter that falls outside the jurisdiction of the Department due to the absence of a dispute therein, as previously stated.

Decision

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

First: In form: Accept the appeal filed by Zakat Payer/Company ..., C.R. No. (...), against Decision No. (23) of 1438 AH, delivered by the First Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal concerning item (annual bonus exceeding 5% of net profit) for 2009, 2010, and 2011, as well as deem this item a deductible expense, and overturn the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.
2. Accept Zakat Payer's appeal concerning item (difference in social security contributions, salaries, and employee housing) for the period from 2009 to 2011, and overturn the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.
3. Reject, by majority, Zakat Payer's appeal concerning item (partner housing allowances and medical insurance costs) for the period from 2009 to 2011, and uphold the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.
4. Accept Zakat Payer's appeal concerning item (unapproved tickets and travel & accommodation expenses) for the period from 2009 to 2011, and overturn the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.
5. Reject Zakat Payer's appeal concerning item (expenses for gifts, gratuities, donations, and administrative costs), as these expenses are deemed distributed profit that reduce the retained earnings at the end of the year, which subsequently becomes the opening balance for the following year for the purpose of calculating Zakat in each of the disputed years, for the Grounds and merits mentioned in this decision.
6. Accept Zakat Payer's appeal concerning item (Zakat provision for 2009 and 2010 AD), and overturn the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.
7. Accept Zakat Payer's appeal concerning item (partners' current account amended by partners' rent) for 2011, and overturn the primary decision concluded in this regard, based on the Grounds and merits mentioned in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-105) issued in Appeal No. (Z-1520-2018)

Principle No. 37

Expenses incurred by a company before its establishment and commencement of operations are, in principle, considered necessary expenses to achieve production later once the company starts its activities. Therefore, this loss must be amortized.

Principle No. 38

The fundamental principle of judicial decisions is that they must be final and conclusive on the matter at hand.

Facts:

On Monday, 16/03/1442 AH corresponding to 02/11/2020 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 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 21/11/1438 AH, by Company ..., against Decision No. (28) of 1438 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh in Case No (37/27) 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 the objection in form filed by ... Company

Second: On Merits:

1. Reject Zakat Payer's objection, and uphold ZATCA's decision to reimburse the overpaid amount (salary and social security differences) back to the adjusted net profit (loss).
2. Reject Zakat Payer's objection, and uphold ZATCA's decision to reimburse pre-operating expenses back to the adjusted net profit (loss) and not deduct its balance from zakat base.
3. Reject Zakat Payer's objection, uphold ZATCA's decision to not to deduct investments represented by bonds and investment funds, and uphold Zakat Payer's argument with regard to deducting the investment in Company ...
4. Carried-forward loss, if any, will be considered when determining Zakat base for zakat after it becomes final.

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

1. The Company is contesting the committee's decision regarding uninsured and undocumented wages and overpaid social security for the period from 2010 to 2013. The Company is requesting permission to deduct these undocumented and overpaid expenses, as the Company has provided an analysis and breakdown of their amounts, and although no documents have been submitted regarding them, they are necessary expenses to generate income, and are



benefits for employees that have been actually paid including, with regard to salaries: Basic salary and housing allowance.

2. Amortization of pre-operating expenses for the period from 2010 to 2013, amounting to a total of (SAR 3,262,579). The Company believes that these expenses were actually incurred for the establishment of the Company and prior work before issuing its commercial register, and that they were paid by the partner..., and.... Due to absence of a company bank account. These are actual expenses that must be amortized as is known from the instructions of the Saudi Organization for Chartered and Professional Accountants (SOCPA), as they are necessary expenses to generate income and therefore must be deducted from Zakat base.
3. Regarding accumulated loss for the period from 2011 to 2013. The Company is objecting, claiming that ZATCA and the committee did not deduct the total amount of loss, but rather took some of what the statement prepared for the disputed years included. The Company has not been able to determine how ZATCA determined the figures included in the prepared assessment so that the Company can know the basis of this difference and whether or not it is subject to Zakat.

The Department requested that ZATCA respond to the points raised in Zakat Payer Company's appeal, a Reply dated 22/11/1441 AH was submitted. This Reply reaffirmed ZATCA's previous position as stated in the memorandum submitted by ZATCA when the dispute over the appealed items was considered before the First Primary Committee for Zakat and Tax Objections in Riyadh. ZATCA added that the issues raised by the Plaintiff Company in its appeal did not deviate from what it had previously raised during the primary objection phase, to which ZATCA had responded at the time. ZATCA concluded its response by requesting rejection of the Plaintiff Company's appeal and upholding of the primary decision regarding the appealed items. After allowing both parties to present their arguments and asking the Appellant if it had anything further to add regarding the appeal, the Department received a response from the Company on 24/02/1442 AH that included the Company reiteration of its reasons for the appeal as stated in the statement of appeal and expressing its willingness to provide any additional data or documents that the Appellate Department may require.

Having reviewed the statement of appeal and reply thereto, and after examining the documents included in the Case file, the Department decided that the Case was ready for adjudication and issuance of decision.

Grounds

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

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:

1. Overpaid salary and social security differences for the period from 2010 to 2013:
Upon reviewing the documents supporting the expenses, salaries, and wages, the Department found that a total of (SAR8,228,525) were deductible expenses as supporting documents were provided. However, (SAR 1,746,118) of these expenses was not supported by documents, which means it must be returned to Zakat base. Therefore, the Department decided to accept Zakat payer's appeal regarding this item and to adjust the amount added to Zakat base due to failure to provide supporting documents for the particulars of this expenditure to be (SAR 1,746,118).
2. Amortization of pre-operating expenses for the period from 2010 to 2013:
Expenses incurred by a company before its establishment and commencement of operations are, in principle, considered necessary expenses to achieve production later once the company



starts its activities. Therefore, this loss must be amortized. Upon reviewing the documents supporting the pre-operational expense amounts, the Department found that their acceptance as deductible expenses were justified. Therefore, the Department decided to accept Zakat Payer's appeal regarding this item for the period from 2010 to 2013, and to deduct it from Zakat base by an amount of (SAR 2,936,320), without any exceptions.

3. Accumulated loss for the period from 2011 to 2013:

Upon reviewing Zakat Payer Company's appeal regarding the disputed item and the decision issued in this regard, the Department found that the committee issuing the decision concluded that there was no dispute between the parties regarding this item, and that the loss for the previous years had not yet been finalized, and that it would be taken into consideration when determining Zakat Payer Company's Zakat base once they were finalized. However, such a statement does not mean that the dispute has actually ended as stated in the committee's decision, and there was no objection from Zakat Payer to the outcome of the decision regarding this item. Furthermore, ZATCA's response to Zakat Payer's appeal regarding the disputed item only included a confirmation of its request to uphold the primary decision regarding this item. The fundamental principle of judicial decisions is that they must be final and conclusive on the matter at hand. The Department has not been able to determine how the dispute regarding the disputed item can be considered settled in light of what the primary committee decided and what ZATCA requested in terms of upholding the decision. Thus, the Department has decided to amend the committee's decision regarding the disputed item so that it is linked to the final determination of the dispute by adding the accumulated loss according to the financial statements prepared by Zakat Payer for the disputed years, after taking into account the impact of the adjustments made by ZATCA, which Zakat Payer did not object to or appeal, and those that Zakat Payer was upheld in making to the exclusion of others, in accordance with the decision of this Department in the first and second items of its appeal.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: In form, Accept the appeal filed by Zakat Payer/Company ..., C.R. No. (...), against Decision No. (28) of 1438 AH, delivered by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Accept Zakat Payer's appeal concerning item (overpaid salary and social security differences for the period from 2010 to 2013, dismiss the primary decision concluded in this regard, and approve adjustments to be added to Zakat base due to the differences arising from failure to submit supporting documents for particulars of this item to the amount of (SAR 1,746,118), based on the Grounds and merits set forth in this decision.
2. Accept Zakat Payer's appeal concerning item (amortization of pre-operating expenses for the period from 2010 to 2013), dismiss the primary decision concluded in this regard, and, deduct the amount of (SAR 2,936,320) from Zakat base for this specific item, excluding any other items, based on the Grounds and merits set forth in this decision.
3. Accept Zakat Payer's appeal concerning item (accumulated loss for the period from 2011 to 2013), and approve to amend the committee's decision regarding the disputed item so that it is linked to the final determination of the dispute by adding the accumulated loss according to the financial statements prepared by Zakat Payer for the disputed years, after taking into account the impact of the adjustments made by ZATCA, which Zakat Payer did not object to or appeal, and those that Zakat Payer was upheld in making to the exclusion of others, in accordance with the decision of this Department in the first and second items of its appeal.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-50)
issued in Appeal No. (1522-2018-Z)

Principle No. 39

Zakat Payer will be given the benefit of the doubt in cases where it is uncertain whether it received the required assessment.

Facts:

On Wednesday, 29/12/1441 AH corresponding to 19/08/2020 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 11/09/1439 AH, corresponding to 26/05/2018 AD, by Company ..., against Decision No. (11) of 1439 AH delivered by Zakat and Tax Objection Committee in Dammam in Case No.(21) filed by the Appellant against the General Authority of Zakat and Tax “GAZT” (Currently ZATCA), in which the primary decision ruled as follows:

First: Uphold ZATCA’s decision to reject in form the objection filed by Zakat Payer Company ..., regarding Zakat assessment conducted by ZATCA for the period from 2009 to 2014.

Having taken cognizance of appeal memorandums and documents included in Case file, the Department 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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

After deliberating on the appeal, the Department found that the subject matter of appeal centers on the Appellant's request to accept to consider its objection on merits regarding the items that Zakat Payer is disputing in connection with ZATCA's assessment, after the committee issuing the decision had ruled to reject Zakat Payer's objection in form due to the expiration of the prescribed period for filing its objection to that assessment, which was estimated at 60 days. Zakat Payer was notified of the assessment on 20/02/1438 AH, while its objection was filed before ZATCA on 25/04/1438 AH. After considering the Appellant's request, the Department found that the expiration of the prescribed period was by a few days. The Appellant stated that the reason for its delay by that short period in filing its objection to the assessment was due to its belief that holidays were not included in the 60-day period within which it was required to file an objection to Zakat assessment. It was not apparent from the Case file to the Department that Zakat Payer's receipt of Zakat assessment was proven by a document that authenticated that receipt, and that all that was relied upon was the beginning of the calculation of the period in that manner, namely the



issuance of the assessment on 20/02/1438 AH. However, issuance of the assessment by ZATCA on that date does not necessarily mean that Zakat Payer was notified of it on the same date on which the assessment was issued. The period between filing of the objection and the end of the prescribed period for filing it was not long, assuming that Zakat Payer received it from the date of its issuance by ZATCA, the Department has determined, based on these circumstances surrounding the determination of the date on which Zakat Payer received Zakat assessment and its subsequent objection to it. Given the doubt about Zakat Payer's receipt of the assessment issued by ZATCA on the same day on which ZATCA issued it, and that Zakat Payer will be given the benefit of the doubt in cases where it is uncertain whether it received the required assessment, and since the Case file lacked any credible document to confirm to the Department's satisfaction that the notification of the assessment was conducted to Zakat Payer on the date of its issuance, the Department has decided to approve Zakat Payer's appeal and refer the subject of its objection to Zakat assessment in dispute to the First Appellate Department for Income Tax Violations and Disputes in Dammam, to consider and rule on the Grounds of Zakat Payer's objection as stated in the statement of objection submitted by it in this regard.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: In form, Accept the appeal filed by Zakat Payer/Company ... C.R. No. (...), against Decision No. (11) of 1439 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

Cancel the primary decision, and reconsider Zakat Payer's objection before the First Appellate Department for Income Tax Violations and Disputes in Dammam, for the reasons and merits set forth in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-39)
issued in Appeal No. (1542-
2018-IW)

Principle No. 40

The fundamental principle when interpreting provisions is to prioritize the clear meaning of the provision over any personal interpretation, as there is no room for independent judgment when the provision is unambiguous.

Facts:

On Wednesday, 17/11/1441 AH corresponding to 08/07/2020 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 in Riyadh to consider the appeal filed on 06/04/1438 AH, corresponding to 24/12/2017 AD, by Company ..., against Decision No. (1) of 1439 AH delivered by Zakat and Tax Objection Committee in Dammam in Case No.(IW-2018-1542) filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary decision ruled as follows:

On Merits:

1. Uphold Taxpayer's position regarding the exclusion of its share of the estimated profit from the joint venture to the outcome for the period from 2005 to 2010.
2. Uphold ZATCA's decision not to deduct carryforward loss for 2008.
3. Uphold ZATCA's decision to impose a late payment fine on the unpaid tax difference for the period from 2005 to 2010. The fine shall be calculated from the due date until the date of payment according to the law.

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

The Company's appeal and challenge to the decision are based on its objection to item (Non deduction of carryforward loss for 2008 due to a 50% change in the Company's ownership). The Company argues that Article (43.b) of the Income Tax Law confirms the permissibility of allowing non-Saudi shareholders to deduct loss incurred in tax years following a change in ownership. Therefore, the Taxpayer Company believes that the decision to delay the payment of the due tax, based on ZATCA's erroneous belief in not allowing the deduction of these losses, is incorrect. This leads to the conclusion that the imposition of a fine on the Company should be nullified as the tax calculation should be adjusted to account for the loss attributable to the non-Saudi shareholders' share after the change in ownership.

Having reviewed the response from ZATCA to the memorandum submitted by the Taxpayer and included in the Case file, the Department found that ZATCA is still adhering to the primary decision and its argument regarding Taxpayer's appeal when the objection was considered before



the Primary Committee. Furthermore, ZATCA did not find anything new in the statement of appeal filed by the Taxpayer to respond to.

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 reviewed the case documents and the statement of appeal submitted by the Appellant Company, the Department found that the formal requirements for accepting the appeal are met as stipulated in the relevant laws, regulations and decisions. Accordingly, this appeal is accepted 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 examining Article (43.b) of the Income Tax Law, which was in effect at the time the Taxpayer was assessed, the Department found that it explicitly states: (the share of a non-Saudi may not be deducted in losses incurred prior to the change in accordance with Article 21 of this Law in the taxable years following the change.). The clear meaning of the provision indicates that the carryforward and deduction of losses incurred by non-Saudi shareholders' shares is definitively not permitted starting from the years following the change in ownership. As such, this provision does not apply to the year in which the change in ownership occurred. Therefore, ZATCA's position of not allowing the deduction of non-Saudi shareholders' share in losses incurred before the change in ownership in the year in which the change in ownership percentage occurred is not justified. Consequently, applying Article (43.b) in the year the change occurred is inconsistent with the clear wording of the provision. The fundamental principle when interpreting provisions is to prioritize the clear meaning of the provision over any personal interpretation, as there is no room for independent judgment when the provision is unambiguous., as such ZATCA's reliance on its position of not deducting those losses in the year the change occurred is not based on a sound basis from the understanding of the law and the apparent interpretation of the provision applied in the case at hand. Based on the aforementioned, the Department has established that the Taxpayer Company is entitled to deduct the incurred losses that were specific to the year in which the ownership change occurred, in order to deduct them from the Company's tax base. This means that any fines imposed on the Taxpayer Company for the delay in paying the tax that it was required to pay have been waived, as the underlying violation attributed to the Taxpayer Company has ceased to exist, as previously decided regarding the Taxpayer Company's entitlement to deduct the share of non-Saudi partners in the carried-forward losses in the year in which the change occurred, but not in subsequent years.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: In form, Accept the appeal filed by Taxpayer/ Company ... C.R. No. (...), against Decision No. (1) of 1439 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

1. Accept the appeal filed by Taxpayer Company regarding its entitlement to deduct the share of non-Saudi partners in the carried-forward losses for the year in which the ownership change occurred, and overturn the primary decision, specifically regarding item (Non deduction of carried-forward loss for 2008 due to a 50% change in the Company's ownership), for the reasons and merits mentioned in this decision.
2. Accept the appeal filed by Taxpayer Company regarding the cancellation of the fines imposed on it for its delay in paying the tax imposed by ZATCA, as the underlying violation attributed to the Taxpayer Company has ceased to exist, and overturn the primary decision on this matter, for the reasons and merits mentioned in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-58)
issued in Appeal No. (1600-2018-W)

Principle No. 41

It is an established principle in litigation that a judicial authority is bound by the claims presented by the parties and must base its decision on those initial claims.

Facts:

On Wednesday, 07/01/1442 AH corresponding to 26/08/2020 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 07/11/1438 AH, corresponding to 30/07/2017 AD, by Company..., against Decision No. (16) of 1438 AH delivered by Zakat and Tax Objection Committee in Dammam in Case No.(21) of 1436 AH 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 Company ..., against ZATCA's letter rejecting its request to refund the amounts paid to Company ..., ...

Second: On Merits:

Uphold ZATCA's decision to subject Company ... to the Income Tax Law in KSA on the Grounds that it is considered a permanent establishment for the period from 2011 to 2013.

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

The Appellant Company is requesting a refund of the withholding tax paid on amounts paid to Company (...), as per the Company's tax return for 2018, amounting to (SAR 3,330,176.83). This request is based on the argument that withholding tax is not applicable because the payments were made for supervisory and engineering services, as well as for purchasing goods for the Company from an overseas supplier. The payments were made to a permanent establishment of the Company within KSA while executing these works, but the criterion of having employees present to execute the works and coordinate the supervision within KSA from the foreign company did not meet the (183) day threshold within a year. This criterion is defined in tax treaties, including the model conventions, such as the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and the United Kingdom. Since the law explicitly prioritizes the application of treaty provisions in case of conflict with the domestic law, the condition of paying withholding tax does not apply in this case due to the absence of a permanent establishment for the non-resident in KSA. There are no physical manifestations of the Company within KSA, and its supervisory work at the construction site involves only engineering, design, planning, and overseas purchasing, all of which are carried out outside KSA. Therefore, the Appellant Company, (Company ...),



requests the cancellation of the primary decision in this regard and seeks a refund of the withholding tax paid.

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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On merits: After reviewing the Case file, its contents, and the statement of appeal, and given that the Appellant Company's argument is a repetition of what was stated during the discussion of its objection before the primary committee that issued the appealed decision, the Department is satisfied by referring to it to avoid repetition. The Company's request, when its objection was considered before the committee, was specifically to recover the amount of withholding tax paid on the amounts paid to (Company (...)) for the period from 2011 to 2013. The Appellant Company believes that the tax treaty between KSA and the United Kingdom stipulates that the profits of British companies are not subject to any withholding tax in KSA because the amounts, from the Appellant Company's viewpoint, are paid to a company that is a resident of the United Kingdom and do not have a permanent establishment in KSA, however, it is exempt from paying withholding tax based on the provisions of the Double Taxation Avoidance Agreement between Saudi Arabia and the United Kingdom, as claimed by the Appellant Company. On the other hand, ZATCA believes that the Company to which the disputed amounts were paid, subject of the refund dispute, has a physical presence in KSA, as evidenced by its continued performance of work related to (... Company) for a period exceeding six months, which negates the description of the company as a non-resident entity or establishment. Therefore, it must be subject to income tax on its activities in KSA, considering it a resident entity as described and classified by ZATCA. The appealed decision concluded in its result that (Company (...)) is a permanent establishment, and therefore subject to income tax in KSA for the period from 2011 to 2013. That decision resolved a dispute that was not the original claim, which was the right of Company (...) to recover the withholding tax, and what it decided was not discussed as an incidental request. It is an established principle in litigation that a judicial authority is bound by the claims presented by the parties and must base its decision on those initial claims. The Plaintiff's request was an explicit and clear request consisting of its demand to recover the amount of withholding tax in dispute. The wording of the appealed decision was not on the specific dispute limited to the request for a refund of the withholding tax, the basis of which differs from the income tax on profits, since the withholding tax is paid regardless of the costs associated with the services for which the amounts were paid, and it did not decide on the original request submitted and avoided discussing the entitlement to the amount of withholding tax or its refund to the Appellant Company without stating the committee's position on that explicit and clear request, and left it pending, and decided on something else other than the original request filed before it, and without stating the connection of that to the original dispute and without there being in the original decision and its statement of facts anything that suggests the acceptance of any incidental request or amendment that was accepted for the initially stated requests.

As such, the Department has decided to cancel the appealed decision and to re-examine the Case in light of the original request related to the right to recover the amount of withholding tax or otherwise. The Department shall examine the dispute in light of whether the amount was paid to a non-resident or a resident entity, in accordance with the provisions of the law and its implementing regulations, as well as the provisions of the specific Agreement for the Avoidance of Double Taxation that the Appellant Company relies on to demonstrate its entitlement to recover the amount of withholding tax. This shall be done after requesting the Company to specify



the evidence supporting its claim that withholding tax is not due on the amounts paid to the non-resident entity (the British company), and requesting ZATCA to respond by stating its position regarding the Appellant Company's claim for the withholding tax withheld by it, and stating the evidence for that in light of the reasons provided by the Appellant Company to justify the recovery of the amount of withholding tax. Any incidental request raised before the Primary Department shall be examined in light of the provisions of the Law of Civil Procedure regarding acceptance or rejection of such request, and in light of the Department's conviction of its connection to the subject matter of the original request, which is the right to recover the amount of withholding tax submitted by the Appellant, or the rejection of its claim due to failure to prove the Grounds for the refund after the Department is convinced that the withholding tax is due on the amounts paid to a non-resident entity.

Therefore, the Department has decided to cancel the primary decision and to refer the Case back to the First Department for Income Tax Violations and Disputes in Dammam, to consider the subject of the objection, which is the request to recover the amount of withholding tax paid by Company (...) for Company (...), due to failure to address this request in the primary appealed decision, which makes the dispute not definitively settled as stated in the ruling of that decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: In form, Accept the appeal filed by Taxpayer/ Company ..., C.R. No. (...), against Decision No. (16) of 1438 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

Cancel the primary decision, and approve referring the Case back to the First Department for Income Tax Violations and Disputes in Dammam for a new hearing on the objection regarding the request to recover the amount of withholding tax paid by (...) Company For (...) Limited Company, in accordance with the reasons and merits mentioned in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-133) issued in Appeal No. (Z-2018-1571)

Principle No. 42

The committee enjoys broad discretion in evaluating the facts and circumstances of each case. This discretion allows the committee to adopt different approaches and even change its position on specific issues, as long as the ultimate decision is supported by sound legal reasoning.

Facts:

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 02/11/1438 AH convened in Riyadh to consider the appeal filed on 03/06/1439 AH by Company..., 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: In form: Accept the appeal filed by Company (...), regarding Zakat assessment conducted by ZATCA for 2014.

Second: On Merits:

Accept the Zakat Payer's request to deduct investments in local joint-stock companies shares, and uphold GAZT's decision for not deducting investments in foreign companies shares for the year 2014.

Uphold GAZT decision for not deducting land contributions from the zakat base for the year 2014.

Uphold GAZT decision for not deducting the dividends of joint-stock companies for the year 2014.

Uphold GAZT decision for not deducting the projects under implementation from the zakat base for the year 2014.

Dissatisfied with the decision, each party, namely: Company (...), and ZATCA submitted a statement of appeal to the Department, challenging the conclusions reached by the primary decision. The two appeals can be summed up as follows:

First: The appeal of Company against the Primary Department decision to (Uphold GAZT decision for not deducting land contributions from the 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.

(Not deducting the dividends of listed joint-stock companies for the year 2014, which amounted to SAR 4,129,682, and the 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 the zakat base.

(Not deducting projects under implementation for the year 2014 AD in the amount of SAR 6,539,970, and the 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.

(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 (..... Holding). The Company holds share in its equity valuing SAR 480,504 according to the financial statements.

(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 GAZT'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: GAZT'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 the 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 the 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 the 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 the 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 the 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 GAZT to respond to the Tax Payer's claims regarding the items subject matter of the appeal. GAZT responded on 26/04/1442 AH with a reply maintaining GAZT'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 GAZT at that time. GAZT also indicated that the item of not deducting investments in fully-owned subsidiaries and associates was not challenged by the 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 the 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. The 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

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 were 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 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:

(Uphold GAZT decision for not deducting land contributions from the 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.

(Not deducting the dividends of listed joint-stock companies for the year 2014, which amounted to SAR 4,129,682, and the 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.

(Not deducting projects under implementation for the year 2014 AD in the amount of SAR 6,539,970, and the 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.

(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.

(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

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: In form, Accept the appeal filed by ZATCA/ Company ..., 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. Regarding the Appeal filed byCompany

1. Accept appeal filed by Zakat Payer regarding the item of upholding ZATCA in disallowing deduction of 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 disallowing deduction of 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 (Disallowing 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:

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 in Riyadh

Decision No. (IR-2020-82)
issued in Appeal No. (Z-1585-2018)

Principle No. 43

If the Appellant does not submit documents that can confirm its claim that the decisions issued against it are incorrect, then such claim will be considered as a mere allegation that is not supported by any credible evidence or strong indications to substantiate it in the appeal, and therefore the claim will not be taken into account.

Facts:

On Wednesday, 13/02/1442 AH, corresponding to 30/09/2020 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 17/07/1439 AH, corresponding to 03/04/2018 AD, by ... Company against Decision No. (13) of 1439 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh in Case No. (38/24) filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the Primary Decision stated as follows:

First: In form: Accept the appeal filed by Company (...), regarding Zakat assessment for the period from 1425 AH to 1428 AH.

Second: On Merits:

Uphold ZATCA in adjusting net profit in import variance except for the amount of SAR 1,056,057 for the year ended on 30/07/1425 AH. Therefore, the Committee upholds Zakat Payer's stance. Since this decision was not accepted by the Plaintiff Company(.), the Plaintiff filed a statement of appeal that can be summarized as follows:

The Appellant is objecting to the additional amounts added to its Zakat assessment, which were calculated based on discrepancies in imports discovered by ZATCA during a review of the assessment notified to Zakat Payer in 1431 AH. This review was initiated following observations by the General Audit Bureau (Currently the General Court of Audit (GCA)) regarding discrepancies between Zakat Payer's declaration and customs data for the period from 1425 AH to 1428 AH. Consequently, Zakat Payer was assessed for the undeclared import difference, which was added to its Zakat assessment, in accordance with Decision No. (2555) dated 19/10/1417 AH. ZATCA contends that it was justified in conducting the assessment based on this decision after discovering the information reported to it by the GCA, which noted discrepancies in Zakat Payer's imports based on customs data and Zakat Payer's declaration. Zakat Payer's appeal is based on the argument that Zakat assessment issued by ZATCA relates to years prior to the amendment of the Company's articles of association, which involved the entry of new partners and the exit of one partner, resulting in Jeddah branch belonging to the exiting partner. Consequently, the documents are not in the possession of Company And Moreover, Jeddah floods caused



damage to the branch, including loss of documents and goods, according to the exiting partner. Furthermore, the Appellant argues that when calculating discrepancies during Zakat assessment by comparing the Company's foreign purchases according to its accounts and foreign purchases according to customs data, the differences in foreign exchange rates must be considered. Additionally, customs data does not include costs related to imported goods, such as insurance and transportation. Some orders belonging to the Company do not appear in customs data because the customs name is listed under (Establishment). However, the Company receives the goods that are incorrectly registered in the customs declaration. Some goods do not appear in customs data because they are received directly through a shipping company in KSA, and the customs declaration is issued in the name of the shipping company, not the Company.

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 order to ZATCA dated 07/09/1441 AH corresponding to 30/04/2020 AD. 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 item 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 replies included in the primary decision regarding the items, subject matter of appeal, shall be considered.

Having taken cognizance of the statement of appeal and documents included in Case file, the Department 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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On merits: After carefully considering the reasons for the appeal against the decision, the Department found that the dispute is essentially a documentary one, and the Appellant has not provided the documents that could confirm its claim that there are no such excess import differences to be included in its Zakat base. The Appellant's defenses are merely general statements that are not supported by substantial evidence or strong proof to substantiate its claim that there are no such differences to be included in its Zakat base, except for what the primary committee found by excluding the amount of (SAR 1,056,057), which represented imports that came through shipping companies. Therefore, relying on the import statements prepared by customs is the principle that cannot be deviated from unless there is evidence that confirms the removal of what these statements contain of recording these excess differences in imports when adding them to Zakat Payer's Zakat base. This is not affected by the Appellant's claim of the existence of an exit process in the Company and the entitlement of the departing partner to the Company's branch in Jeddah, in addition to the inability of Zakat Payer to provide documents confirming the correctness of its position as it claims, in view of Jeddah floods disaster. It is assumed that the Company should have retained these documents and preserved them as long as it considers them useful when requested to prove the Company's right. Moreover, the Appellant's claim of the loss of documents in Jeddah floods is a general statement that has not been confirmed by anything that proves the loss of those documents. Based on the aforementioned, the Department has decided by majority to reject the appeal filed by Zakat Payer Company and uphold the primary decision in its ruling to add the import differences for the period from 1425 AH to 1428 AH, except for the amount of (SAR 1,056,057) for the year ending on 30/07/1425 AH.

Decision



Based on the foregoing and considering the aforementioned reasons, the Department has decided by majority as follows:

First: In form, Accept the appeal filed by Zakat Payer/Company(.), C.R. No.(.), against Decision No. (13) of 1439 AH, delivered by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

Dismiss Zakat Payer's appeal, and uphold the primary decision according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-77)
issued in Appeal No. (I-1631-2018)

Principle No. 44

Observations from GCA regarding ZATCA's performance do not justify reopening the assessment after the prescribed period has elapsed if the stipulated reasons for reopening the assessment do not exist even after the expiration of the prescribed period.

Principle No. 45

Relying on ZATCA's right to reopen the assessment without being bound by a specific time limit is not consistent with the overall provisions of Ministerial Decision No. (2555) of 1427 AH, which regulates this matter. This decision clearly indicates that reopening an assessment without being bound by a specific time limit (five years) is only allowed in the case of specific regulatory violations as well as clear violations of the special instructions when processing Zakat and tax assessments based on taxpayers' declarations.

Principle No. 46

Stability of taxpayers' financial and legal positions, without leaving them in a state of indefinite suspension, results in ZATCA's lack of entitlement to reopen taxpayer's final assessments.

Principle No. 47

Committee's failure to uphold either party to the dispute regarding its approach that was upheld by the appealed primary decision implies that reopening of any discussion of the disputed items related to said decision shall be rendered invalid.

Facts:

On Saturday, 09/02/1442 AH, corresponding to 26/09/2020 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 24/02/1438 AH, corresponding to 24/11/2016 AD, by ... Company against Decision No. (41/12) of 1437 AH delivered by the First Primary Zakat and Tax Objection Committee in Riyadh in Objection No. (1434/22/4270) filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the Primary Decision stated as follows:

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

Second: On Merits:

- Reopen final Assessment for the Period from 2005 to 2008.



Uphold ZATCA's decision to reopen Zakat assessments for Zakat Payer's accounts for the period from 2005 to 2008; and consequently, the two contested items (advance payments from customers and creditors) are to be discussed on merits.

1. Uphold ZATCA's decision to add item advance payments from customers, which have completed a full lunar year, to Zakat Payer's Zakat base for the period from 2005 to 2008.
2. Uphold Zakat Payer's claim against adding item (creditors) to the Company's Zakat base for 2008.

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

Since this decision was not accepted by Zakat Payer Company (...), it filed a statement of appeal dated 24/02/1438 AH that can be summarized as follows:

Zakat Payer's appeal is based on its claim that ZATCA has no right to reopen the assessment for the period from 2005 to 2008, given that the prescribed period for reopening the assessment has expired and there is no justification for doing so. Additionally, Zakat Payer objects to the primary decision's upholding of ZATCA's decision to add item (advance payments from customers) to Zakat Payer's Zakat base for the period from 2005 to 2008. This action was taken by ZATCA after reopening the assessment based on observations from GCA during their audit of the Appellant's file, indicating that there were items subject to Zakat that ZATCA had failed to include in the assessment.

The Department requested ZATCA to respond to the points raised by the Appellant in its statement of appeal regarding the disputed items within 10 days from the date of sending that request to ZATCA, which was dated 07/09/1441 AH corresponding 30/04/2020 AD. However, the Department did not receive a response from ZATCA regarding what it was requested to respond to concerning the Company's appeal in connection with the reasons for the appeal as previously stated, after the expiration of the granted deadline, and without providing a reason for the delay in its response. Given that the appeal transfers the Case to the state it was in when it was appealed, this entails relying on ZATCA's statements and responses included in the primary decision regarding the subject matter of the appeal 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

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

On merits: Having reviewed the Case file, its contents, and the statement of appeal, and upon considering all of the Appellant's arguments, the Department has found that the Appellant object to the following:

1. Reopening of final assessment for the period from 2005 to 2008: Upon careful consideration of the reasons for appealing this item, the Department found that Zakat Payer objects to the validity of ZATCA's action in reopening the assessment. This is because the final assessment for those years was conducted after reviewing the final declarations in accordance with the regulations and the provisions of Ministerial Decision No. (2555) dated 19/10/1417 AH. Zakat Payer's situation does not meet the conditions under which the assessment can be reopened. ZATCA's right to reopen such assessments is contingent upon the existence of material or accounting errors, which ZATCA corrects on its own initiative, at the request of Zakat Payer, or based on a note from GCA. However, the third section of the aforementioned Ministerial Decision states that ZATCA is not entitled to reopen the final assessment in cases that are not governed by specific regulatory rules or instructions and have been dealt with in a manner that has affected Zakat Payer's Zakat or tax base after ZATCA has analyzed, inquired about, and discussed it before conducting the final assessment.



Therefore, ZATCA's reopening of the assessment was not based on new substantial elements that were not stated in the original assessment. Reopening the assessment in such a case would create uncertainty among Zakat Payers, as reopening the assessment undermines the principle of Zakat and tax stability for Zakat Payers.

However, ZATCA believes it has the right to reopen the final assessment without being bound by a specific time limit if there is a note from GCA, and when data or information emerges that could affect Zakat assessment. Upon reviewing the reasons for Zakat Payer's appeal and ZATCA's position on the basis for its actions in reopening the assessment despite the passage of more than five years, the Department finds that no information was concealed or unknown to ZATCA after Zakat Payer submitted its declaration during the period in which ZATCA could review Zakat Payer's declaration for the purpose of issuing the final assessment. Furthermore, no accounting or material errors have been found that would necessitate reopening the assessment, and Zakat Payer has not been proven to have concealed information with the intent of tax evasion. Therefore, relying on ZATCA's right to reopen the assessment without being bound by a specific time limit is not consistent with the overall provisions of Ministerial Decision No. (2555) of 1417 AH, which indicates that reopening the assessment without being bound by that five-year time limit can only occur when there are specific regulatory violations as well as clear violations of the special instructions when processing Zakat and tax assessments based on taxpayers' returns. This is the only approach that is consistent with the principle of stabilizing taxpayers' financial and legal positions without leaving them in a state of indefinite suspension. Therefore, all of this results in ZATCA not being entitled to reopen Zakat Payer's final assessment. Consequently, the decision on this appeal regarding the contested item is to accept Zakat Payer's objection and to declare ZATCA's action of reopening the final assessment for the disputed years to be unsound. ZATCA's reliance on the fact that reopening the assessment is permissible in such circumstances when there are notes from the GCA is not valid, as the relationship between GCA and ZATCA is based on the function of the auditing authority in monitoring the work of government agencies when it observes violations regarding failure to collect revenues or control expenditures in accordance with the laws, regulations, and rules applied in the work of government agencies, in order to hold those agencies accountable in the event of such violations. Therefore, Zakat Payer should not be held accountable for these observations that GCA sends directly to government agencies, including ZATCA. The existence of these observations on the performance of ZATCA does not justify reopening the assessment after the expiration of the specified period if the reasons for reopening the assessment do not exist even after the expiration of the specified period.

2. Advance payments from customers for the period from 2005 to 2008. Zakat Payer's appeal of the primary decision regarding this item centers on a number of reasons included in Zakat Payer's statement of appeal. The primary decision stated in its second sections that it had decided to discuss items (advance payments from customers and creditors), after the primary decision upheld ZATCA's position in reopening Zakat assessment for Zakat Payer's accounts for the period from 2005 to 2008. This Department has established that ZATCA's action to reopen Zakat assessment, which was upheld by the appealed primary decision, was unsound, as previously detailed in the discussion of this decision regarding reopening the assessment for those years. Based on the aforementioned, this entails the invalidity of reopening discussion of that contested item (advance payments from customers for the period from 2005 to 2008) as the primary decision ruled. It is decided accordingly to accept Zakat Payer's appeal, overturn the primary decision regarding that item, and adopt the provisions of the assessment issued to Zakat Payer before the amended assessment, based on the reasons and merits stated in the discussion of the first item in this decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:



First: In form, Accept the appeal filed by Zakat Payer/Company ..., C.R. No. (...), against Decision No. (41/12) of 1437 AH, delivered by the First Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

1. Accept the appeal filed by Zakat Payer regarding reopening of final assessment for the period from 2005 to 2008 is accepted, approve that such assessment shall not be reopened, and overturn the primary decision on this matter, based on the reasons and merits stated in this decision.
2. Accept the appeal filed by Zakat Payer regarding advance payments from customers for the period from 2005 to 2008, approve their treatment as they were in the original assessment for those years, before the reassessment was conducted, and overturn the primary decision on this matter, based on the reasons and merits stated in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-116)
issued in Appeal No. (I-1634-
2018)

Principle No. 48

Because the committee overturned the original decision on a particular appeal point, the other appeal points related to it shall not be considered, as the underlying basis for these related points has already been overturned.

Facts:

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 15/01/1425 AH, as amended by Royal Decree No. (M/113) of 02/11/1438 AH convened. in Riyadh to consider the appeal filed on 05/05/1438 AH, by.....Company against Decision No. (2) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Case No. (37/29) 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 ...Company regarding the additional tax assessment for the period from 2004 to 2007

Second: On Merits:

First Point:

1. Reject Taxpayer's objection to item (Reopening of the assessment for 2004), based on the merits stated in the decision.
2. Reject Taxpayer's objection to item (ZATCA's right to reassess taxes for the period from 2005 to 2007), based on the merits stated in the decision.

Second Point:

1. Reject Taxpayer's objection to item (Tax due on purchase price differences for 2004), based on the merits stated in the decision.
2. Reject Taxpayer's objection to item (Tax due on net profit of purchase price differences for 2005), based on the merits stated in the decision.
3. Reject Taxpayer's objection to item (Tax due on net profit of purchase price differences for 2006), based on the merits stated in the decision.
4. Reject Taxpayer's objection to item (Tax due on net profit of purchase price differences for 2007), based on the merits stated in the decision.
5. Reject Taxpayer's objection to item (Determination of an estimated profit margin on net purchase price differences, based on the merits stated in the decision.
6. Reject Taxpayer's objection to item (Late payment fine), based on the merits stated in the decision.



Since this decision was not accepted by Company (...), it filed a statement of appeal that can be summarized as follows:

- First Point:

1. Taxpayer's appeal against the rejection of its objection to reopening of the assessment for 2004: Taxpayer initially objects to ZATCA's application of the provisions of the Tax Law and its Regulations to the case of reopening the assessment for 2004, despite the fact that the law was not issued until 2005. Consequently, there is no basis for applying its provisions to the case of reopening the assessment for the disputed year. Instead, the provisions of Ministerial Decision No. (2555) dated 19/10/1417 AH should be applied, as it regulated the rules and procedures for reopening assessments. On the other hand, there is no valid justification for reopening the assessment for the disputed year based on the existence of undeclared purchases, if this is solely based on information obtained from customs declaration that was notified to ZATCA through observations from GCA. This is because ZATCA's right to reopen an assessment with an additional assessment is subject to the exercise of this right in accordance with the controls and provisions specified in the Ministerial Decision, which does not permit the reopening of an assessment without a period of five years, except if information or data appears that was not known to ZATCA at the time of the assessment and is likely to affect Zakat and tax assessment. However, in fact the additional assessment was issued more than five years after receiving GCA's note on 04/01/1431 AH, and the additional assessment was issued on 03/03/1437 AH. Therefore, ZATCA is not entitled to issue an additional assessment after more than five years have elapsed from the deadline for filing the return. The information received from Customs was known and available and was not unknown to ZATCA. It should have verified the accuracy of the purchase and import amounts from Customs before conducting the original assessment. Therefore, there was no suspicion of tax evasion by the Company in submitting its return and declaring what was available to it and what ZATCA provided throughout the period during which ZATCA's inquiries lasted until the issuance of the additional assessment. Moreover, the other cases in which the Ministerial Decision permitted the issuance of an additional assessment without specifying a time limit do not apply to the Company's case, such as in the case of material accounting errors in the final assessment, as they do not result in substantive additions but rather correct material accounting errors. Furthermore, even when issuing an additional assessment, it should not exceed the prescribed period of five years in the case of material accounting errors that justify reopening the assessment, and there was also no error in determining the amount due under the original assessment due to an error in applying the provisions and instructions, or that the accounts were not prepared in accordance with the accounting principles and standards. Therefore, none of the cases stipulated in the Regulations governing the reopening of assessments under the Ministerial Decision apply to the Company's case, taking into account that the return was submitted to ZATCA and was not decided upon until after the expiry of the prescribed period for conducting the final assessment as stated above.
2. Taxpayer Company's appeal against ZATCA's right to conduct a tax assessment for the period from 2005 to 2007: The Company is appealing against ZATCA's action of reopening the assessment, despite the fact that the statutory period for conducting an adjusted assessment, which is five years according to Article (65) of the Tax Law and Article (59.8) of its Implementing Regulations, has expired. This period begins at the end of the deadline for submitting the return for the fiscal year. The deadlines for conducting the assessment for each of the three disputed years have thus expired. Consequently, ZATCA's failure to consider this matter results in instability of taxpayers' financial positions. Due to the significance of this impact, the law has stipulated a period for ZATCA to exercise its right to reopen the assessment that cannot be exceeded. ZATCA's request for information does not affect this, as the Taxpayer's return is presumed to be accepted after the expiration of



the period specified by the law for exercising ZATCA's right to reopen the assessment. After this period, the assessment cannot be reopened without the written consent of the Taxpayer, which the Taxpayer Company has not provided. The Company has not agreed to the reopening of the assessment.

- Second Point:

1. Company's appeal against the rejection of its objection regarding tax due for 2004, amounting to (SAR 1,593,254). This is because ZATCA has determined that the total value of foreign purchases as per the Company's return does not align with the value of the customs declaration for foreign purchases. Consequently, ZATCA inferred that a comparison of the amounts through a comparison of the customs declaration with the Company's return reveals an inflation of expenses. Therefore, the tax due and the resulting fine must be paid. However, in fact, the financial statements show that there is no inflation of expenses. The net profit according to the return matches the net profit according to the audited financial statements prepared by a licensed auditor. Moreover, the principle of matching expenses and costs with revenue explains the soundness of the Company's position and demonstrates the absence of any inflation of its expenses. Therefore, the Company requests that ZATCA not rely solely on the existence of this difference that it perceives by merely comparing the customs declaration with what is stated in the return, as the reality of the Company's position is shown by the audited financial statements that explain the reality of this difference when comparing the purchases that ZATCA has not accepted with the corresponding revenue. The Company also adds that the final assessment for 2004 was not conducted until the end of 2015. Due to the long period, the relocation of the Company, and the difficulty of finding documents and records that support the Company's position before ZATCA, and the expiration of the prescribed period for retaining records, it has been impossible to present this to ZATCA. Furthermore, the Company has requested a copy of the original return from ZATCA to explain its position after losing its copy of the return, but ZATCA has not responded. Therefore, the Company requests that the purchases stated in its return be accepted and not added to taxable base for 2004.
2. Tax due on net profit of purchase price differences for 2005: The Company is contesting the Committee's decision to uphold ZATCA's position of imposing income tax on the net profit of foreign purchase price differences amounting to (SAR 2,632,617). However, in fact, the Company submitted its return as a total cost of its operations as a single amount that includes both domestic and foreign purchases, in addition to direct expenses, for a total amount of (SAR 9,756,690). Given that the return form was new at that time after the issuance of the Tax Law, errors in the data submitted for the return are possible. However, matching expenses and costs with revenue based on the financial statements confirms that the Company has included all its domestic and foreign purchases in its return, and the net profit for that year matches the net profit as shown by the financial statements. Therefore, there is no suspicion of concealing domestic or foreign purchases or related revenues to reduce the net profit subject to the due tax. Consequently, ZATCA's insistence on calculating the profit and tax on it, assuming the existence of differences in purchases, results in a double taxation situation, as the Company has already declared the revenue from these purchases in its accounts and paid the tax on it. Therefore, the Company requests non calculation of tax on the purchase price differences for 2005, contrary to the primary decision.
1. Tax due on net profit of purchase price differences for 2006: Taxpayer Company is appealing ZATCA's action of imposing a tax on net profit of foreign purchase price differences not included in the tax return, with these differences estimated at (SAR 1,203,750). However, in fact, the Company submitted its tax return and declared the revenues corresponding to purchases and costs, and calculated related tax. Meanwhile, ZATCA used customs declaration



for foreign purchases and considered the existence of a difference as undeclared income; thus, it estimated a net profit and imposed tax on it. In fact, it was the Company that provided the ZATCA with information when responding to its inquiries for the period from 2004 to 2007. Therefore, there is no suspicion of concealing information or data or failing to declare realized income to reduce net profit. The Company submitted analytical data for direct expenses, foreign and domestic purchases, and combined them in a single item within the tax return for 2006. It responded to ZATCA's inquiries regarding this matter. However, ZATCA insisted on calculating the differences in foreign purchases and considered them expenses for which no revenue was declared in the tax return for that year. This contradicts the truth in its entirety, as ZATCA disregarded the analytical data submitted to it. Consequently, re-calculating the tax on the assumption of the existence of differences in foreign purchases results in a double taxation situation that ZATCA itself does not agree with. Therefore, the Company requests that no profit tax be calculated on foreign purchase price differences for that year, contrary to the primary decision which upheld ZATCA's position regarding these differences for that year.

2. Tax due on net profit of purchase price differences for 2007: The Company is appealing ZATCA's decision to impose income tax on net profit resulting from foreign purchase price differences not included in the tax return, with a difference of (SAR 261,093). However, in fact, ZATCA considered the amount of foreign purchases included in the inquiries requested by ZATCA as the basis for calculating the adjusted net profit, concluding that it was not included in the tax return for that year. In fact, the Company provided ZATCA with analytical data for its purchases in response to ZATCA's inquiries for the period from 2004 to 2007. ZATCA considered that these purchases showed a difference when compared to the customs declaration for that year; therefore, it is necessary to calculate the profit on the revenues from these purchases that were not declared in the Company's tax return. ZATCA did not take into account all the analyses, data, and explanations when they were not in its favor, but instead concluded and took from them what was not in the Company's favor. The analytical data for both direct expenses and foreign purchases of both types included in the tax return for that year demonstrate the absence of any suspicion of concealing information or data from ZATCA. The Company declared the revenues corresponding to these foreign purchases and calculated the tax on them, and therefore there is no valid basis for ZATCA's assumption that there are realized revenues that were not declared to reduce net profit by the Company so that the net taxable profit can be adjusted. Based on this, calculation of tax based on this assumption of the existence of foreign purchase differences leads to a double taxation situation; because it actually represents a recalculation of the tax on the same foreign purchases, which is something that ZATCA itself does not agree with. As such, the Company requests non calculation of tax on foreign purchase price differences and not to uphold the primary decision that approved ZATCA's position in dealing with these differences with regard to foreign purchases.

As stated in the statement of appeal submitted by Taxpayer, the decision issued regarding 2006 and 2007 affirmed that the dispute is a documentary dispute and that Taxpayer did not provide the documents supporting its position regarding foreign purchases for those years. However, in fact, after submitting the data and information to the committee and granting ZATCA a two-week period to examine the submitted documents before issuing the decision, the Company was surprised by the issuance of the decision without being informed of ZATCA's opinion on the submitted documents. Rather, the decision overlooked this matter and considered that the Company did not submit documents supporting its argument, which is contrary to the facts. The Company submitted invoices and documents for its foreign purchases that correspond to the customs declaration. The Company provided data on foreign purchases based on copies of invoices, the value of imports through documents related to those purchases matching the customs declaration, and the value of imports according to the books, as well as the amount of differences in a comparative table illustrating this.



Regarding items (foreign purchase price differences for the 2006 and 2007), the statement of appeal concluded by clarifying that there is difficulty in matching the customs declaration for imports with the value of imports according to the accounting books and records. Some differences can be attributed to several reasons, including difference in the method of recording imports according to accounting standards and customs declaration, as imports are recorded as inventory and the expense on the cost of goods is not recorded until the sale is made, while customs declaration records imports based on their clearance date. Additionally, there is a difference between Hijri and Gregorian calendars, which in some cases results in recording of imports in different years in the accounting books compared to those recorded in the import data. Some discrepancies also arise from difference and variation in the foreign exchange conversion rate.

3. Determination of an estimated profit margin on net purchase price differences: Taxpayer Company's appeal centers on the invalidity of the decision to uphold ZATCA's imposition of that tax on the estimated net profit from the purchase differences for the period from 2005 to 2007, because the nature of the Company's work is the sale of medical devices and supplies, which is considered "other activities" mentioned in the Implementing Regulations, and therefore its estimated profit is 15%, while ZATCA adopted its estimation at a rate of 25%, on the basis that those Regulations for the tax law estimated the minimum limit and did not specify a higher percentage that should not be exceeded, and therefore the Company does not know the systematic basis for determining the percentage on which the estimation was made and which the committee agreed with ZATCA on. In fact, Article (16) of the Regulations stated that the determination should be based on the circumstances and evidence related to the nature of the Taxpayer's activity. Therefore, assuming the existence of these differences, it is incorrect for ZATCA to insist on calculating a percentage exceeding 15% specified based on what is stated in the Regulations, which shall be deemed a violation, and assuming the existence of these differences, the Company requests to be accounted for on the basis of a 10.5% rate and not on the basis of the excessive rate imposed ZATCA and approved by the committee in the appealed decision.
4. Late payment fine: The Company is appealing against the decision to subject the income tax and withholding tax differences to a 1% penalty for every 30 days of delay, calculated from due date until payment date, in accordance with Article (77.1) of the Tax Law, and based on the provisions of Article (68) of the Implementing regulations. However, in fact there is a clear and obvious difference regarding the existence of this tax between ZATCA and the Taxpayer as stated in the reasons for the Company's appeal in connection with the disputed items, which arose from ZATCA's assumption of the existence of foreign purchase differences, so the tax was imposed on them without taking into account the Company's position regarding them and at a rate that does not comply with the regulatory requirements, even assuming that it is due. ZATCA's determination of these differences and the estimation of the tax on them after many years had passed since the Company submitted its returns on their due dates cannot be ignored. In addition, imposing a tax in such a case as the Company's in an arbitrary manner is contrary to the principles of justice and it is not acceptable, with the existence of this dispute, to impose a late payment fine for every 30 days of delay, and to calculate it from the date of the assessment, whereas the delay in the assessment was due to ZATCA, so the Taxpayer is not at fault for the extension of that period due to the issuance of the assessment to be calculated within the period of delay for which the penalty is calculated. It is also not reasonable to calculate the late payment fine in such a case to be greater than the amount of the estimated tax that ZATCA calculated by 25%. It is worth noting that there are many appeal decisions that included the calculation of the late payment fine from the date of the final decision and not from the date of the assessment. As such, the Company requests to be exempted from late payment fines for the reasons stated.



The Department requested ZATCA to respond to the Appellant's Memorandum regarding the disputed items. The Department accordingly received ZATCA's Rejoinder dated 17/04/1442 AH, regarding its response to Taxpayer Company's Appeal Memorandum submitted with respect to the items Taxpayer objects to in relation to ZATCA's assessment. The Rejoinder received from ZATCA reaffirmed its stance, asserting that the Company's tax return was inaccurate. This alone, ZATCA argued, sufficed to grant ZATCA the right to amend the return or conduct an additional assessment for the outstanding differences. This action was justified based on Article (62.c) of the Income Tax Law, specifically due to the Company's failure to accurately report the import discrepancies, as the return was prepared incorrectly. As for not reassessing the Company for 2004 and ZATCA's non entitlement to conduct a tax assessment for the period from 2005 to 2007, ZATCA relies on Ministerial Decision No. (2555) dated 19/10/1417 AH, which granted ZATCA the right to reassess Taxpayer without being bound by a specific time limit, according to Paragraph First of the same Decision. As for ZATCA's non entitlement to make an estimated assessment on the Company's foreign imports for the period from 2004 to 2007, ZATCA insists on the validity of its actions based on Article (65) of the Income Tax Law. According to this article, Taxpayer was supposed to declare the imports in its tax return. The existence of a note from GCA is proof that Taxpayer did not declare them. As for the estimated tax on foreign purchase differences for 2004, and the net profit of foreign purchase differences for the period from 2005 to 2007, ZATCA insists on the validity of its imposition of the estimated tax for 2004, relying on Ministerial Decision No. (1/398) dated 25/2/1421 AH. As for the period from 2005 to 2007, the imports listed in the customs declaration that Taxpayer did not declare in its returns were first treated as sales at a net profit margin of 25%, based on Article (16.c) and Article (57.3) of the Implementing Regulations of the Income Tax Law. Given that the nature of the Company's business is services, installation, and maintenance of medical equipment, and the amounts subject to the additional assessment are medical supplies related to its activities, they were classified as other activities according to item (9) of the table in Article (16.4) of the Implementing Regulations of the Income Tax Law. As for the late payment fine, it was imposed in accordance with Article (77.a).

Having reviewed the statement of appeal filed by Taxpayer Company and ZATCA's response thereto, and after examining the documents included in the Case file, the Department decided that the Case was ready for adjudication and issuance of decision.

Grounds

Having reviewed case documents and statement of appeal submitted by Taxpayer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with capacity and within the period prescribed by law.

On merits: The Department has considered all the Appellant's arguments, particularly those related to Taxpayer's appeal and objection to the invalidity of reassessing the Company for 2004. Additionally, the Department has carefully examined the reasons that led ZATCA to reopen the assessment for 2004. As detailed in the decision under consideration and ZATCA's response to the appeal regarding that item, the Department has found that ZATCA took this action based on a note from GCA that confirmed the existence of imports in the Company's name according to the customs declaration for 2004, which were less than the amount recorded in the accounts by (SAR 1,593,254). However, what governs the reopening of an assessment against a taxpayer is what was included in Ministerial Decision No. (2555) dated 19/10/1417 AH, as it is the framework that defines the controls governing the reopening of assessments for 2004, before the issuance of the Tax Law. While relying on the notes from GCA regarding the non-conformity of the import data at customs with what was recorded in Taxpayer's accounts is not sufficient in itself to confirm the validity of ZATCA's procedure in reopening the final assessment without being bound by a specific time limit, this is because carrying out such a procedure after the expiration of five years



from the date of Taxpayer's return submission can only occur when data or information appears that was not known to ZATCA when it notified Taxpayer of the assessment. Since this information was available to ZATCA and was not hidden from it at the time of the assessment, and since it was not proven that Taxpayer had committed any act intended to evade the due tax when submitting its return through this information that ZATCA claims was new information that it did not discover until after notifying GCA of its existence, and since merely relying on the existence of this note does not result in the possibility of reopening the assessment against Taxpayer in that year due to the non-applicability of what that decision allowed ZATCA to do in terms of conducting an additional assessment without being bound by a specific time limit, given that this information was available to ZATCA at that time and its knowledge of it does not depend on the existence of a note from GCA, as such, the Department concluded that ZATCA was not entitled to reopen the final assessment as there was no justification for it, based on the aforementioned Ministerial Decision that regulates the specific rules for reopening an assessment without being bound by a specific time limit, which are conditions and circumstances that do not apply to the Company's situation as previously stated. Therefore, the Department ruled that ZATCA's decision to reopen the assessment and amend it with an additional assessment was invalid. Additionally, the Department accepted Taxpayer's return, which was the basis for notifying Taxpayer of its final acceptance.

Regarding Taxpayer's objection to ZATCA's right to conduct a tax assessment for the period from 2005 to 2007, it was found that ZATCA's argument in reopening the assessment is based on its assertion that Article (65.b) of the Tax Law permits such a procedure because the Company submitted incomplete returns, as confirmed by the observations sent by GCA regarding the existence of imports that the Company did not declare in its returns when submitting them to ZATCA in a timely manner. Consequently, there is data and information related to the Company's imports that was not known to ZATCA at the time of the original assessment, which makes ZATCA justified in reopening the assessment for the aforementioned years pursuant to the provisions of the Tax Law.

Tax returns for the period from 2005 to 2007 are governed by the provisions of the Tax Law and its Implementing Regulations that organize the process and procedure for amending the assessment. Article (65.a) explicitly states that ZATCA's right to amend the assessment is within five years from the end of the deadline for submitting the tax return. However, ZATCA's reliance on Paragraph (b) of that Article is not applicable to the facts of the case at hand, given that ZATCA's right to amend the assessment within (10) years from the end of the deadline for submitting the tax return for the tax year relates to cases where Taxpayer has not submitted a return at all, or if it appears that the return is incomplete or incorrect with the intent to evade tax. Reopening the assessment after the expiration of the five-year period specified by the law for ZATCA to exercise its right to amend the assessment is incompatible with the case at hand because the information obtained by ZATCA from GCA regarding the import differences related to the customs data for the disputed years was not new unknown information at the time of the assessment, as ZATCA could have verified it before GCA notified it of the existence of this note related to its function of monitoring the efficiency of government agencies in collecting their revenues and the regularity of their expenditures as specified by GCA's law. It did not appear from the Department's examination of the original decision, nor from ZATCA's viewpoint during the consideration of the dispute before the Primary Committee and what was stated in ZATCA's Rejoinder, an accusation against the Company of committing an act constituting tax evasion in a manner that indicates the Company's intention to conceal this information. Based on the aforementioned, reopening the assessment is not valid or consistent with the provisions of Article (65.a), which can be interpreted as meaning that the tax return for the tax year is final if five years have passed from the end of the deadline for submitting it, unless ZATCA exercises its right to amend within that period, or proves the existence of intent to evade tax or the submission of an incomplete return within ten years from the end of the deadline for submitting the return. Stability



of legal and financial positions is a fundamental objective affirmed by the law as it set forth that ZATCA shall not exceed the five-year period for reopening the assessment except in the case of tax evasion. This applies also to the case of not exceeding ten years for ZATCA to exercise its right to reassess. As such, reopening the assessment based on such information that was not unknown to ZATCA as previously stated, does not achieve the goal of stabilizing the financial and legal positions of taxpayers, in addition to lack of any evidence to support this procedure, which is consistent with the provisions of the law. Based on the foregoing, the Department concluded that ZATCA was not entitled to reopen the assessment for the period from 2005 to 2007.

As for the conclusion of the primary decision regarding (Second Point): It rejected Taxpayer's objection to the tax due on net profit of purchase differences from the period from 2004 to 2007. This Department has decided that ZATCA's action in reopening assessment for Taxpayer for those years, as previously stated, is invalid. Additionally, the primary decision ruling to obligate Taxpayer to pay tax on profits of those differences has negated the basis upon which those tax dues are imposed on Taxpayer in accordance with what will be stated in the operative part of this decision after the Department has concluded that the reopening of the assessment for the disputed years is invalid, as established from the facts and reasons of this decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: In form, Accept the appeal filed by Taxpayer/Company(...), C.R. No.(...), against Decision No. (2) of 1438 AH, delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Regarding Taxpayer's appeal to reopen tax assessments for the period from 2004 to 2007:
 - a. Accept the appeal filed by Taxpayer regarding reopening of assessment for 2004, approve that such assessment shall not be reopened, and overturn the primary decision on this matter, based on the reasons and merits stated in this decision.
 - b. Accept the appeal filed by Taxpayer regarding reopening of assessment for the period from 2005 to 2007, approve that such assessment shall not be reopened, and overturn the primary decision on this matter, based on the reasons and merits stated in this decision.
2. Accept the appeal filed by Taxpayer regarding tax amounts due for purchase differences for the period from 2004 to 2007, and regarding determination of the estimated profit margin on the net difference of these purchases, as per the Department's decision in paragraph (1) of this ruling stating not to reopen tax assessments for those years, to cancel the late payment fine for absence of its reason, and overturn the primary decision on this matter, based on the reasons and merits stated in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-59)
Delivered in Appeal No. (Z-
1562-2018)

Principle No. 49

Causes of discarding accounts include: lack of supporting documentation, account manipulation, and technical recording errors that make financial statements misleading.

Facts:

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 2011 to 2013.

Second: On Merits:

1. Zakat payer to be accountable on a Gregorian year basis for the period from 2011 to 2013.
2. Uphold ZATCA’s decision not to accept the financial statements for the period from 2011 to 2013.
3. Uphold ZATCA’s decision to calculate capital and estimated profits for the period from 2011 to 2013.

Since this decision was not accepted by Zakat Payer (... Enterprise), Zakat Payer filed a statement of appeal that can be summarized as follows:

Zakat Payer is objecting to the primary decision which upheld the reopening of Zakat assessment and rejection of Zakat declarations submitted by Zakat Payer, without ZATCA clarifying the reason for this decision in a manner that demonstrates the validity of its position. ZATCA has not cited any evidence to conclusively prove that there was any manipulation or violation of the records contained in the accounting books and the statements prepared by the Enterprise. The mere assertion that these statements were prepared in a subsequent year by an accounting firm does not necessitate the discarding of these accounts, as long as no manipulation has been found in the records and data shown by these books and accounts. Furthermore, the claim that this data was prepared by an accounting firm after the end of the disputed fiscal years is not accurate. When Zakat Payer was questioned by the auditor, it stated that this accounting and financial statements were prepared by an accounting firm. What was meant by this was that the subsequent audit work was undertaken by that firm. Therefore, it is incorrect to conclude from this that these records are contrary to accounting practices without ZATCA proving the existence of specific violations or manipulations. Additionally, it cannot be accepted that such violations exist to justify discarding the accounting data submitted by Zakat Payer. ZATCA then selectively chooses some of the data in the financial statements to add differences in internal and external purchases based on the data available for these amounts. ZATCA should either accept all the data included in these statements or reject it entirely. Therefore, ZATCA should not resort to arbitrary estimates unless it has obtained information from external sources, such as Saudi Customs or accounts with another customer, from which it can infer the existence of manipulation and evasion. This is something



that ZATCA has not done, as it has relied in its estimation on what is included in the accounting data in Zakat Payer's statements.

In its objection, Zakat Payer has requested that the arbitrary estimation adopted by ZATCA not be resorted to, as the reasons for resorting to it have not been met, as previously stated. Additionally, Zakat Payer has requested that ZATCA's assessment of additional Zakat on internal and external purchases, as concluded in the primary decision, be disregarded. This is because the assessment is not based on any evidence supported by the actual accounts shown in the documents submitted to ZATCA and examined by it during its inspection of Zakat Payer.

The Department requested that ZATCA respond to the points raised by the Appellant in its memorandum regarding the disputed items. ZATCA responded on 08/01/1442 AH, reaffirming its position as previously presented before the Appeal Committee when considering the appeal of Zakat Payer Company. ZATCA requested to uphold the appealed decision confirming the validity and correctness of its procedures, given that the points raised by Zakat Payer Company were not new and had already been addressed during the consideration of its appeal before the Primary Committee. Additionally, ZATCA questioned the reliability of the financial statements prepared by an accounting firm in years subsequent to each of the disputed years, arguing that this contradicts the requirements of adherence to accounting professional standards. Furthermore, the financial statements submitted by Zakat Payer, after it had opted for an estimated assessment, showed significant differences between the value of imports according to the financial statements and what was stated in its previous declarations for the disputed years. This makes ZATCA's action of reopening the assessments and reassessing Zakat Payer a sound decision, given the information revealed in the financial statements submitted by Zakat Payer to ZATCA.

Grounds

Upon deliberation of the appeal, the Department decided to accept it in form. However, the Department disregarded ZATCA's request to reject the appeal due to its late filing, which is beyond the stipulated 60-day period from the date the Appellant was notified of the primary decision, and also due to the Appellant's failure to deposit a bank guarantee to proceed with the appeal. This is because the established principle in the Department is that as long as ZATCA has not proven a specific date for Zakat Payer's receipt of the primary decision, the date of filing the appeal is considered to be the date on which the receipt of the primary decision is deemed to have occurred. And since ZATCA has not presented any evidence to refute this principle, its request should be disregarded. As for ZATCA's request to dismiss Zakat Payer's appeal due to its alleged failure to provide a bank guarantee to hear the case, as stated in its appeal, based on the argument that the Regulation for Zakat Collection stipulates this condition for accepting appeals, the Department decided to disregard this request. This is because Royal Decree No. (26040), issued on 21/04/1441 AH, which approved the Tax Dispute and Violation Committee Procedures, stated in its third article that the appellate departments shall consider objections submitted by interested parties against decisions issued by ZATCA regarding Zakat assessments, in accordance with the Tax Dispute and Violation Committee Procedures. Since these rules do not include a provision requiring Zakat Payers to pay the amounts claimed when objecting to such amounts, and given that the Tax Law, after its amendment, does not include such a requirement, and considering the principle of presumption of innocence, and that it was ZATCA who initially objected to Zakat Payer's Zakat declaration, and given that the points of dispute between Zakat Payer and ZATCA are not within the time frame of the Regulation for Zakat Collection of 1438 AH, it is therefore decided not to comply with ZATCA's request to dismiss Zakat Payer's appeal against the primary decision on Zakat assessment.

On merits: Having reviewed the Case file, its contents, the statement of appeal, and the statements made before the Department, and having considered all of the Appellant's arguments, the Department has decided to issue its ruling on the appealed items as follows:



1. Item (reopening Zakat assessment): Zakat Payer's appeal is based on its request to cancel the appealed decision regarding the reopening of Zakat assessment, as per ZATCA's letters Nos. (3555/29/1435) dated 18/12/1435 AH and (1336/29/1436) dated 16/04/1436 AH, whereby the Enterprise was notified that Zakat assessment had been reopened for the period from 1432 AH to 1434 AH, based on Zakat declaration no. (5) submitted by the Enterprise through ZATCA's electronic portal, stating that Zakat due on the Enterprise was (SAR 206,111). The Enterprise responded to ZATCA's request by preparing financial statements for the same period that ZATCA had previously conducted Zakat accounting for, based on the estimated accounting basis. The audited financial statements were submitted to the ZATCA. However, ZATCA disregarded and rejected the financial statements and accounts for the period from 2011 to 2013, after conducting a field audit of the Enterprise, which resulted in a re-estimation of Zakat due to (SAR 1,330,289). The Primary Committee upheld ZATCA's argument regarding the reopening of Zakat assessment in accordance with Ministerial Decree No. (2555) of 1417 AH, which states that ZATCA has the right to reopen final assessments without being bound by a specific time limit if data or information previously unknown to ZATCA becomes available. After reviewing the new information that came to the attention of ZATCA and upon which it relied, it was found that this information was internal and sourced from the Enterprise's books and accounts, which ZATCA refused to accept and completely disregarded. This information was not obtained from external sources (Customs - audit of another client). ZATCA argues that Zakat Payer submitted estimated Zakat declarations for Hijri years 1432 AH to 1434 AH, and was assessed based on the imports rule, resulting in a difference of (SAR 206,111). Zakat Payer objected to this assessment and submitted financial statements for the financial periods from 2011 to 2013, which revealed information that was not available to ZATCA at the time of the initial assessment, showing a difference in the value of imports that were accounted for. Based on this information, ZATCA reopened the assessment for Zakat Payer, resulting in Zakat difference of (SAR 1,330,289). It has been established that Zakat Payer was submitting its Zakat declaration based on the estimated accounting method, and therefore ZATCA conducted an estimated assessment for the disputed years. When Zakat Payer objected to the estimated assessment and submitted audited financial statements, ZATCA reopened the final assessments due to the appearance of new data and information in the submitted financial statements (relating to domestic and foreign purchases) that was not known to ZATCA at the time of the assessment, which could affect the assessment. Pursuant to clause (1) of Ministerial Decree No. (2555) dated 19/10/1417 AH, which stipulates: "ZATCA may reopen a final assessment in the following cases without being bound by a specific time limit:
 1. When it is proven that Taxpayer has evaded paying all or part of tax or Zakat.
 2. When data or information that was not known to ZATCA at the time of the assessment becomes available and is likely to affect Zakat or tax assessment.
 3. When there are material or calculation errors in the final assessment and the authority corrects them on its own initiative or at the request of Taxpayer or as a result of a notice received from the GCA, as this procedure does not change the concept on which the assessment was based nor does it add any new factual elements not included in the original assessment."
4. Clause (4) of the aforementioned Ministerial Decree states: "Determination of the time limit for ZATCA's right to reopen a final Zakat assessment, in accordance with the aforementioned conditions, is considered a restriction on the authority's right to recover from Zakat Payer only, and does not in any way affect the absolute legal obligation of the taxpayer to pay the full Zakat, which is not extinguished by the passage of time, even in cases where ZATCA does not have the right to reopen Zakat assessment. Therefore, in cases where ZATCA's right to recover from Zakat Payer lapses due to the passage of the specified time, and ZATCA discovers that there is an additional Zakat due from Zakat Payer, ZATCA shall notify Zakat Payer of the additional Zakat dues."



Therefore, based on the foregoing, and given that the aforementioned circular explicitly states ZATCA's right to reopen a final assessment without being bound by a specific time limit if data or information that was not known at the time of the assessment becomes available and is likely to affect Zakat or tax assessment, and considering that Zakat Payer submitted audited financial statements - which were not available at the time the estimated assessment was issued - containing data that could affect Zakat assessment. The Department finds that ZATCA's action in reopening the assessment is valid. Zakat Payer's claim that the new information relied upon by ZATCA to reopen the assessment was derived from the information provided by Zakat Payer in its financial statements does not change the fact that new information was discovered that allowed ZATCA to reopen the assessment, regardless of its source. Therefore, it is more appropriate to consider this new information provided by Zakat Payer later, which was not known to ZATCA at the time of its initial assessment based on Zakat Payer's declarations. As a result, the Department dismisses Zakat Payer's appeal and upholds ZATCA's action in reopening the Zakat assessment against Zakat Payer.

2. Discarding of accounts: Zakat Payer's appeal is based on its request to cancel the appealed decision regarding the discarding of accounts for the disputed years from 2011 to 2013. Zakat Payer claims that the primary committee supported ZATCA's decision to discard the accounts, basing its decision on the argument that the financial statements were prepared in violation of accepted accounting standards, as the accounts for each year were not prepared in a timely manner but were rather prepared and reviewed in 2014 by a single legal accounting firm. Additionally, ZATCA pointed out that there were no bank certifications for the Enterprise's account balances and that the accuracy and integrity of the inventory valuation had not been verified due to the lack of an inventory control system. Furthermore, the field audit report indicated that the accounting software used to record accounting entries allowed the data entry person (accountant) to modify the entry number. Zakat Payer objected to this, stating that no accounting standard, either directly or indirectly, indicates the necessity of preparing financial statements in a timely manner and not delaying them for one or more consecutive years. The primary Zakat and tax objection committee should have cited the specific accounting standard number, paragraph number, and explained the nature of the violation. Moreover, the claim by ZATCA and the primary committee that the financial statements were prepared and reviewed by a single legal accounting firm is also incorrect, and the primary committee relied on what was stated in the inspection committee's report when asking Zakat Payer, the owner of the Enterprise, about who prepared the entries in the Enterprise? Zakat Payer, owner of the Enterprise, provided an incorrect and inaccurate response to the inspection committee, as the owner has no knowledge of accounting matters, and the agreement signed with (Saleh Al-Nuaim Accounting and Auditing Firm) was solely for an audit. Since the Enterprise prepared audited financial statements after ZATCA's assessment - as per ZATCA's verbal request - it is logical that the date of preparation of the financial statements would be subsequent to the end of the fiscal year. As the primary objection committee mentioned, the auditor's report noted the absence of bank confirmations for the Enterprise's account balances and lack of verification of the accuracy and integrity of the inventory valuation due to the absence of an inventory control system. However, this does not constitute a reason to discard all of Zakat Payer's accounts, as the auditor did not reserve any opinion regarding the absence of bank statements, which clearly reflect all of the Enterprise's financial transactions and are consistent with what is recorded in the accounts. Additionally, the primary Zakat and tax objection committee pointed out that the accounting software used to record accounting entries allows the data entry person (accountant) to modify the entry number, which violates paragraph (5.G) of Article (16) of the Regulations for Zakat collection. Neither ZATCA nor the primary Zakat and tax objection committee have provided any evidence of manipulation of information that was discovered during the field audit of the Enterprise's accounts. They have merely made general statements about the deficiencies in the accounting software.



Therefore, Zakat Payer concluded its objection regarding this clause by stating that the explanation provided regarding the claims attributed to the Enterprise, as previously stated, clearly demonstrates that there is no evidence to support its validity and lacks any examples or evidence that appeared to ZATCA during the audit of the accounts and records, such as the existence of any manipulation of information that would render it unreliable. From this, it can be inferred that ZATCA was hasty in its decision to rule that the accounts submitted to ZATCA by the Enterprise cannot be relied upon.

However, ZATCA believes that Zakat Payer 's accounts have been discarded after the field audit due to the fact that Zakat Payer submitted its Zakat declarations using an estimated method. This is an admission by Zakat Payer that there are no systematic records or accounts, and they were assessed based on the data available to ZATCA. Subsequently, Zakat Payer submitted financial statements and Zakat declarations for the years in dispute and requested to be assessed based on these statements. ZATCA conducted a field audit of the institution and found that the legal accounting firm (Saleh Al-Nuaim) was responsible for recording accounting entries and preparing accounts for the financial periods in dispute, as well as certifying the fairness of the financial statements, as documented in the field audit report. Therefore, the preparation and review of these accounts were in violation of the rules and standards of the Saudi Organization for Certified Public Accountants, as rule no. (506) of the Code of Professional Conduct states that "such work must be professional work that complements the nature of the work, such as providing financial and accounting consulting and administrative work of a consulting nature, provided that such work is not combined with auditing for one client at the same time." Consequently, what the legal accountant did was in violation of the rules and standards, considering that these entries were prepared at a later date after the end of the financial years in question, as evidenced by the samples that were reviewed, in addition to the fact that the financial statements for the years in dispute were prepared during 2014. All of this does not make the accounting documents submitted by Zakat Payer reliable enough to be used as a basis for assessment, which led ZATCA to resort to an estimated method of assessment

After careful consideration by the Department of the dispute regarding this item on ZATCA's right to conduct an estimated assessment and discard Zakat Payer's accounts for the calculation of Zakat due, and after reviewing the totality of the reasons for the appeal submitted by Zakat Payer regarding this item and the response from ZATCA, the Department finds that ZATCA's arguments in response to the Appellant's defenses were based on the fact that the legal accounting firm (Saleh Al-Nuaim) was responsible for recording accounting entries and preparing accounts for the financial periods in dispute, as well as certifying (auditing) the fairness of the financial statements, in violation of rule no. (506) of the Code of Professional Conduct issued by the Saudi Organization for Certified Public Accountants, as documented in the field audit report. However, ZATCA has not provided any documentary evidence to support its claims based on tangible evidence and indications to prove the existence of flaws and disturbances in the credibility of the accounts prepared for the financial years in dispute. Given that it is common knowledge that when a legal accountant undertakes bookkeeping, they are required to write a contract (engagement letter) specifying the scope of the agreed-upon tasks, which has not been proven in this case. This is confirmed by the fact that the contract signed with the legal accountant stated that it was to conduct an audit of the company's accounts and express an opinion thereon, without any provision for keeping the commercial books. This is clearly evident in the auditor's report, which states: "The Enterprise's branch maintains regular financial accounts that include everything that the law requires to be recorded therein, and the financial statements were found to be consistent with what is recorded in those accounts".

ZATCA has reopened Zakat assessment without adhering to a specific time limit due to the receipt of data and information (Zakat Payer's financial statements) that were not available to it when the assessment was initially conducted (as mentioned in the first item), this constitutes an implicit acceptance of the accuracy of the data contained in the financial statements, as ZATCA relied on



what was stated therein (external purchases). Therefore, it is not justifiable to discard them without a valid reason for doing so. The validity of the financial statements is not undermined by the objection that these financial statements were prepared at dates subsequent to the years in dispute, as the preparation of financial statements primarily depends on financial events supported by documents that can be referred to by the internal or external auditor or examiner upon request. According to the external auditor's report, the accounting books and records that reflect the information contained in the submitted financial statements are retained and can be verified for their fairness. Furthermore, the fact that the financial statements were submitted after the estimated Zakat assessment does not undermine this argument. ZATCA relied on its right to reopen the final assessment without adhering to a specific time limit based on the emergence of data or information that was not known to the authority at the time of the assessment, and ZATCA relied on information sourced from the very accounts and statements that it decided to discard. This confirms the unsoundness of ZATCA's procedure of selecting and extracting what it wants from the statements, while at the same time refusing to rely on them to assess Zakat Payer. What is required is to either discard the accounts entirely and rely on the initial assessment, or accept the submitted returns based on the financial statements and assess accordingly after examining them. The documents and the actual circumstances do not prove anything to support the discarding of the accounts, such as the absence of supporting documents for the financial statements or the existence of manipulation in the accounts or technical errors in the recording that would make the financial statements misleading as previously stated, and in view of ZATCA's reliance on information contained in the financial statements to reopen the Zakat assessment, this constitutes evidence that ZATCA has accepted the data contained in the financial statements, which confirms that discarding the accounts is an unjustified procedural action. This confirms the validity of Zakat Payer's appeal and the reversal of the primary decision in this regard, and the decision to accept what is stated in the financial statements submitted by Zakat Payer as a basis for assessing them for the disputed years.

3. internal and external purchases for the period from 2011 to 2013: Zakat Payer's appeal is focused on challenging the appealed decision regarding internal and external purchases for the years in dispute. The Appellant claims that the committee's upholding of ZATCA's decision to calculate estimated capital and profits for the period from 2011 to 2013 is incorrect, considering that ZATCA examined the accounts of the commercial suppliers (Al-Prince Company - Dubai, Al-Bawasel Company - Dubai) and since the accounts of external suppliers are included in the financial statements and accounts that ZATCA discarded, it is not permissible to rely on them for the authority to calculate purchases and then the added capital according to the rule applied in the estimated accounting principles. Furthermore, ZATCA cannot use data from accounts that it has rejected or discarded entirely. ZATCA must either accept the accounts in their entirety and assess the enterprise based on them systematically, or discard them as it has done. In the latter case, it cannot then use any data from them, especially after ZATCA has acknowledged discarding the data and not relying on it. Assuming that ZATCA calculated the internal and external purchases based on the Enterprise's accounts that it discarded, then it has calculated them incorrectly, which led to an incorrect calculation of Zakat base and consequently an incorrect calculation of due Zakat. This is because ZATCA and the primary committee relied on the following import data when calculating the external and internal purchases:

- a. Import statement extracted from the computer system by ZATCA's branch in Al-Ahsa Governorate and attached to the letter of the director of the Al-Ahsa branch and sent to/ Owner of Enterprise No. (3555/29/1435) dated 18/12/1435 AH. This statement includes Zakat Payer's annual imports, which are as follows:



Trade 3 (General Trade)

Year	Value of Goods	Customs Duty	Total Trade	Total
1432 AH	5,379,474	17,660	5,397,134	5,397,134
1433 AH	21,499,373	52,949	21,552,322	21,552,322
1434 AH	11,917,467	17,382	11,934,849	11,934,849

Import statement extracted from the Enterprise's accounting records, from which ZATCA prepared three assessment forms for the period from 2011 to 2013, attached to a letter from the director general of ZATCA's branch in Al-Ahsa and sent to the director of Enterprise..... No. (...), Dated (...), Details of the statement are as follows:

Years	External Purchases	Internal Purchases	Total Purchases
2011	11,686,573	43,890,207	55,576,780
2012	39,669,600	51,439,079	91,108,679
2013	23,664,881	50,638,540	74,303,421
Total	75,021,054	145,967,826	220,988,880

ZATCA has calculated internal purchases when preparing the aforementioned assessment forms for the period from 2011 to 2013, and the primary committee supported this by using the following equation:

Total purchases according to the accounting records and discarded financial statements, minus Total external purchases according to the import statement extracted from ZATCA's computer system.

Result: Total internal purchases:

Years	Total Purchases As per accounting records and discarded statements	Total external purchases as per import statement extracted from ZATCA's computer system	Internal purchases calculated by ZATCA and Primary Committee
2011	49,269,681	5,379,474	43,890,207
2012	72,938,452	21,499,373	51,439,079
2013	62,556,007	11,917,467	50,638,540
Total	184,764,140	38,796,314	145,967,826

That is to say, instead of using the external purchases that were included in Zakat assessment for the period from 2011 to 2013 and derived from the accounting records and financial statements that they discarded when calculating internal purchases, ZATCA and the primary committee used the external purchases listed in the import statement extracted from the computer system. This resulted in an increase in the value of internal purchases, the details of which are as follows:

Years	Total Purchases As per accounting records and discarded statements	External Purchases as per accounting records and financial statements included in the assessment	Internal Purchases to be included in the assessment	Internal Purchases Actually, included in the assessment
2011	49,269,681	11,686,273	37,583,108	43,890,207
2012	72,938,452	39,669,600	33,268,852	51,439,079
2013	62,556,007	23,664,881	38,891,126	50,638,540
Total	184,764,140	75,021,054	109,743,086	145,967,826



If we compare the value of internal purchases calculated by ZATCA and the primary committee, which were included in Zakat assessment, with the value of internal purchases that should have been included in the assessment the differences resulting from the incorrect calculation of internal purchases by ZATCA and the committee will be evident as follows:

Years	Internal purchases calculated by ZATCA and Primary Committee	Internal Purchases to be included in the assessment	Differences + (-)
2011	43,890,207	37,583,108	6,307,099
2012	51,439,079	33,268,852	18,170,227
2013	50,638,540	38,891,126	11,747,414
Total	145,967,826	109,743,086	36,224,740

This has led to an incorrect calculation of Zakat base and consequently an incorrect calculation of Zakat

While ZATCA claims that Zakat Payer was requested during the audit to provide a statement detailing external purchases during the years under appeal, but Zakat Payer failed to provide it, and therefore, Zakat Payer was asked about the suppliers for external purchases. Zakat Payer stated that it deals with Al Bawasel Company and Al Prince Company in Dubai. The external purchases were determined in the data provided by Zakat Payer to ZATCA as follows:

Years	Purchases from Al Bawasel Company	Purchases from Al Prince Company	Total Purchases
2011	11,686,573	-	(SAR 11,686,573)
2012	37,931,228	1,738,372	(SAR 39,669,900)
2013	21,994,304	1,670,577	(SAR 23,664,881)

Therefore, Zakat Payer was assessed on these external purchases at a net profit margin of 10.5%, and the capital was also determined according to the import rule. As for the internal purchases, they were determined based on the declarations submitted by Zakat Payer and their values were as follows:

Years	Value of Internal Purchases
2011	(SAR 43,890,207)
2012	(SAR 51,439,079)
2013	(SAR 50,638,540)

Therefore, Zakat Payer was assessed on these internal purchases at a net profit margin of 15% as per ZATCA's circulars.

However, after considering the viewpoints of both Zakat Payer and ZATCA regarding this disputed item, and upon reviewing note no 8 in the financial statements for 2011 and note no. 9 in the financial statements for 2012 and 2013, it becomes evident that ZATCA made a material error in calculating the internal purchases for the years in dispute. This error occurred because the internal purchases were calculated by (subtracting the external purchases according to the information available to ZATCA from the total purchases stated in the financial statements), while the external purchases were calculated based on what was stated in Zakat Payer's financial statements. This procedure resulted in an overstatement of the amount of internal purchases, as shown in the following table:

Years	Total Purchases As per financial statements (1)	External Purchases As per financial statements Which ZATCA relied on (2)	Internal Purchases As per financial statements Which ZATCA did not rely on	Internal Purchases As per ZATCA's assessment (Committing material mistake in calculations)
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			= (1-2)	
2011	49,269,681	11,686,273	37,583,108	43,890,207
2012	72,938,452	39,669,600	33,268,852	51,439,079
2013	62,556,007	23,664,881	38,891,126	50,638,540

Considering that Zakat Payer's request to accept the financial statements and accounting records based on the information contained therein for the disputed years has been approved, and the primary decision supporting ZATCA's action of making an estimated assessment of Zakat Payer, as stated in this decision when discussing item (2), has been canceled, which implies the acceptance of Zakat Payer's request to cancel the Primary Committee's decision supporting ZATCA's action regarding item (internal and external purchases) and the estimated assessment thereof, the Department concluded by acceptance of assessing Zakat Payer based on the information provided in the financial statements.

Decision

First: In form, Accept the appeal filed by Zakat Payer/ Enterprise ..., C.R. No (.....), TIN (.....), against Decision No. (22) of 1438 AH, delivered by the Primary Zakat and Tax Objection Committee in Dammam.

Second: On Merits:

1. Reject Zakat Payer's appeal regarding item (reopening of Zakat assessment), and uphold the primary decision on this matter, based on the reasons and merits stated in this decision.
2. Accept Zakat Payer's appeal regarding item (discarding accounts), overturn the primary decision on this matter, and approve assessment for the disputed years based on the financial statements submitted by Zakat Payer for those years, based on the reasons and merits stated in this decision.
3. Accept Zakat Payer's appeal regarding item internal and external purchases for the period from 2011 to 2013), overturn the primary decision on this matter, and approve assessment for the disputed years regarding this item based on the financial statements submitted by Zakat Payer for those years, based on the reasons and merits stated in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-63)
issued in Appeal No. (I-1493-2018)

Principle No. 50

Burden of proving payment of disputed amounts before the committee rests on Taxpayer.

Principle No. 51

Disputes shall be considered ongoing if the primary committee fails to adjudicate Taxpayer's objection, as the primary committee has not exhausted its jurisdiction in settling the subject matter of the dispute.

Facts:

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) of 23/04/1439 AH convened in Riyadh to consider the appeal filed on 06/09/1438 AH, by (.....) Company against Decision No. (13) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Objection No. (35/37), on tax assessment for 2009 and 2010, 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 objection filed by Taxpayer/ Company (...), On tax assessment for 2009 and 2010, except for the late payment fine, based on the reasons stated in the decision.

Second: On Merits:

1. Reject Taxpayer's objection to item (assessment during time limit), based on the merits stated in the decision.
2. Reject Taxpayer's objection to item (income from compensation), based on the merits stated in the decision.
3. Reject Taxpayer's objection to item (management fees), based on the merits stated in the decision.
4. Establish resolution of the dispute over item (salaries and wages), based on the merits stated in the decision.
5. Establish resolution of the dispute over item (reversal of provision entries), based on the merits stated in the decision.
6. Reject Taxpayer's objection to item (difference in revenues), based on the merits stated in the decision.
7. Reject Taxpayer's objection to item (paid expenses), based on the merits stated in the decision.
8. Reject Taxpayer's objection to item (bad debts), based on the merits stated in the decision.

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



With regard to the appeal on item (management fees), Taxpayer is contesting the Primary Committee's decision that ultimately rejected its objection concerning management fees. Taxpayer reaffirms its disagreement with ZATCA's treatment that did not allow for a claim of management fees amounting to (SAR 1,250,130) out of the total (SAR 2,102,870) realized from (...) Hotel during the year ending on 31 December 2009. In support of its argument, Taxpayer refers to the reasons outlined in point (2) of the objection memo submitted to the Primary Committee. The taxpayer concludes its appeal by requesting cancellation of the tax imposed on the revenues from (...) Hotel to avoid double taxation.

With regard to the appeal on item (difference in revenues), Taxpayer is contesting the Primary Committee's decision that ultimately rejected its objection concerning difference in revenues. Taxpayer reaffirms its disagreement with ZATCA's treatment that did not allow the correction of an unintentional error when ZATCA compared the revenue realized from (...) Hotel, amounting to (SAR 957,955), with the revenue related to (...) Hotel, amounting to (SAR 2,273,705), and imposed an additional tax on the revenue difference of (SAR 1,315,750). In support of its argument, Taxpayer refers to the reasons outlined in the objection memo submitted to the Primary Committee. Taxpayer concludes its appeal by requesting cancellation of the tax imposed on the revenue difference related to (...) Hotel.

With regard to the appeal on item (income from compensation), Taxpayer is contesting the Primary Committee's decision that ultimately rejected its objection concerning this item. Taxpayer reaffirms its disagreement with ZATCA's treatment that did not allow for an adjustment to the amounts receivable and payable for 2009 and 2010 from the compensation income. In support of its argument, Taxpayer refers to the reasons outlined in point (1) of the objection memo submitted to the Primary Committee. Taxpayer concludes its appeal by requesting cancellation of the tax imposed on the compensation income for 2009 and 2010.

With regard to the appeal on item (paid expenses), Taxpayer is contesting the Primary Committee's decision that ultimately rejected its objection concerning paid expenses. Taxpayer reaffirms its disagreement with ZATCA's treatment that allowed for the deduction of only professional/legal fees paid to (...) based on the submitted documents. In support of its argument, Taxpayer refers to the reasons outlined in point (4) of the objection memo submitted to the Primary Committee. Taxpayer concludes its appeal by requesting permission to deduct expenses against professional fees for 2009 and 2010.

With regard to the appeal on item (bad debts), Taxpayer is contesting the Primary Committee's decision that ultimately rejected its objection concerning this item. Taxpayer reaffirms its disagreement with ZATCA's treatment that did not allow for the deduction of bad debts that were written off in 2010. In support of its argument, Taxpayer refers to the reasons outlined in point (5) of the objection memo submitted to the Primary Committee. Taxpayer concludes its appeal by requesting permission to deduct the bad debts that were written off for the year ending on 31 December 2010.

With regard to the appeal on item (late payment fine), Taxpayer is contesting the Primary Committee's decision that ultimately rejected its objection concerning this item. Taxpayer reaffirms its disagreement with ZATCA's treatment that imposed a late payment penalty. In support of its argument, Taxpayer refers to point (6) of its objection memo submitted to the Primary Committee. Since the Department decided to open pleadings, ZATCA was notified on 23/11/1441 AH corresponding to 13/07/2020 AD to submit its response to the appeal under consideration. A Reply Memorandum was received from ZATCA on 21/12/1441 AH corresponding to 10/08/2020 AD, which included a response to Taxpayer'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 Taxpayer 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 verification of the formal validity of Taxpayer's appeal and its rejection on substantive Grounds.



Furthermore, on 20/03/1442 AH, corresponding to 05/11/2020 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.

The Department, during its session held remotely on 25/06/1442 AH, corresponding to 07/02/2021 AD, decided to request Taxpayer to provide a report from a chartered accountant regarding the disputed written-off debts. This report was to be submitted within (10) days from the date of the request. Taxpayer was notified on 26/06/1442 AH corresponding to 08/02/2021 AD to submit what the Department had requested within the specified period. However, the deadline passed without any response from Taxpayer.

In the session held on 05/08/1442 AH, corresponding to 18/03/2021 AD, upon reviewing Appeal Memoranda and replies thereto, and after examining documents of the Case file, the Department decided that the Case was ready for adjudication and issuance of a decision.

Grounds

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

On merits: With regard to Taxpayer's appeal concerning item (management fees), the Department found that the appeal centers on Taxpayer's request to deduct the revenue generated from (...) Hotel to offset the withholding tax paid on it, in order to avoid double taxation. However, ZATCA believes that this revenue should not be deducted, as Taxpayer has not provided supporting documents for the payment. Upon careful consideration by the Department, and given that Taxpayer attached several cheques from (...) Hotel but did not attach withholding tax forms, these cheques cannot be considered as there is no way to link them together. The Department also granted Taxpayer the opportunity to provide any additional evidence to support its claim, but it did not respond with anything beyond what was included in its appeal memorandum. Since the burden of proof for the payment of the disputed amounts rests with Taxpayer according to the law, and given that the appealed decision regarding the dispute in question is in accordance with the valid reasons on which it is based and is sufficient to support its judgment, as the issuing committee has thoroughly examined the dispute and reached the conclusion stated in its ruling, and the Department has not found anything in this regard that warrants further clarification or comment in light of the defenses presented before it, the Department concludes that the submissions have not affected the outcome of the decision. Therefore, the Department, has decided, by majority, to reject Taxpayer Company's appeal to deduct the revenue generated from (...) Hotel from the tax base due to the lack of supporting documents and to uphold the primary decision regarding the disputed item.

With regard to Taxpayer's appeal concerning item (difference in revenues), the Department found that the appeal centers on Taxpayer's request to not add a revenue difference of (SAR 1,315,750) to the tax base. Taxpayer claimed that the revenue from managing (...) Hotel amounted to (SAR 2,419,925), which was declared as income in the tax return and financial statements. However, ZATCA believes that the revenue difference should be added to the tax base, as Taxpayer only declared (SAR 957,955) and not (SAR 2,273,705) from which (SAR 454,741) was withheld. Upon careful consideration by the Department, and given that Article (8) of the Income Tax Law stipulates that: "taxable income is the gross income, including all revenues, profits, and gains irrespective of their type and of the form of payment resulting from carrying out the activity, including capital gains and any incidental revenues, after deducting exempt income". The Department found that Taxpayer attached a portion of the financial statements, namely the income statement and note (5) of the 2010 financial statements related to revenues, and the 2010 tax return. It was found that the revenues declared in the income statement amounted to (SAR 16,544,147).



Upon reviewing the note on revenues, it became clear that it included management fees from (...) Hotel amounting to (SAR 2,419,925) and management fees from (...) Hotel amounting to (SAR 957,955). Upon examining the tax return, the Department found that Taxpayer declared the full amount of revenues of (SAR 16,544,147). Therefore, the Department decided that Taxpayer's appeal to declare all its revenues was valid, and accordingly, Taxpayer's appeal regarding item (difference in revenues) is accepted, and to overturn the primary decision in this regard.

With regard to Taxpayer's appeal concerning item (income from compensation), the Department found that the appeal centers on Taxpayer's request to not include full amount of compensation income as Taxpayer did not receive the entire amount but had settlements made. However, ZATCA believes that its action of including the compensation amounts and not making any account offsets is correct, as an amount of (SAR 307,472) for 2009, which is considered as outstanding receivables, and two amounts for 2010, amounting to (SAR 307,472) as outstanding receivables and (SAR 301,950) as due and payable related to the Hotel, were added, while the rest of the disputed amounts were accepted. Upon careful consideration by the Department, and given that Taxpayer calculated the income based on the net amount received after deducting the corresponding accounts receivable and amounts due and payable related to the Hotel, it follows that Taxpayer's statement regarding the net income received in the settlement process should be accepted. ZATCA's assertion that the correct accounting treatment for tax base calculation purposes requires Taxpayer to declare the full amount of compensation received as income without offsetting amounts outside the accounts, due to the independence of accounts and each account having its own debit and credit balance, and therefore the account should be shown without any offset, is not supported by any statutory provision. Furthermore, ZATCA did not discuss whether the amounts deducted from the income were deductible for tax purposes. Given that the disputed amounts resulted from the termination of contracts that required the settlement of all related receivables or expenses, Taxpayer's treatment is consistent with the purpose for which the disputed revenues were recognized after adjusting them for uncollected debts and amounts due and payable to the hotel whose contract with the property owner was terminated. Therefore, the Department has decided to accept Taxpayer's appeal and overturn the primary decision.

With regard to Taxpayer's appeal concerning item (prepaid expenses), the Department found that the appeal centers on Taxpayer's request to deduct the amounts paid to (...) as legal fees. However, ZATCA believes that it has already deducted the amounts for which Taxpayer provided supporting documents, and has not deducted those for which there were no documents. Upon careful consideration by the Department, and given that the dispute between the parties is based on documents, and Taxpayer has not provided documents related to the difference that ZATCA did not accept, and the Department has not found anything in this regard that warrants further clarification or comment in light of the defenses presented before it, the Department concludes that the submissions have not affected the outcome of the decision regarding the difference that ZATCA did not accept. As such, the Department has decided to reject Taxpayer's appeal and amend the primary decision by ruling to reject Taxpayer's objection to the portion of the prepaid expenses that ZATCA did not accept.

With regard to Taxpayer's appeal concerning item (bad debts), the Department found that the appeal centers on Taxpayer's request to deduct bad debts from the tax base due to their write-off. However, ZATCA believes that they should not be deducted due to lack of documents or procedures proving the impossibility of collecting these debts. Upon careful consideration by the Department, and given that the dispute between the parties is based on documents, and the Department requested Taxpayer to provide a report from a chartered accountant confirming the write-off of these disputed debts, and Taxpayer did not respond to the Department's request, and the Department has not found anything in this regard that warrants further clarification or comment in light of the defenses presented before it, the Department concludes that the submissions have not affected the outcome of the primary decision. As such, the Department has decided to reject Taxpayer's appeal and uphold the primary decision.



With regard to Taxpayer's appeal concerning item (late payment fine), the Department found that the appeal centers on Taxpayer's request to not impose a late payment fine on the additional tax imposed by ZATCA. Upon careful consideration of Taxpayer's request regarding this item, and after reviewing Taxpayer's objection submitted to the primary committee, it was found that Taxpayer's objection included an objection to the late payment fine, item (6) of that objection. Since the Primary Committee did not rule on this matter, the Primary Committee did not fully exercise its jurisdiction in resolving the dispute, which means that the dispute is not yet concluded. Therefore, the Department has decided to refer the matter to the Second Department for Determination of Income Tax Disputes and Violations in Riyadh to rule on the dispute.

Decision

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

First: In form: Accept the appeal filed by Taxpayer/ Company(...), CR. No. (...), against Decision No. (13) of 1438 AH issued by Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Reject, by majority, Taxpayer's appeal to item (management fees), and uphold the primary decision concluded in this regard, in accordance with Grounds and merits stated in this decision.
2. Accept Taxpayer's appeal to item (revenue difference), and dismiss the primary decision concluded in this regard, in accordance with Grounds and merits stated in this decision.
3. Accept Taxpayer's appeal to item (compensation income), and dismiss the primary decision concluded in this regard, in accordance with Grounds and merits stated in this decision.
4. Reject Taxpayer's appeal to item (prepaid expenses), and amend the primary decision by ruling to reject Taxpayer's objection to the portion of the prepaid expenses that ZATCA did not accept, in accordance with Grounds and merits stated in this decision.
5. Reject Taxpayer's appeal to item (bad debts), and uphold the primary decision concluded in this regard, in accordance with Grounds and merits stated in this decision.
6. Refer the dispute regarding item (late payment fine) to the second Department for Determination of Income Tax Violations and Disputes in Riyadh, 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-2021-128)
issued in Appeal No. (Z-1497-2018)

Principle No. 52

Writing off amounts owed by related parties results in those parties declaring the written-off amount as their income in exchange for the debts that were relieved.

Facts:

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) of 23/04/1439 AH convened in Riyadh to consider the appeal filed on 05/03/1439 AH, corresponding to 22/12/2020 AD, by (.....) Company against Decision No. (25) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Objection No. (10/38), on Zakat assessment for the period from 1990 to 2012, filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary decision ruled as follows:

In form:

Accept the appeal filed by Zakat Payer/Company (... , regarding Zakat assessment for the period from 1990 to 2012 AD.

Second/ On merits:

1. Reject Zakat Payer's objection to item (Difference in Carried Forward Losses), based on the merits stated in the decision.
2. Settle the dispute regarding item (partners' contribution to cover losses in 1991), based on the merits stated in the decision.
3. Reject Zakat Payer's objection to item (writing off amounts to related parties), based on the merits stated in the decision.
4. Accept Zakat Payer's objection to item (current account difference), based on the merits stated in the decision.

Since the Decision was rejected by Zakat Payer Company. (. . . .), it submitted a statement of appeal that could be summarized as follows:

Zakat Payer is appealing the primary committee's decision on three items: Regarding item (difference in carried forward losses), and specifically regarding the carried forward losses for the period from 1990 to 1995, and 1997 to 2012 under this item, Zakat Payer bases its appeal on the argument that ZATCA did not rely on a specific and consistent method in deducting the balance of carried forward losses. And Zakat Payer requests that the balance of carried forward losses be deducted based on the Company's audited financial statements, not on Zakat assessment issued by ZATCA. With regard to carried forward losses for 1996, Zakat Payer is arguing that ZATCA incorrectly ignored the carried forward losses, as they were covered by investments from new partners. The Company is questioning why ZATCA added an extra amount of (SAR 7,655,577) to the partners' account and failed to deduct the balance of the carried forward losses that were



covered from the aforementioned increase. Regarding carried forward losses for 1993, Zakat Payer is arguing that ZATCA made a mistake by deducting the balance of losses carried forward at the end of the year amounting to (SAR 9,806,245) instead of the balance of losses at the beginning of the year amounting to (SAR 10,548,080) and requests that this procedure be corrected. As for the item (Write-off amounts from related parties for 1998, 2005, 2010), Zakat Payer confirms its right not to add these amounts to Zakat base, and that these amounts are not collectible, so Zakat is not due on it. As for the item (Difference in partners' current account for the years 1994 and 2002), the taxpayer bases 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 was formed during the year and has not yet passed a full year. Accordingly, Zakat Payer requests that the partners' current balance not be added to zakat base.

The Department decided to open the pleadings, therefore, ZATCA submitted a reply memorandum dated 30/05/1441 AH corresponding to 26/01/2020 AD, in response to Zakat Payer's appeal regarding the appealed items, by affirming its position previously presented to the Primary Committee. ZATCA also reaffirms that Zakat Payer's appeal is not new to what had been previously submitted before the Primary Committee and addressed by ZATCA. Accordingly, ZATCA insists on accuracy and correctness of its procedures and requests to dismiss Zakat Payer's appeal and uphold the primary decision.

On Thursday, 26/08/1442 AH, corresponding to 08/04/2021 AD, the Department decided to hold a 10-day electronic pleading hearing. However, the period elapsed date set without either party to the appeal submitting any additional arguments.

On Thursday, 24/09/1442 AH, corresponding to 06/05/2021 AD, after the Department reviewed the appeal and examined the Case file, and considering the matter of writing off amounts from related parties, the Department requested Zakat Payer to prove that these related parties had included these amounts in its Zakatable income. Zakat Payer is required to submit the documents through the electronic portal within a period of 30 days from this date. On 22/10/1442 AH, Zakat Payer responded with a memorandum stating, in summary, that the Company was unable to obtain the required documents from the Department.

On Tuesday, 05/11/1442 AH corresponding to 15/06/2021 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 on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

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

On merits: Regarding Zakat Payer's appeal concerning item carryforward losses difference, it appears that the subject of the appeal lies in the Appellant's request to deduct carryforward losses for the period from 1990 to 1995, and the period from 1997 to 2012, according to what is stated in the financial statements, and not according to the losses that ZATCA has adjusted, because when calculating zakat base, it should be reduced by the full loss, without any deduction, as it represents funds that the Company no longer possesses. Zakat Payer adds that ZATCA did not rely on a specific and fixed method in deducting the balance of carryforward losses, while ZATCA believes that the carryforward losses were treated in light of ZATCA's circular No. (92/1) dated 19/07/1418 AH, which stipulates that carryforward losses that may be deducted are the losses of the current year or previous years as adjusted according to ZATCA's assessment, after adding provisions or reserves only to them, and which were previously reduced by the losses in the year of their formation, in order to prevent double taxation. Upon examining the appeal, and regarding



the deduction of losses for 1990, and for the period from 1997 to 2012 according to zakat assessment and not according to the financial statements, and since Zakat Payer has pointed out ZATCA's inconsistency in its treatment of carryforward losses, and since Zakat Payer has indicated in its appeal that the reason for ZATCA's adjustment relates to board members' remuneration and expenses that may be considered distribution expenses, and since Zakat Payer's appeal was presented to ZATCA and it did not show reasons for the adjustment other than what Zakat Payer pointed out, and since the adjustments referred to by Zakat Payer do not represent an acceleration or deferral of an expense, and their non-acceptance as an expense does not mean that the remaining profits are not reduced or the losses increased, it is therefore decided to accept Zakat Payer's appeal and approve the carryforward losses according to its statement.... As for the non-deduction of carryforward losses for the period 1991-1992, since the committee's decision covered all years of the objection without considering Zakat Payer's reasons for objection for each year individually or for a group of years as stated in Zakat Payer's objection, which do not represent the same reason or reasons for all years in dispute, and since the Department has not found anything contrary to what Zakat Payer has stated, it was therefore decided to accept Zakat Payer's appeal. As for 1996, it appears that the subject of the appeal lies in Zakat Payer's objection to the committee's approval of ZATCA's action in not deducting the beginning-of-the-year losses for 1996, due to the partners extinguishing the losses during the year and the absence of a balance at the end of the year, and Zakat Payer demands the deduction of the beginning-of-the-year balance, while ZATCA believes that there are no carryforward losses in the financial statements because they were covered by the new partners. Upon examining the appeal, and since the partners' coverage of the losses does not negate the fact that these losses existed at the beginning of the year, which necessitates their deduction as they represent the lower balance, it is therefore decided by this Department to accept Zakat Payer's appeal. As for the deduction of carryforward losses for 1993 with the year-end balance, although it is greater than the beginning-of-the-year balance, the committee did not address Zakat Payer's objection regarding ZATCA's failure to deduct the carryforward losses for 1993 for the lower balance, which is the beginning-of-the-year balance, and since the committee's decision covered all years of the objection without considering Zakat Payer's reasons for objection, which do not represent the same reason or reasons for all years in dispute, and since the Department has not found anything contrary to what Zakat Payer has stated, it was therefore decided to accept Zakat Payer's appeal. Therefore, the Department has concluded to accept Zakat Payer's appeal for all years in dispute and to overturn the primary decision in what it ruled on in this regard.

Regarding item writing off amounts from related parties for 1998, 2005, and 2010, the subject of the appeal lies in Zakat Payer's request not to include this item in zakat base, arguing that these amounts are uncollectible and therefore not subject to zakat. However, ZATCA believes that the item is included as an expense under other expenses and it is stated that it represents a waiver of an amount due from a related party, and the Company has not clarified the nature of this transaction and the legal reasons that led to the decision to waive this amount. Upon the Department's examination of the dispute, and since the writing off of amounts to related parties results in proving that these parties have included the written-off amounts as income in return for the debts that were waived, and since the Department requested Zakat Payer to provide proof that these parties have included these amounts in their Zakat income, and since Zakat Payer has not provided any proof of writing off these amounts, and since the dispute is a matter of documentation, and since the Department has not observed anything that warrants reconsideration or comment in light of what Zakat Payer has presented, it is therefore decided by the Department to reject Zakat Payer's appeal and uphold the primary decision in this regard.

Regarding item difference in partners' current accounts for 1994 and 2002, it appears that the subject of the appeal lies in Zakat Payer's disagreement with the non-deduction of this item from zakat base, as the audited financial statements do not show a balance for partners' current accounts at the beginning of the year, and the balance of partners' current accounts at the end of the year



was formed during the year and has not completed a full lunar year. ZATCA has not clarified its viewpoint regarding Zakat Payer's objection for 1994, and the committee did not address Zakat Payer's objection for both 1994 and 2002 in the reasons for the primary decision, but rather made a general decision on the objected item. Since the committee's decision to make a decision that covers all years of the objection without considering Zakat Payer's reasons for objection, which do not represent the same reason or reasons for all years in dispute, and since deducting the difference in current accounts does not eliminate the effect of covering realized losses from the current account, because according to zakat procedures applied to all Zakat Payers, the deduction of remaining profits or the addition of carryforward losses is based on the lowest or year-end balance, and the beginning-of-the-year carryforward losses represent the lowest balance of the account, and since the Department has not found anything contrary to what Zakat Payer has stated, the Department has therefore concluded to accept Zakat Payer's appeal.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: In form: Accept the appeal filed by Zakat Payer/ Company (...), against Decision No. (25) of 1438 AH issued by Second Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Accept Zakat Payer's appeal to item (Difference in Carried Forward Losses) for all disputed years, and dismiss the primary decision concluded in this regard, in accordance with Grounds and merits stated in this decision.
2. Reject Zakat Payer's appeal to item (writing off amounts from related parties for 1998, 2005, and 2010), and uphold the primary decision concluded in this regard, in accordance with Grounds and merits stated in this decision.
3. Accept Zakat Payer's appeal to item (difference in partners' current accounts for 1994 and 2002), and dismiss 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-2021-99)
issued in Appeal No. (I-1504-
2018)

Principle No. 53

If a Taxpayer's objection includes a justification for its dispute with ZATCA's assessment, then the objection is considered acceptable in form.

Facts:

On Tuesday, 27/10/1442 AH corresponding to 08/06/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/04/1439 AH convened in Riyadh to consider the appeal filed on 23//11/1438 AH, by (.....) Company against Decision No. (17) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Objection No. (10/38), on tax assessment for the period from 2006 to 2014, filed by the Appellant against the General Authority of Zakat and Tax "GAZT" (Currently ZATCA), in which the primary decision ruled as follows:

In from:

Rejected the objection in form.

Since the Decision was rejected by Taxpayer Company. (. ...), it submitted a statement of appeal that could be summarized as follows:

Taxpayer company is appealing the primary committee's decision to reject the Taxpayer's objection in form. Taxpayer requests that its appeal be accepted on formal Grounds and that the substance of the case be subsequently considered. Taxpayer argues that the objection is well-founded and submitted by a party with capacity, and that its objection has included all the requirements for an objection as stipulated in Article (66) of the Income Tax Law.

On Thursday 19/08/1442 AH corresponding to 01/04/2021 AD, the Department decided to hold a 10-day electronic pleading hearing. However, the period elapsed date set without either party to the appeal submitting any additional arguments.

On 17/09/1442 AH, corresponding to 29/04/2020 AD, upon reviewing Appeal Memoranda and replies thereto, and after examining documents of the Case file, the Department decided that the Case was ready for adjudication and issuance of a decision.

Grounds

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

On merits: Upon examining the subject of the appeal and reviewing the Case file, and considering that Taxpayer's objection was against the estimated assessment, requesting to be assessed according to the financial statements after registration and filing of returns, therefore, the Department concludes that the original decision's finding of the objection lacking reasons is



incorrect and unsound. The Department has found that Taxpayer's objection clearly stated the reason for its dispute with ZATCA's assessment. Therefore, this Department decides to accept the appeal, cancel the primary decision, and refer the case to the Second Department for Determination of Income Tax Disputes and Violations in Riyadh for a final decision.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: In form: Accept the appeal filed by Taxpayer/ Company (...), against Decision No. (17) of 1438 AH issued by Second Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

Cancel the primary decision and refer the case to the Second Department for Determination of Income Tax Disputes and Violations in Riyadh.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-2)
issued in Appeal No. (1507-2018-ZI)

Principle No. 54

The principle for calculating the period granted for filing an objection is when Taxpayer initially becomes aware of the assessment, including the data and reasons upon which the decision is based.

Principle No. 55

If it is impossible to determine the exact date from which the prescribed time period for rejecting a claim on formal Grounds should be calculated, then the objection is considered acceptable in form.

Facts:

On Saturday, 03/06/1442 AH, corresponding to 16/01/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Decree No. (65474) dated 23/12/1439 AH, convened in Riyadh to consider the appeal filed on 16/09/1438 AH, by Company (...) against the decision of the Second Preliminary Committee for Tax Zakat Objection in Jeddah, No. (15) for 1438 AH, issued in the Case regarding zakat and tax assessment for the period from 2010 to 2012, filed by the Appellant against ZATCA in which the primary decision ruled as follows:

First: Not to accept the objection filed by Taxpayer/Company (...) against zakat and tax assessment for the period from 2010 to 2012 in form, based on the reasons stated in the decision.

Second: On Merits: Not examine the objection on its merits because it was rejected in form.

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

The Company is appealing the decision that rejected its objection in form. The committee that issued the decision found that Taxpayer did not file its objection within the stipulated 60-day period from the date of notification of the assessment. The committee reached this conclusion after finding that Taxpayer did not provide acceptable and convincing reasons to justify its failure to file the objection within the prescribed statutory period. The committee issued its decision rejecting the objection in form without discussing its substance. The Appellant, in its appeal, stated that the committee's decision failed to take into account that the assessment decision issued on 22/03/1436 AH was not received by the Company's employee until 04/12/1436 AH and that only the first page was received. The full assessment decision was not delivered to them until 19/02/1437 AH. Taxpayer also stated that the mailing address used to send the assessment letter did not belong to (...) Company Limited, but rather to (...) Company, and added that it had provided the committee with copies of the commercial records showing that each company had a different mailing address.

The Department decided to open pleadings, therefore Taxpayer was notified on 18/03/1442 AH, corresponding to 04/11/2020 AD, to present any additional evidence regarding the appeal under



consideration within the deadline granted by the Department or to rely on what was already presented in the appeal memorandum. The period elapsed without Taxpayer submitting any additional information to what was stated in their appeal memorandum. The Department also received a response memorandum from ZATCA on 16/05/1442 AH, corresponding to 31/12/2020 AD in response to the appeal. ZATCA reaffirmed its adherence to the validity and soundness of its procedures in dealing with the appealed zakat and tax assessment decision and thus upholding the committee's decision, to which ZATCA adheres, and the reasons stated therein. ZATCA further stated that the issues raised by the Company did not go beyond what was previously presented before the committee that issued the decision and that ZATCA had already responded to them at that time.

Having reviewed the statement of appeal and response thereto, and after examining the documents included in the Case file, the Department decided that the Case was ready for adjudication and issuance of decision.

Grounds

Having reviewed the case documents and the statement of appeal submitted by the Appellant Company, the Department found that the formal requirements for accepting the appeal are met as stipulated in the relevant laws, regulations and decisions. Accordingly, this appeal is accepted 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 and its contents, as well as the appeal memorandum, and considering that the assessment was issued by ZATCA pursuant to the appealed decision on 23/03/1436 AH, and that the decision under consideration did not address the reasons and justifications provided by Taxpayer in its objection memorandum, nor did it address the extent to which Taxpayer was aware of the assessment in light of the facts and correspondence between ZATCA and Taxpayer and considering that Taxpayer argues that the reliance of the decision on the receipt of the assessment by mail or through an employee does not constitute sufficient notification, as it did not enable them to review the details and justifications of the assessment in full, and whereas the principle is that the calculation of the time period begins when Taxpayer becomes aware of the assessment, including its details and the reasons upon which it was based, and whereas the appealed decision did not include a clarification of the extent to which Taxpayer was aware of the details of the assessment, after careful consideration of the reasons provided by Taxpayer in its appeal regarding their failure to receive the full assessment decision until 19/02/1437 AH, and considering that doubt should be resolved in favor of Taxpayer, and given the inability to determine the exact date from which the statutory time periods for rejecting a claim on formal Grounds should be calculated, the Department, by a majority, decided to accept Taxpayer 's appeal, dismiss the primary decision, and refer the case back to the First Department for Determination of Income Tax Violations and Disputes in Jeddah to consider the merits of the case and rule on the reasons for Taxpayer's objection as stated in its objection memorandum.

Decision

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

First: In form: Accept the appeal filed by Taxpayer/ Company(...), (...) TIN (...) against Decision No. (15) of 1438 AH issued by Second Primary Committee for Zakat and Tax Objections in Jeddah. (15) .

Second: On Merits: Accept Taxpayer's appeal by a majority, cancel the primary decision, and refer the matter of Taxpayer's objection to the disputed zakat and \tax assessment is referred to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for the reasons and considerations set forth in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-40)
issued in Appeal No. (Z-1508-
2018)

Principle No. 56

Acceptance of salaries solely based on the amounts recorded in social insurance is not supported by any law. The fact that the General Organization for Social Insurance (GOSI) has set a maximum salary limit does not imply that this limit is reasonable.

Facts:

On Sunday, 06/09/1442 AH corresponding to 18/04/2021 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/04/1439 AH convened in Riyadh to consider the appeal filed on 01/12/1438 AH, by (.....) Company against Decision No. (30) of 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Objection No. (3351/ 3351/22), on Zakat assessment for 25/06/2006 to 31/12/2012, 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 from:

Accept the objection filed by Zakat Payer/Company (...) against Zakat assessment for 25/06/2006 to 31/12/2012, based on the reasons stated in the decision.

Second: On Merits:

1. Uphold ZATCA's decision to include short-term loans in Zakat Payer's zakat base, as per the merits of the decision.
2. Uphold ZATCA's decision to include short-term loans from partners in Zakat Payer's zakat base, as per the merits of the decision.
3. Not uphold Zakat Payer's claim to deduct fixed asset additions from the net profit of 2011, as per the merits of the decision
4. Uphold ZATCA's decision to calculate Zakat for the first fiscal period as a long, specific period of 555 days, as per the merits of the decision.
5. Uphold ZATCA's treatment of the utilization of provisions for previous years, as per the merits of the decision.
6. Uphold ZATCA's treatment of the utilization of provisions for previous years, as per the merits of the decision.
7. Uphold ZATCA's decision to include amounts due from subsidiaries in Zakat Payer's zakat asset, as per the merits of the decision.
8. Uphold ZATCA's decision to correctly adjust the net profits of the disputed years by the difference in board members' bonuses exceeding SAR 540,000 as per the merits of the decision.
9. Uphold ZATCA's decision to adjust the net profit of 2012 by including logistics costs charged by a subsidiary company, as per the merits of the decision.



10. Affirm ZATCA's addition of commissions and incentives of Limited Company to the net profits of the disputed years, according to reasoning of the decision.
11. Uphold ZATCA in subjecting profits of foreign purchases difference to zakat for years subject to dispute, according to Grounds of the decision.
12. Uphold ZATCA in amending net profits of years subject to dispute by the sales cost difference, according to Grounds of the decision.
 - a) Settle the dispute between parties regarding the Rent Difference Item, according to Grounds of the decision.
 - b) Uphold ZATCA in not deeming school fees as deductible fees from Zakat Payer's zakat base, according to Grounds of the decision.
 - c) Settle the dispute between parties regarding the Transportation Expenses Item, according to Grounds of the decision.
 - d) Uphold ZATCA's procedure in properly addressing the inventory provision of 2011, according to Grounds of the decision.
13. Settle the dispute between parties regarding item of Supply Contract Profits of (...) University, according to Grounds of the decision.
14. Settle the dispute between parties regarding the item of Profits from Sale of Assets, Depreciation Differences and Value of Fixed Assets, according to Grounds of the decision.
 - a) Uphold ZATCA in addressing used part of the written-off debt provision, according to Grounds of the decision.
 - b) Uphold ZATCA in not deeming tax, fines and penalty expenses as deductible fees from Zakat Payer's zakat base, according to Grounds of the decision.
 - c) Settle the dispute between parties regarding the item of Paid Withholding Taxes, according to Grounds of the decision.

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

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, since 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 ZATCA'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 ZATCA's treatment 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 ZATCA's treatment according to which it imposed zakat on a proportional basis and at the same time calculated zakat for the first long financial period from 15 July 2006 to 31 December 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, as zakat was calculated twice on the same funds owned by the same shareholders.

With regard to the appeal on the item (Provisions Transferred by a Related Party), Zakat Payer objects to the Primary Committee decision, which upheld ZATCA's treatment by which it added the end-of-service bonus provision for employees in the amount of SAR (19,181,427) and the doubtful debt provision in the amount of SAR (24,222,008), which was transferred by a related party, (... Food) Company. Zakat Payer confirms that these provisions were transferred during 2007 by (...) company, as a result of business reorganization, and (... 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. Based on the foregoing, Zakat Payer believes that subjecting such provisions to zakat in the assessment of Zakat Payer will subject the same amount to zakat twice. Regarding the appeal on the item (Use of Provisions), Zakat Payer objects to the Primary Committee decision, which upheld ZATCA's treatment regarding amendment /shortfall in the provisions during the period 2007 and years 2008-2012, against the opening balance of provisions instead of amending it against 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 ZATCA's treatment, 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 ZATCA's treatment, 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 ZATCA's procedure 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. With regard to the appeal on the item (Logistical Costs Incurred by a Related Saudi Establishment), Zakat Payer objects to the Primary Committee decision upholding ZATCA's treatment, which did not allow to deduct logistical costs as deductible expenses, as Zakat Payer considers them to be expenses paid to (... for Operation and Services Limited) Company. The latter Company has also declared the objected amount as part of its revenues, so not allowing for logistical expenses as deductible expenses would result in doubling the zakat.

Regarding the appeal on the item (Sales Promotion and Discount Related to Company), Zakat Payer objects to the Primary Committee decision upholding ZATCA's treatment in adding sales promotion of trade to zakat base, as ZATCA added discount amounts paid by (...) Company to adjusted profit on the Grounds 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 are paid and recovered from (...) Company, without any profit margin. Therefore, (... Commercial) Company does not recognize any cost or revenue in respect of the aforementioned transaction.

With regard to the appeal on the item (Foreign Purchase Differences), Zakat Payer objects to the Primary Committee decision upholding ZATCA's procedure in calculating an estimated profit on the import differences during 2007, 2011 and 2012. Regarding this objection, Zakat Payer confirms that difference between foreign purchases declared by the Company and foreign purchases shown in Customs Authority registers mainly represent a difference in timing, price/rates, import of consumables/fixed assets and promotional items not declared as foreign purchases. Zakat Payer



concluded his objection to this item that, in view of the large volume of transactions and differences, he requests the Department to accept differences within a reasonable limit.

With regard to the appeal on the item (Cost of Sales Differences), Zakat Payer objects to the Primary Committee decision upholding ZATCA'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 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 ZATCA'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 ZATCA's procedure in adding goods provision during 2011 to zakat base. Zakat Payer states that he agrees with ZATCA 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 ZATCA'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 ZATCA's observations is not related to a ... Commercial Company.

Regarding the appeal on the item (Taxes, Fines and Penalties), Zakat Payer objects to the Primary Committee decision upholding ZATCA's procedure in not deducting taxes, fines and penalties as deductible fees, because the amounts that ZATCA did not allow to be deducted in the assessment represent bank charges for various bank transactions, mainly representing expenses for bank transfers/payments. These expenses are paid to local banks, and therefore they must be allowed as deductible expenses.

Since the Department decided to open up court proceedings, ZATCA 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 ZATCA, which included a response to what was included in the Appellant's reply. ZATCA 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 ZATCA responded to at the time. ZATCA 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 the Department and a copy of financial statements, which were attached to the case file.

In 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 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 Appellant Company, the Department found that the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On merits, and regarding Zakat Payer's appeal regarding the item (Short-Term Loans), and having considered the appeal filed before it, it was found that the appeal lies in Zakat Payer's request not to add short-term loans to zakat base, as a year had not passed thereon, and that they were not used to finance fixed assets, but rather to finance the Company's working capital. However, ZATCA believes that loan balances were added at the beginning or end of the period, whichever is less, to zakat base, as Zakat Payer did not provide sufficient documents to determine the revolving balance that has passed one year. Having considered the abovementioned, and since the dispute between Zakat Payer and ZATCA regarding this item was a documentary dispute, and the Primary Committee, issuing the decision, requested a detailed extract of the movement of loans to determine the carried forward balance, but it was not submitted to the Primary Committee. Since loans are added to zakat base, if a year has passed thereon or if they are used to finance what is prepared for acquisition, and since Zakat Payer did not attach documents proving the movement of these loans, which entails taking the lesser of balances at the beginning of the period or the end of the period. Since the Department has not noted anything that required correction or comment in the light of information submitted before it, the Department therefore decided that the foregoing does not affect the outcome of the primary decision on this item. Accordingly, the Department decided to reject Zakat Payer's appeal and to uphold the primary decision on this item.

Regarding the Zakat payer's appeal on the item (Short-Term Loans from Partners), it was found that the appeal lies in the Zakat payer's request not to add the short-term loans from partners to the Zakat base, since no Hijri year has passed since providing. However, ZATCA believes that it has added the balances of the loans provided by the partners to the Zakat base, as they were used to provide financing for fixed assets. Based on the Department's review of the Zakat payer's statement of appeal regarding this item and ZATCA's response to it, as well as the Department's review of the Preliminary Decision, the Zakat payer's appeal reiterates the reason for their objection when it was considered before the Preliminary Committee. The decision issued by the Committee states that the Zakat payer submitted documents, some of which were accepted and others rejected. The Department's consideration of the Zakat payer's appeal regarding this item revealed that the appellant did not submit any additional information other than what was previously submitted, and the Committee issued its decision on the basis of the documents it received, which confirms its conviction. As the dispute is substantiated, which is a detailed extract of the loan activity to determine the revolving balance, the Zakat payer did not present it before the Preliminary Committee, nor did they present it in their appeal, which is the basis of the dispute. The Department did not find any reason to appeal or comment in light of what was presented before it, which leads the Department to conclude that what was submitted does not affect the preliminary decision on this item. Accordingly, the Department decided to reject the Zakat payer's appeal and uphold the preliminary decision on this item.

Regarding the Zakat payer's appeal on the item (Profit used to finance Long-Term Assets), it was found that the appeal lies in the Zakat payer's request to reduce the annual profit on the fixed asset additions, while ZATCA considers it incorrect to reduce the annual profit on fixed asset additions



during the Zakat year by (SAR 70,361,162) due to the availability of bank and cash balances of more than three times the amount of fixed asset additions (SAR 234,166,086) in the year. There is nothing that theoretically or practically prevents the Zakat payer from using these available balances to purchase fixed assets during the year. Based on ZATCA's assertion that it did not apply the Rule of Net Zakat Base or Adjusted Net Profit, whichever is greater, and that it deducted the full amount of fixed assets according to the financial statements, the Zakat payer's objection is that ZATCA subjected the annual net profit used to finance long-term assets to Zakat. Since the Zakat payer's objection to the Preliminary Committee's decision is that ZATCA subjected the annual net profit used to finance long-term assets to Zakat, and since the Zakat payer's objection has no legal or accounting basis, as the Zakat base is calculated by deducting the total negative elements from the total positive elements that make up the Zakat base, so that a specific negative element shall not be deducted from another specific positive element. Based on ZATCA's confirmation of its deduction of the full amount of fixed assets according to the financial statements, and as the Department did not find any reason to appeal or comment in light of what was presented before it, which leads the Department to conclude that what was submitted does not affect the preliminary decision on this item. Accordingly, the Department decided to reject the Zakat payer's appeal and uphold the preliminary decision on this item.

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 the Zakat payer's request not to calculate Zakat on the long fiscal period due to not reaching the minimum amount determining Corporate zakatability, along with trade division transformation into an independent company. However, ZATCA believes that the Hawl conditions are met and Zakat is due for the long fiscal period. Based on the Department's review of Note (1) of the financial statements prepared at the end of 2007, it was found that the trade division transformation of (.....) Company took place on 01/01/2007, which determines that the Zakat payer is entitled to calculate Zakat for the year 2007 only, without the additional period of 2006, which was within the (.....) Company base. Therefore, the Department concluded that the Zakat payer's appeal shall be accepted, and the preliminary decision on this item shall be reversed.

Regarding the Zakat payer's appeal on the item (Provisions transferred from a related party), it was found that the appeal lies in the Zakat payer's request not to add the provision for employees' severance pay and the provision for bad debts that were transferred from a related party to the Zakat base, while ZATCA believes that these provisions shall be added, as they financed deducted assets. In light of the foregoing, the Department found that ZATCA had clarified in its viewpoint, that was confirmed in the preliminary decision, that these Provisions were added to the (.....) Company's Zakat base, which means that they were calculated within that Company's Zakat base, and therefore their recalculation within the Zakat payer's base is unacceptable. However, this does not negate ZATCA's claim that the impact of these Provisions on (.....) Company Zakat base was negative, and therefore the addition is formal, as it is the method of calculation that matters, not the result of that calculation, and had these Provisions not been included in (.....) Company Zakat base, the Zakat base would have been lower than it was by the same excluded amount. Therefore, the Department concluded that the Zakat payer's appeal shall be accepted, and the preliminary decision on this item shall be reversed.

Regarding the Zakat payer's appeal on the item (Using Provisions), it was found that the appeal lies in the Zakat payer's request to deduct used provisions from the adjusted profit not from the opening balance. ZATCA argues that there is no real impact on the Zakat base as the net profit for all years was greater than the adjusted net profit for the year. Also, the reduction in book profit in the used provisions is governed by Tax Regulations based on avoiding double taxation and shall not affect the Zakat payer, who is subject to a Shari'ah (legal) basis, which is passing a Hijri year on Nisab amount of surplus wealth. Since these provisions were not accepted in their formation year as a deductible expense to reach the Net Zakat or Tax Profit, it is fair for the Zakat payer to be accountable for these provisions to be deducted, in the year they were used, from the net



accounting profit to reach the Net Zakat or Tax Profit. Therefore, the Department concludes that the Zakat payer's appeal for deducting used provisions from the net profit shall be accepted, and the preliminary decision on this item shall be reversed.

Regarding the Zakat payer's appeal on the item (Amounts due to related parties), it was found that the appeal lies in the Zakat payer's request not to subject "amounts due to related parties" to Zakat as it arose due to commercial transactions and were not used in business for a period of twelve months, while ZATCA considers it valid to add it to the Zakat base as the Zakat payer did not provide sufficient documents proving the activity of this item. Based on the Department's review of the financial statements for the years in dispute, and the analysis provided by the Zakat payer for the item 'Amounts due to related parties', it appears that the opening balances are paid during the year and other amounts arise during the same year, representing a small percentage of the Zakat payer's total liabilities. As the Department did not find from the financial statements that the lower balance of the disputed item had passed a full Hijri year with the amount of Nisab (reached Hawl) or was used to finance fixed assets, the Department concluded that the Zakat payer's appeal shall be accepted and that the preliminary decision on this item shall be reversed.

Regarding the Zakat payer's appeal on the item (Board of Directors' Fees), it was found that the appeal lies in the Zakat payer's request to consider the entire remuneration of the Board of Directors as a deductible expense, while ZATCA believes that only those registered in Social Insurance shall be considered. Based on the Department's review of the above, and since the dispute is based on the principle of exceeding the salaries and wages approved by Social Insurance and not on proper or supporting documents, Therefore, it is agreed on the fact that the remuneration was paid to the board member. Based on the fact that accepting salaries within the limits of what is registered in Social Insurance does not have a law to apply, and the fact that General Organization for Social Insurance has set an upper limit for salaries does not make this limit reasonable. After reviewing the financial statements and comparing the Board of Directors' remuneration with the net income and total salaries, the reasonableness of the Board of Directors' fees is clear, which leads the Department to accept the Zakat payer's appeal to deduct the full of Board of Directors' fees without limiting them to what is registered in Social Insurance and to reverse the preliminary decision on this item.

Regarding the Zakat payer's appeal on the item (Logistics Costs charged by a related Saudi Entity), it was found that the appeal lies in the Zakat payer's request to consider the deduction of (SAR 110,850,826) as expenses charged to 2012 income statement for logistics services, while ZATCA considers that expenses deduction shall not be considered for lack of sufficient proper documents. Based on the Department's review of the subject matter of the appeal and the response thereto, and the preliminary decision on this regard, and since the ordinary and necessary expenses for the financial activity, whether paid or accrued, may be deducted if they are actual expenses, and since the Zakat payer submitted a letter from the subsidiary company (.....) stating that these costs were recorded within its revenues, in addition to providing a copy of the contract with the affiliated company, along with Note (1) of the Zakat payer's 2012 financial statements, which stipulates that: "During the year, the Company entered into an agreement with an affiliate, (.....) Transport Services Ltd. Under this agreement, (.....) Transport Services shall provide transportation and warehousing services to (.....) company for a pre-agreed fee by utilizing assets owned by the Company. The Company shall charge (.....) Transport Services a fixed monthly rental amount for the use of these assets, provided that the Company remains the beneficial owner of these assets.....". Note (15) of the financial statements states: "Supply costs represent supply fees invoiced by an affiliated entity amounting to (SAR 123.62 million), which are adjusted against the monthly rental amount charged by the Company (SAR 12.77 million) for the use of the Company's assets.....". As ZATCA did not provide evidence that contradicts what the Zakat payer submitted and what they admitted, the Department concludes that the Zakat payer's appeal regarding the deduction of logistics expenses shall be accepted and the preliminary decision on this item shall be reversed.



Regarding the Zakat payer's appeal on the item (Sales Promotion and Discount related toCompany), it was found that the appeal lies in the Zakat payer's request not to add the amounts of sales promotion and discount related to (.....) Company to the Zakat base, as these amounts are paid by the Company to end business clients on behalf of (.....) Company and then recovered from them without a profit margin. ZATCA argues that these amounts shall be subject to Zakat as they are unauthorized income. The Zakat payer provided a sample of the sales promotion and discount documents that were sent to clients and paid by (.....) Company to (.....) Company. Since the Zakat payer's revenue from the sales promotion and discount related to (.....) Company is offset by a similar cost of promoting to the Zakat payer's business clients, the Zakat payer's appeal regarding the deduction of logistics expenses shall be accepted by the majority, and the preliminary decision shall be reversed.

Regarding the Zakat payer's appeal on the item (Differences in External Procurement), it was found that the appeal lies in the Zakat payer's request not to calculate an estimated profit on the differences in external procurements and subject them to Zakat, while ZATCA believes that an estimated profit shall be calculated on these differences as the Appellant did not provide proof of the reasons for the differences in the external procurements stated in customs return and declaration. Based on the Department's consideration of the above, the import data proven by ZATCA for the Zakat payer's external procurements, which ZATCA considered as a basis for holding the Zakat payer accountable for Zakat in light of the data contained in this item. Since these statements represent information from a neutral party and are considered a reliable presumption to prove what stated, and since the Appellant was allowed to submit documents proving the amounts of the differences, while the Zakat payer did not submit any document that would lead them to deviate from ZATCA statements, but rather, their objection, which they had previously raised before the Preliminary Committee, was based on the claim that the amounts of these differences were incorrect, without providing any significant evidence to support this claim. Therefore, the Department concludes that these purchases are considered to be their zakatable inventory. In light of what was presented before it, the Department did not see any reason to appeal or comment, which leads the Department to conclude that what was presented has no effect on the preliminary decision on this item. Accordingly, the Department decided to reject the Zakat payer's appeal and uphold the preliminary decision on this item.

Regarding the Zakat payer's appeal on the item (Cost of Sales Difference), it was found that the appeal lies in the Zakat payer's request not to add the cost of sales differences that contained in Financial Statements and Zakat Declaration difference for the years in dispute, as they are damaged goods expenses, while ZATCA believes that they should be added to the Zakat base as there is no convincing explanation for deducting them. Since the Department has the right to adopt the reasons for the decision under appeal on the item without any additions, as long as it considers these reasons do not require any comment. As the decision under appeal was in line with its reasons, the Committee that issued the decision scrutinized the dispute and found in favor of ZATCA in adjusting the net profit for the years in dispute with the cost of sales differences. In light of what was presented before it, the Department did not see any reason to appeal or comment, which leads the Department to conclude that what was presented has no effect on the preliminary decision on this item. Accordingly, the Department decided to reject the Zakat payer's appeal and uphold the preliminary decision on this item.

Regarding the Zakat payer's appeal on the item (Disallowing School Fees Deduction) under (Other Expenses), it was found that the appeal lies in the Zakat payer's request to accept school fees as a deductible expense, while ZATCA considers that it shall not accept these fees due to insufficient documentation. Based on the Department's consideration of the above, and whereas the ordinary and necessary expenses of the 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, the Department concludes that the Zakat payer's appeal regarding the deduction of school fees is accepted and the preliminary decision on this regard is reversed.

Regarding the Zakat payer's appeal on the item (Goods Provision), it was found that the appeal lies in the Zakat payer's request not to add the retained balance of the physical stock provision to the Zakat base as the provision does not exist in the Company's accounts, while ZATCA believes that the provision was added in accordance with Circular No. (84431) of 1392 AH, which stipulates that all provisions shall be added as they are considered as capital. Based on the Department's consideration of the above, and since the basis of the dispute between ZATCA and the Zakat payer does not relate to the validity of adding these provisions, but rather to the Zakat payer's objection that the provision did not exist in its books. After the Department's verification of the existence of the provision or not in the accounts concerned, it was found that there was no physical stock provision in 2011 financial statements. After verifying Statement No. (8) on which ZATCA relied in the preliminary decision to prove the existence of the provision, and based on the Department's review of the cited statement, it is clear that there is no physical stock provision, and the burden of proving that is on ZATCA. Since ZATCA did not prove otherwise, and since the 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 the Zakat payer's appeal on this item is accepted and the preliminary decision on this item is reversed.

Regarding the Zakat payer's appeal on the item (Bad Debit Provision), it was found that the appeal lies in the Zakat payer's request not to add the bad debts provision to the profits subject to Zakat for 2011, as the provision activity is not related to the Appellant, while ZATCA believes that the provision was added in accordance with its Circular No. (2057/6) dated 14/04/1426 AH. After reviewing 2011 financial statements, the Department found that there was no breakdown of the bad debt provision. The Zakat payer attached Statement No. (8) for the year 2011 showing the bad debt provision with the opening balance, the activities during the year and the closing balance, from which it was found that its component is amounted to (SAR 4,076,785). As it is established that the provision is added to the Zakat profit, and that the Zakat payer is responsible for providing documents that prove their point of view, however, the Zakat payer did not provide any proper documents that support their claim. In light of what was presented before it, the Department did not see any reason to appeal or comment, which leads the Department to conclude that what was presented has no effect on the preliminary decision on this item. Accordingly, the Department decided to reject the Zakat payer's appeal and uphold the preliminary decision on this item.

Regarding the Zakat payer's appeal on the item (Taxes, Fines and Penalties), it was found that the appeal lies in the Zakat payer's request to deduct taxes, fines and penalties as they represent bank charges for various banking transactions, while ZATCA 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, and based on the Department's review of the financial statements, an item for financial charges was found, in addition to the Appellant's submission of statements detailing the amounts under appeal, journal entries, and the statements contained in the final declaration including the amounts of the item under appeal. As ZATCA did not provide evidence that contradicts what the Zakat payer submitted and what they admitted, the Department concludes to accept the Zakat payer's appeal regarding the deduction of bank charges, and to reverse the preliminary decision on this item.

Decision

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

First: Accepting the Appeal in form from the Zakat payer/ (.....) Company against the decision of the Second Preliminary Committee for Tax Zakat Objection in Jeddah No. (30) of 1438 AH.

Second: On Merits:



1. Rejecting the Zakat payer's appeal regarding the item (Short-Term Loans) and upholding the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
2. Rejecting the Zakat payer's appeal regarding the item (Short-Term Loans from Partners) and upholding the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
3. Rejecting the Zakat payer's appeal regarding the item (Profit used to finance Long-Term Assets) and upholding the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
4. Accepting the Zakat payer's appeal regarding the item (Calculation of Zakat on a proportional basis for the first long fiscal period), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
5. Accepting the Zakat payer's appeal regarding the item (Provisions transferred from a related party), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
6. Accepting the Zakat payer's appeal regarding the item (Using Provisions), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
7. Accepting the Zakat payer's appeal regarding the item (Amounts due to related parties), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
8. Accepting the Zakat payer's appeal regarding the item (Board of Directors' Fees), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
9. Accepting the Zakat payer's appeal regarding the item (Logistics Costs charged by a related Saudi Entity), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
10. Accepting the Zakat payer's appeal regarding the item (Sales Promotion and Discount related toCompany), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
11. Rejecting the Zakat payer's appeal regarding the item (Differences in External Procurement) and upholding the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
12. Rejecting the Zakat payer's appeal regarding the item (Cost of Sales Difference) and upholding the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
13. Accepting the Zakat payer's appeal regarding the item (Disallowing School Fees Deduction), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
14. Accepting the Zakat payer's appeal regarding the item (Goods Provision), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
15. Rejecting the Zakat payer's appeal regarding the item (Bad Debit Provision) and upholding the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.
16. Accepting the Zakat payer's appeal regarding the item (Taxes, Fines and Penalties), and reversing the preliminary decision thereon, in accordance with the reasons and rationales contained in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-7)
Issued in Appeal No. (1619-2018-IW)

Principle No. 57

Required documents to be submitted by the Objecting Zakat payer to the Adjudication Committee shall be stated and the nature of those documents shall be clarified in order for the Committee to base its decision on them correctly.

Facts:

On Tuesday 06/06/1442 AH corresponding to 19/01/2021 AD, the First Appeals Chamber 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 08/01/1438 AH, by the (.....) branch, against the decision of the Second Preliminary Committee for Tax Zakat Objection in Riyadh, No. (30) of 1437 AH, issued in the case of the tax assessment for the years 2007 to 2010, filed by the Appellant against ZATCA, in which the preliminary decision ruled as follows: First: Accepting the objection of the Zakat payer/ (.....) Bank branch to the tax assessment for the years 2007 to 2010 in terms of form for the reasons stated in the decision.

Second: On Merits:

1. Rejecting the Zakat payer's objection to Social Insurance for the year 2008 for the reasons stated in the decision.
2. The dispute over Bahrain Employees' Insurance Expenses for the year 2008 has been finalized for the reasons stated in the resolution.
3. The majority rejected the Zakat payer's objection to Insurance Expenses for the year 2007 for the reasons stated in the decision.
4. Rejecting the Zakat payer's objection to Withholding Tax on interest paid to offshore banks for the reasons stated in the decision.
5. Rejecting the Zakat payer's objection to Late Penalties on Withholding Tax for the reasons stated in the decision.

As this decision was not accepted by the Plaintiff (..... Bank Branch), they submitted an appeal to the Department, which included the following:

The Zakat payer objects to ZATCA for issuing a tax assessment decision for the contested years after the expiration of the statutory period stipulated in Article (65) of Income Tax Law, stating that the assessment decision was issued on 14/04/1436 AH corresponding to 03/02/2015 AD, five years after the statutory deadline for filing the declaration for the year 2009, which is 30/04/2010 AH corresponding to 16/05/1431 AH. Regarding the item 'Social Insurance for the year 2008', the Committee supported ZATCA in adding an amount (SAR 450,611) to the tax base due to insufficient documents, despite the fact that all documents were available before the Committee, whether the social insurance certificate or data provided by the bank's branch. They added that the total wages and salaries charged to the accounts amounted to (SAR 17,312,060), of which (SAR 8,906,231) were subject to insurance, and (SAR 8,405,829) were not subject to insurance, for which the CPA certificate was provided. These salaries are inclusive of social insurance amount (SAR 620,046) that was charged as an expense to the year's accounts, which is



lower than the social insurance amount (SAR 630,844) mentioned in ZATCA's memorandum, which confirms that the expenses are not charged other than what is mentioned in the social insurance certificate. They further added that the amount in the ZATCA's memorandum (SAR 1,081,455) resulting from the comparison between the portion of amount submitted and the social insurance certificate amount (SAR 630,844) according to the certificate, resulted in a difference of (SAR 450,611) added by ZATCA. This means that it is the amount of the monthly insurance premium calculated by the computer according to the monthly salaries subject to Insurance Law, including Employer's share and Employee's share. Regarding the item 'Insurance Expenses for 2007', the Committee supported ZATCA in refusing to deduct these expenses as they do not fulfil the conditions stipulated in paragraph (8) of Article (9) of the Implementing Regulations of the Income Tax Law. They stated that these expenses are related to Bahraini SIO so that the Bahraini employee seconded to the bank's branch in Saudi Arabia can maintain their job and their pension later when they return to Bahrain and retire, adding that they are paid inside Saudi Arabia in an account at (.....) Bank, which transfers them to Bahrain's SIO according to the agreement concluded between GCC countries regarding Insurance Collection from employees working in other Gulf country. They also attached a letter issued by the General Organisation for Social Insurance addressed to a Saudi company stating that Bahraini SIO is required to pay social insurance for a Bahraini employee working in Saudi Arabia. Regarding the item 'Withholding tax on interest paid to offshore banks', the Committee upheld ZATCA's decision to impose withholding tax on these amounts. It based its contested decision on the failure to submit a statement of these transactions certified by Saudi Central Bank in accordance with Ministerial Decision No. (1776) dated 18/05/1435 AH. They argued that the assessment amounts, on which ZATCA imposed the withholding tax, do not represent loan proceeds or commissions, and are therefore ordinary banking expenses. They also added that the Committee did not address the supplementary memorandum of objection submitted during the hearing, which stated that Conventions of Double Tax Avoidance between Saudi Arabia and France exempts these transactions from taxation as (.....) Bank branch in Bahrain is considered resident for tax purposes in France as the bank's head office is located in France. They stated that ZATCA confirmed in its letter to them, issued on 29/05/1437 AH, No. (.....), that the interest income received by (.....) Bank branch in Bahrain from a Source in Saudi Arabia is not subject to tax in the Kingdom in accordance with the provisions of Article (7) of the Conventions. With regard to the item 'Late Penalties on Withholding Tax,' they base their objection on the fact that these penalties relate to a technical dispute over the validity of charging withholding tax on these expenses. Accordingly, they requested that any late penalties be calculated only from the date of issuing a final decision on the dispute in question.

Based on the Department's decision to open the hearing, the Department received a supplementary memorandum from Taxpayer dated 02/04/1442 AH, which included a confirmation of what was stated in their appeal memorandum. The Department also received a reply memorandum from ZATCA dated 23/05/1442 AH in response to the appeal, confirming the correctness of its procedures in dealing with the appealed items, thus upholding the Committee's decision, to which ZATCA adheres and the reasons contained therein supporting the correctness of ZATCA's assessment of Appellant. In addition, the issues raised by Taxpayer Company did not deviate from what was previously presented before the Committee issuing the decision, to which ZATCA responded in a timely manner.

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 the formal requirements for appeal hearing have been met



as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On the merits, regarding Taxpayer's appeal regarding (Issuing Tax Assessment Decision after Five Years), and upon reviewing the case file and papers, and what was stated in the appeal list, and after referring to paragraph (1) of Article (65) of Income Tax Law, which gives ZATCA the right to conduct or amend tax assessment at any time after the expiration of five years after the deadline for filing the tax return for the tax years if Taxpayer agrees in writing. The preliminary decision shows that the Tax payer filed their objection to some of the items related to the Zakat assessment on the years assessed by ZATCA after the expiration of the statutory deadline during which it is allowed to assess the Tax payer, which leads the Department to conclude by majority that Taxpayer did not exercise their right to object to the tax assessment that conducted after the five-year period stipulated in Income Tax Law. As this defense is a superficial and non-public order defense, Taxpayer shall raise it before the Committee that preliminary considered the dispute. Since the decision under appeal did not address this defense in its rationales and reasons, in addition to the fact that Taxpayer's appeal memorandum and supplemental memorandum did not include any reference to their previous submission of this defense to the Preliminary Committee, despite the Department giving them sufficient time to do so, and where Article (186) of 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." Accordingly, the Department concluded by a majority that this item shall be disregarded and the objection shall be dismissed.

Regarding Taxpayer's appeal on (Social Insurance for 2008), and upon reviewing the case file and papers, and the appeal list, it was found that Taxpayer objects to adding this expense to the tax base, while ZATCA believes that the 2008 profits were adjusted with a portion of the social insurance charged to the accounts in excess. Therefore, ZATCA calculated the social insurance according to the rates approved by Law, and then added the overcharged amount to the year's profits in accordance with the provisions of paragraph (c) of Item (1) of Article (9) of Implementing Regulations of the Income Tax Law. Having considered the views of the parties and the Grounds on which the Preliminary Committee based its decision, it is clear that ZATCA relied on the bank transfer information of General Organization for Social Insurance, and its source of information was not the tax return or financial statements in which Taxpayer argues that the expense charged to their accounts is the amount that ZATCA arrived at without any increase. The Department also found that the Preliminary Committee based its decision by rejecting Taxpayer's objection to the insufficiency of documents without specifying the documents that Taxpayer should have submitted to the Committee, which determines the validity of the Tax payer's appeal regarding the correctness of their accounting for social insurance for the disputed year, as the Department did not find and ZATCA did not prove that Taxpayer carried the amount on their financial statements or included it in their declaration. In addition, this is not inconsistent with ZATCA's argument that it relies on bank transfer information, which usually includes both Taxpayer's share and Employee's share. Accordingly, the Department concluded that Taxpayer's appeal was accepted by the majority and the preliminary decision was reversed.

Regarding Taxpayer's appeal on (Insurance Expenses for 2007), and upon reviewing the case file and papers, and the appeal list, it was found that Taxpayer asserts that these expenses are related to Bahraini SIO so that the Bahraini Employee seconded to the bank's branch in Saudi Arabia can keep their job and pension later when they return to Bahrain and retire provided that they are paid inside Saudi Arabia in an account belonging to (.....) Bank, which transfers them to Bahraini SIO in accordance with the Agreement concluded between GCC Countries regarding Insurance Collection from Employees Working in Other Gulf Country. However, ZATCA believes that these expenses represent the value of social insurance for Bahraini Employees working for the Kingdom branch, which is not a deductible expense as stipulated in paragraph (8) of Article (9) of the Implementing Regulations of the Income Tax Law. Referring to the Common System of Extending Insurance Protection to Citizens of the Cooperation Council of the Arab Gulf States



Working Outside Their Countries in Any Member State of the Council issued by Royal Decree No. (M/63) dated 26/11/1426 AH, the Department found that the amounts paid for social insurance for Bahraini Employees who work in Taxpayer's branch in the Kingdom are a deductible expense under the provisions of the regulation on which ZATCA was based, as the conditions established by Common System apply. Thus, the relevant provisions in the Implementing Regulations of the Income Tax Law are consistent with those in the Common System in force during the tax year in question, by establishing the deductibility of these amounts as a contribution from Employer in favor of Employee.

Regarding Taxpayer's appeal on (Withholding tax on interest paid to offshore banks), and upon reviewing the case file and papers, and the appeal list, it was found that Taxpayer filed their objection on the basis that these amounts do not represent loan proceeds or commissions as they are ordinary banking expenses. The Committee, which issued the decision, did not address the statement in the supplementary objection memorandum submitted during the hearing that the Conventions of Double Tax Avoidance between Saudi Arabia and France exempts these transactions from being subject to taxation, because (.....) Bank's branch in Bahrain is considered resident for tax purposes in France as the bank's head office is located in France. In its letter to them, dated 29/05/1437 AH, ZATCA emphasized that the interest income received by (.....) Bank branch in Bahrain from a Source in the Kingdom is not subject to taxation in Saudi Arabia in accordance with the provisions of Article (7) of the Conventions. ZATCA emphasizes that this interest is paid to (.....) Bank in Bahrain, not to the bank in France. Therefore, the provisions of the Conventions of Double Tax Avoidance with France do not apply. The Department found, after referring to the Preliminary Committee's decision on the contested item, that the Committee did not address Taxpayer's original request to subject what ZATCA had calculated to the Conventions of Double Tax Avoidance with France, overriding the reasons for that decision, and addressing in its merits the Ministerial Decision regarding the time period required to subject deposits to withholding tax. Since the preliminary decision did not address the dispute substance, namely the applicability of the Conventions of Double Tax Avoidance with France to interest paid to offshore banks. Accordingly, the Department decided to cancel the appealed decision on this Item and refer the case to the Second Department for the determination of Income Tax Violations and Disputes in Riyadh for a new hearing, as Taxpayer's original request was not resolved in the appealed decision. This makes the dispute unresolved, as required by the decision.

Regarding Taxpayer's appeal on (Late Penalties on Withholding Tax), the Department canceled the decision related to the item "Withholding tax on interest paid to offshore banks", which was the reason for the Preliminary Committee's decision to impose the disputed penalty. This entails canceling the Committee's decision regarding the penalty and referring it to the Second Department for the determination of Income Tax Violations and Disputes in Riyadh to consider it in light of its conclusion regarding the item related to the applicability of the Conventions of Double Tax Avoidance with France to interest paid to offshore banks.

Decision

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

First: Accepting Appeal in form from Taxpayer/ (.....) Bank Branch, CR No. 55, against the decision of the Second Preliminary Committee for Tax Zakat Objection in Riyadh, No. (30) of 1437 A.H.

Second: On Merits:

1. Dismissing, by majority, Taxpayer's appeal regarding (Issuing Tax Assessment Decision after five years), in accordance with the reasons and rationale provided in this decision.
2. Accepting, by majority, Taxpayer's appeal regarding (Social Insurance for 2008), and reversing the preliminary decision in this regard, in accordance with the reasons and rationale provided in this decision.



3. Accepting, by majority, Taxpayer's appeal regarding (Insurance Expenses for 2007), and reversing the preliminary decision in this regard, in accordance with the reasons and rationale provided in this decision.
4. Canceling the preliminary decision regarding (Withholding tax on interest paid to offshore banks), and referring the case to the Second Department for the determination of Income Tax Violations and Disputes in Riyadh for reconsideration, according to the reasons and rationale provided in this decision.
5. Canceling the preliminary decision regarding (Late Penalties on Withholding Tax), and referring the case to the Second Department for the determination of Income Tax Violations and Disputes in Riyadh for reconsideration in light of its conclusion regarding the item related to the applicability of the Conventions of Double Tax Avoidance with France to interest paid to offshore banks, in accordance with the reasons and rationale provided in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-5)
Issued in Appeal No. (1624-2018-I)

Principle No. 58

Ignoring accounts is a departure from the norm, and there must be some justification for it.

Principle No. 59

Financial statements are merely extracts from accounting books, and their late preparation does not mean that accounting books do not exist. Therefore, ZATCA's reasoning those financial statements are prepared later than the end of fiscal years is not sufficient to claim the absence of accounting books.

Principle No. 60

Transferring Contracts from Main Contractor to a Subsidiary is not considered a Subcontract, especially if those Contracts dues are paid directly to Transferee Company by Employer.

Facts:

On Sunday, 04/06/1442 AH corresponding to 17/01/2021 AD, the First Appeals Chamber 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 Appeal filed on 28/10/1437 AH, by (.....) Company, against the decision of the Third Preliminary Committee for Tax Zakat Objection in Riyadh, No. (17) of 1437 AH, issued in the case of the tax assessment for the years 2012 to 2014, filed by Appellant against ZATCA, in which the preliminary decision ruled as follows:

First: Accepting Taxpayer's objection as a matter of form, according to the decision's reasoning.

Second: On Merits:

1. Rejecting Taxpayer's objection to ZATCA accounting them on a deemed basis, according to the decision's reasoning.
2. Rejecting Taxpayer's objection to imposition of a late penalty, according to the decision's reasoning.

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

Taxpayer is objecting to the assessment on a deemed basis, as they object to Committee's support for ZATCA's accounting them on a deemed basis. Their objection was based on the fact that Company does not execute any contracts inside Saudi Arabia, as it signed contracts with Project Owners in the Kingdom, and then assigned all these contracts in its name and full value to its Subsidiarity (..... Company), in which Company owns (75%) of its capital. In addition, Transferee Subsidiary registered with ZATCA as a permanent establishment, submitted tax returns based on its statutory books and proper documents, and paid tax due according to the submitted returns. Committee also erred in considering the transferred contracts as subcontracts of Taxpayer's solidarity responsibility, while providing technical support as a Contractor to



Subsidiary, as these contracts were transferred to Subsidiary with the consent of Project Owner (Contracting Entity). In addition, the invoices issued by Subsidiary in the name of Contracting Entity have been paid to Subsidiary. Moreover, the late penalty for disputed items is still disputed between Taxpayer and ZATCA.

Since the Department decided to open up court proceedings, Zakat Payer was contacted on 04/11/1441 AH, corresponding to 25/06/2020 AD, to submit documents regarding the appeal under consideration within the period granted to him by the Department or to be satisfied with contents of statement of appeal, and the period passed without an addendum to his statement of appeal. The Department also received a reply from ZATCA dated 23/05/1442 AH corresponding to 07/01/2021 AD to respond to subject of the appeal, in which it affirmed its adherence to validity and soundness of its procedures in dealing with the appealed items, thus upholding the Committee's decision that ZATCA adheres to and reasons contained therein that support validity of ZATCA's assessment on the Appellant, and that the action raised by Zakat Payer Company did not depart from what it had previously presented before the committee that issued the decision, to which ZATCA responded in a timely manner.

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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On the merits, having perused the case files and documents contained therein, and contents of statement of appeal, it is evident to the Department that Zakat Payer objects to the Committee's uphold for ZATCA in holding him accountable for estimated assessment, and imposing a delay fine on the ground that the Company did not execute any contracts inside the Kingdom and that contracts signed with project owners in the Kingdom of Saudi Arabia were all waived to its subsidiary (...) Company, in which Zakat Payer Company owns (75%) of its capital, and the assignee subsidiary registered with ZATCA as a permanent establishment, submitted its declarations, and paid the resulting tax. ZATCA considers that Zakat Payer is obliged by law to register with it and that Zakat Payer is held accountable regarding estimated assessment for not complying with requirements of the Law of Commercial Books. Since Zakat Payer's activity is to execute contracts within the Kingdom, which requires a presence within the Kingdom, and existence of a permanent establishment. Furthermore, ZATCA primarily based its squandering of Zakat Payer's accounts on the fact that financial statements were prepared several years after the end of the fiscal years subject to the objection, and this is a reliance that is not based on a legal or accounting basis, since financial statements are only an extract from accounting books, and their late preparation does not mean that there are no accounting books. Since squandering is a departure from the principle, since departure from the principle requires justifications calling for abandoning this principle, and since ZATCA's mere inference that preparation of the financial statements is late for the end of financial years is not sufficient to claim that accounting books do not exist, and this does not affect what ZATCA argued to uphold its procedure for the estimated assessment of transferring contracts to another company, as this has nothing to do with squandering of accounts. Zakat Payer has established that the transferee company is a subsidiary and therefore not considered as subcontracts, especially since dues of those contracts are paid directly to that transferee company, and that transferee company has submitted its tax returns to ZATCA and paid the tax based thereon, which means that ZATCA's rejection of contract transfer results in double taxation on the same contracts. Accordingly, the Department concluded that the estimated assessment on Zakat Payer was invalid and that the late payment fine resulting from the



estimated assessment was cancelled, as the estimated assessment was proven to be invalid, then the fine is accordingly canceled.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

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 No. (17) for 1437 AH.

Second: On Merits:

1. Accept Zakat Payer's appeal in his request to cancel (estimated assessment) and overturn the primary decision concluded in this regard, in accordance with Grounds and reasons mentioned herein.
2. Accept Zakat Payer's appeal in his request to cancel (late fine) 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-2021-267)
Issued in Appeal No. (Z-2020-18657)

Principle No. 61

Failure to discuss defenses that influence constitution of the decision and response thereto renders the decision flawed, devoid of valid and sufficient Grounds to support its ruling.

Facts:

The Department convened its session to consider the Appeal filed on 10/11/1441 AH corresponding to 30/06/2020 AD, by, holding National ID No. (...), in his capacity as the attorney for Zakat Payer/ Company, Under POW issued by the Asharqia Chamber of Commerce and Industry No. (...), Dated, against the First Department for the Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-55-2020) delivered in Case No. (Z-10530-2019), regarding Zakat Payer's objection to zakat assessment of 2017, filed by Zakat Payer against ZATCA, in which the Primary Department decided as follows:

Dismiss Case filed by Company, C.R. No. (...), in form, because it was filed after expiration of the objection period.

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

Since Zakat Payer objects to the appealed decision of the Department. Zakat Payer's objection lies in the fact that reason for delay in submitting his objection within 60 days is purely technical errors, and that he did not have the assessment letter upon issuance. Zakat Payer added that he is fully prepared to pay zakat due on all amounts that have passed a year.

On, 09/01/1443 AH corresponding to 17/08/2021 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.

Grounds

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

On merits, and having perused the case file, Zakat Payer's objection lies in the fact that he was unable to submit his objection during the legal period due to not being properly notified thereof. Therefore, he requests to overturn the Department's decision in this regard. Having considered the decision subject of appeal, the Department found that the decision did not discuss Zakat Payer's fundamental defenses regarding formal elements of assessment. Since judicial ruling is based on elements, key of which are its reasons, including litigants' demands and pleas, and examining and debating its Grounds in order to reach a correct ruling in accordance with established judicial principles. 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. Since it turned out that the appealed decision did not discuss a substantial plea of Zakat Payer, represented by incomplete formal elements of ZATCA'S assessment. Therefore, it is decided that the decision was flawed that necessitates reversal. In order to enable Zakat Payer to litigate at two degrees, this Department concluded to cancel the Primary Decision and return the case to it for consideration on merits.

Decision

First: Accept appeal filed by Zakat Payer/ ... Company, C.R. No. (...), TIN (...), against the First Department for the Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-55-2020) issued in Case No. (Z-10530-2019), regarding Zakat Payer's objection to zakat assessment of 2017.

Second: On Merits:

Accept Zakat Payer's appeal, overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam and remand the Case for reconsideration on merits according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-244)
issued in Appeal No. (IW-1654-
2018)

Principle No. 62

Since it is recognized that Zakat Payer must be held accountable based on his records and books.

Facts:

First: In Form:

Accept objection in form filed by Zakat Payer/ branch of Company, on tax assessment of 2007 to 2012 according to Grounds stated in the decision.

Second: On Merits:

First: Income Tax and Withholding Tax on Estimated Profits:

1. Dismiss Zakat Payer's objection on expiry of ZATCA's right to conduct tax assessment of 2007 and 2008, according to Grounds stated herein.
2. Dismiss Zakat Payer's objection to non-approval of books and the estimated tax accounting, according to Grounds stated herein.
3. Dismiss Zakat Payer's objection to imposition of a withholding tax on estimated profits, according to Grounds stated herein.
4. Dismiss Zakat Payer's objection to imposition of late fines on income tax and withholding tax, according to Grounds stated in the decision.

Second: Withholding Tax on Non-Resident Entities:

1. Dismiss Zakat Payer's objection on expiry of ZATCA's right to calculate withholding tax of 2007 and 2008, according to Grounds stated in the decision.
2. Dismiss Zakat Payer's objection to Withholding Tax imposed upon actual payment, according to Grounds stated in the decision.
3. Dismiss Zakat Payer's objection to the Responsibility of Withholding Taxes Item, if any, that falls on the consortium leader for the contract with Al-Khafji Joint operations, according to Grounds stated in the decision.
4. Dismiss Zakat Payer's objection to imposition of withholding tax on equipment leases accompanied by provision of services, according to Grounds stated in the decision.
5. Dismiss Zakat Payer's objection to imposition of taxes on subcontractors, according to Grounds stated in the decision.
6. Dismiss Zakat Payer's objection to imposition of a withholding tax on the supply of labors from Company and Company, based on the merits stated in the decision.
7. Dismiss Zakat Payer's objection to imposition of withholding tax on salaries of the Company's employees, according to Grounds stated in the decision.
8. Dismiss Zakat Payer's objection to imposition of withholding taxes on securing assets outside the Kingdom, according to Grounds stated in the decision.
9. Dismiss Zakat Payer's objection to imposition of withholding taxes on others item, according to Grounds stated in the decision.



10. Dismiss Zakat Payer's objection to imposition of withholding tax on exempted items under the Double Taxation Avoidance Agreement, according to Grounds stated in the decision.
11. Dismiss Zakat Payer's objection to the additional reservations item on withholding tax on subcontractors, equipment lessors and labor suppliers, according to Grounds stated in the decision.
12. Settle the dispute on the item of a material error in calculating withholding taxes on Company of 2009, according to Grounds stated in the decision.
13. Dismiss Zakat Payer's objection to a material error item in calculating withholding taxes on Company, based on the merits stated in the decision.
14. Dismiss Zakat Payer's objection to the item of reversing entry of expenses of Company, based on the merits stated in the decision.
15. Dismiss Zakat Payer's objection to imposition of late fines on withholding tax, according to Grounds stated in the decision.

Since this decision was not accepted by Zakat Payer (.... Company, he filed a statement of appeal that included the following summary:

Zakat Payer's objection lies in the following items: The first item (Extinction of ZATCA's Right to Conduct Tax Assessment of 2007 and 2008), since Zakat Payer objects to the branch's objection to ZATCA issuance of assessment after expiration of the legal deadline established under Article 65 of the Income Tax Law, i.e., after lapse of five years from submitting the declaration for each year. In addition, Zakat Payer attached a copy of ZATCA's assessment and declaration submission notices to verify that the assessment was issued after expiration of the legal deadline. Moreover, the esteemed committee upheld ZATCA regarding this item and stated the following: "We inform the Committee that ZATCA has notified Zakat Payer of field examination during the legal period. Based on Article 59.8 of the Implementing Regulations of the Income Tax Law, the Committee deems it appropriate to dismiss Zakat Payer's objection to this item". The Primary Committee's interpretation of Article 59.8 is inconsistent with the provisions of Article 65 of the Law, which expressly stipulates that assessment should be issued during this period, and not the examination orders. The second item: (Non-Adoption of Books and Estimated Tax Accounting) Taxpayer objects to ZATCA's waste of his accounts and its estimated assessment thereon, and the esteemed Primary Committee's reliance on Article 63.b of the Law in wasting his accounts. This Article does not apply to him because he submitted his declarations in a timely manner and his accounts were accurate, which enabled ZATCA to track financial events. The form and model referred to in the said Article applies to hand-maintained books, as our customers have reviewed the Law of Commercial Books and believe that it obligates traders who maintain manual records with certain forms in accordance with the Implementing Regulations of the Law of Commercial Books. Accordingly, it believes that the Law of Commercial Books or its Implementing Regulations does not require traders to keep certain forms when keeping books in the computer. It is conceivable that this is impossible due to discrepancy between orientations of software developers inside the Kingdom and around the world, because taxpayers are mostly linked to approved automated accounting systems. Therefore, taxpayer considers that plea of non-compliance with certain forms falls within non-essential matters that the Appellate Committee has traditionally neglected in its previous decisions because it is not at the core of Law of Commercial Books and does not prevent auditor from tracking the financial event in a manner that is presented in the forms adopted by Taxpayer in its books, the third item: (Imposition of Withholding Tax on Estimated Profits), since Taxpayer objects to ZATCA's procedure regarding imposition of a withholding tax of 5% on the estimated profit distributions resulting from ZATCA's squandering of accounts, and it is not in accordance with the decision of the distinguished Primary Committee regarding upholding ZATCA in squandering of the accounts. In addition, Taxpayer considers that there is a difference between income and profit, and receipt by the head office of all or some of branch revenues is not a receipt of profits. until the head office obtains its profits, if any, the expenses must first be covered so that there will be profits, while the head office account remained a creditor and not a



debtor for all years. Furthermore, ZATCA charged the branch revenues with more than they can bear in the assessment. Since the branch revenues are an important axis in imposing withholding taxes on profits and the rest of the withholding taxes included in the assessment, and Taxpayer attached an analysis of the branch's full revenues since its establishment until the end of 2012, the fourth item: (Late Fine on Income Tax and Withholding Tax on Transfer of Hypothetical Profits), since Taxpayer objects to imposition of a late fine on income tax and withholding tax arising from waste of accounts. Since the Committee decided to dismiss Taxpayer's objection to tax based on Article 77.A of the Income Tax Law and Article 68.1.E of the Implementing Regulations of the Income Tax Law, and since Article 77.A of the Law referred to in the decision of the distinguished Primary Committee regarding fine for not submitting the declaration does not apply to Taxpayer's case related to late fees. Furthermore, Article 68.1.E is related to the tax to be withheld, Taxpayer does not consider that any provision in the Articles of the Implementing Regulations requires him to assume estimated profits and deduct tax from profits that have not been achieved or transferred abroad. This means that Grounds for imposing a late fine are among the matters that are not explicitly mentioned within Taxpayer's obligations, but rather it is a jurisprudence by ZATCA that is currently subject to appeal because it is not agreed upon.

With regard to Item (5): (Expiration of ZATCA right to calculate withholding tax for the years 2007 AD and 2008 AD), Taxpayer challenged imposition of withholding tax for the years 2007 AD and 2008 AD, and also challenged adoption of Article (68/D) of the applicable law by the Committee issuing the decision, as Taxpayer believed that such Article applies to the beneficiary, not the paying party. As for Item (6): (withholding tax imposed at the time of actual payment), Taxpayer challenged imposition of withholding tax on amounts that were not repaid to the head office, which was supported by the credit balance of the head office account at the end of each year. The Primary Committee confirmed the validity of ZATCA action, given that the accounts were ignored and the branch revenues were transferred directly to the head office. Moreover, the Primary Committee did not issue any decision with regard to Taxpayer observations mentioned in Item (5-2) of Part (2) of its memorandum submitted to the Committee, where Taxpayer requested correction of the material error in the assessment and deduction of the amount of (SAR 4,229.958) from the assessment as the value of withholding tax paid by Taxpayer and the amounts mentioned in the assessment. With respect to Item (7): (the responsibility for withholding taxes, if any, rests on the consortium leader of the contract concluded with Al Khafji Joint Operations), Taxpayer filed its appeal to challenge ZATCA action of imposing withholding tax on the costs related to its contract with Al Khafji Joint Operations, which was implemented by a consortium, given that the consortium leader is the party responsible for withholding taxes. The esteemed Primary Committee validated ZATCA action and mentioned that the branch paid these amounts, noting that the branch diligently paid the withholding taxes imposed on the amounts paid directly by it. The branch shall be aware that ZATCA considered the consortium leader as the party responsible for withholding taxes rather than consortium members. With regard to Item (8): (impose withholding tax on equipment rent accompanied by service provision), Taxpayer challenged imposition of withholding tax on external entities that have a permanent establishment in KSA based on the nature of contracts concluded with them, as such entities provide rented equipment and other accompanying services. Also, Taxpayer mentioned the great difference between the actual tax and the estimated tax in both cases. Moreover, Taxpayer explained that Article (4) of Income Tax Law referred to in the esteemed Primary Committee decision relates to the permanent establishment, while it is understood based on the Primary Committee decision that the Committee rejected Taxpayer objection filed based on the existence of a permanent establishment, which conflicts with the Primary Committee decision side by side with the document adopted thereby for issuing its decision. As for Article (9): (impose withholding taxes on subcontractors), Taxpayer challenged imposition of withholding taxes on non-resident entities, which are classified by applicable law as permanent establishments based on the scope of work of the subcontracts executed with clients; therefore, income tax shall be imposed directly on such entities instead of



withholding tax. Furthermore, Article (4) of Income Tax Law referred to in the esteemed Primary Committee decision relates to the permanent establishment, while it is understood based on the Primary Committee decision that the Committee rejected Taxpayer objection filed based on the existence of a permanent establishment, which conflicts with the Primary Committee decision side by side with the document adopted thereby for issuing its decision. With respect to Item (10): (impose withholding tax on the supply of labor by Company and Company), Taxpayer objection on this items covers the following three aspects: (1) Expiration of ZATCA right to make an assessment for the years 2007 AD and 2008 AD; (2) there is a permanent establishment incorporated for non-resident entities based on the scope of work; and (3) Taxpayer added in its memorandum that it was evidenced that Noel Tendon is a resident entity that has a permanent establishment, and the total value of transactions performed with it is estimated at (SAR 10,358.574) and invoices were received among official papers of Saudi Investment Group and Marketing (SIGMA) (C.R No. 2050025808) including details of its bank account No. (042-0073718-080) in the Saudi Awwal Bank (previously Saudi Arab British Bank (SABB)). Taxpayer also attached the following documents: (1) copies of contracts, and (2) copies of invoices. As for Item (11): (impose withholding taxes on salaries of Company employees), Taxpayer challenged ZATCA action of imposing a (5%) withholding tax on salaries of Company employees. Moreover, Taxpayer submitted a sample of employment contracts and mentioned that it cannot understand the basis on which the esteemed Primary Committee reached its decision, nor the sub-articles adopted to reach the same. Therefore, Taxpayer adheres to its perspective mentioned in the memorandum submitted to the Primary Committee. With regard to Article (12): (impose withholding taxes on all insurance premiums), Taxpayer filed its appeal to challenge ZATCA action and explained its point of view in the supplementary memorandum submitted to the esteemed Primary Committee, given that the amounts taxed by ZATCA include insurance premiums against risks related to units' rout outside KSA. The Primary Committee validated ZATCA action and mentioned that such insurance premiums are for the benefit of a non-resident entity in exchange for services that were performed inside KSA, whether in whole or in part. Accordingly, Taxpayer called for deduction of this item. Concerning Item (13): (impose withholding taxes on the Item named "other"), Taxpayer objected to imposing withholding taxes on Saudi companies and employees and attached a statement of the same in Statement No. (19) included in its objection letter. Additionally, Taxpayer clarified its point of view with regard to this item, and ZATCA accepted its objection in part, but the Primary Committee ignored such acceptance by ZATCA and validated the primary assessment, which was then corrected by ZATCA. As for Item (14): (impose withholding taxes on entities residing in countries concluding Conventions of Double Tax Avoidance with KSA), Taxpayer believed that ZATCA imposed taxes on entities residing in countries concluding Conventions of Double Tax Avoidance with KSA without considering the advantages granted to these entities by virtue of Conventions of Double Tax Avoidance. The Primary Committee affirmed the legitimacy of ZATCA action, highlighting the inadequacy and unreliability of the submitted documents. With regard to Item (15): (additional reservations regarding withholding tax imposed on subcontractors, equipment lessors, and worker suppliers), Taxpayer believed that the amounts on which tax was imposed include expensed that are not normally subject to withholding tax, such as fuel, food, moving marine units, etc. the esteemed Primary Committee affirmed the validity of ZATCA action. With respect to Item (16): (a material error in calculating withholding taxes imposed on Company), Taxpayer challenged confirming ZATCA action by the Primary Committee concerning this item, arguing that its accounts were ignored. Taxpayer maintained its position with regard to this item based on the statements mentioned in its objection letter. With reference to Item (reverse entry of expenses related to Company), taxpayer motioned that the Grounds of its appeal concerning this item are the same as the previous one, as they rely upon the same facts and reasons. As for Item (18): (delay fines imposed with relation to withholding tax), Taxpayer filed its appeal to challenge validation of ZATCA action by the Primary Committee concerning this item. Taxpayer appealed this decision



based on clarifications included in its objection letter and memorandum submitted to the Primary Committee. With regard to Item (19): (imposing delay fines with relation to withholding tax), Taxpayer filed its appeal to challenge validation of ZATCA action by the Primary Committee concerning this item. Taxpayer appealed this decision based on clarifications included in its objection letter and memorandum submitted to the Primary Committee. Based on the above, Taxpayer requested cancellation of the appealed decision taken by the Primary Committee in light of the aforementioned Grounds.

The Department decided to open the pleading. Therefore, ZATCA submitted a Reply on 10/08/1442 AH, corresponding to 23/03/2021AD, responding to Taxpayer appeal, including the following: (1) With relation to income tax and withholding tax imposed on estimate profits: concerning Item (expiration of ZATCA right to make an assessment for the years 2007 AD and 2008 AD), ZATCA performed the field inspection for the period (2007-2012 AD) on 24/04/1434 AH and the Company representatives received ZATCA authorization No. (1434/16/2566) issued on 22/04/1434 AH with relation to examining the Company accounts and books for the said years. Accordingly, ZATCA notified Taxpayer of the examination for the years 2007 AD and 2008 AD before the end of the five-year period ending on 30/04/2013 AD for the year 2007 AD and 30/04/2014 AD for the year 2008 AD. Thus, this action is interruptive of prescription in accordance with provisions of Article (59.8) of Implementing Regulations of Income Tax Law, as ZATCA asked Taxpayer to provide documents and clarifications supporting items included in its tax return, noting that ZATCA could not have done the same unless Taxpayer return needed such action, as evidenced by significant amendments made by ZATCA in its amended assessment, i.e., discussing with Taxpayer is necessary, essential, and closely related to completion of assessment or amendment thereof. Therefore, such action is interruptive of prescription, and ZATCA reserves the right to amend the assessment within 10 years in accordance with provisions of Article (65.B) of Income Tax Law. Therefore, ZATCA confirmed the validity and legality of its action. As for Item (ignore account books and make an estimate tax assessment), ZATCA made an estimate tax assessment because it was evidenced, based on the field inspection report, that Taxpayer recorded entries using an Excel-based application designed by the head office, which is contrary to directions mentioned in ZATCA Circular No. (1717) dated 27/03/1432 AH, which confirmed that companies that have accounts and records saved on a computer system and an integrated automated system in accordance with controls mentioned in Ministerial Resolution No. (312/32) dated 27/01/1423 AH and Article (56.2) of Implementing Regulations, do not need to use sub-programs and applications such as Excel. So, Taxpayer reliance on Excel for making entries and recognition indicates that there is no integrated automated system, and Taxpayer representatives stated that entries are recorded daily and then automatically transferred to the trial balance, income statement, and financial position without using the general ledger. Additionally, when auditing the head office current account, the Company representatives asked for more time to review the daily movement and prepare the related statement, which is incompatible with Ministerial Resolution No. (312/32) dated 27/01/1423 AH issued with regard to controls of examining accounts of companies and institutions that save their accounts on computers, as Clause (4) of such Ministerial Resolution stipulates that: “final accounts and balance sheets shall be extracted directly from computer”, which contradicts the statements of the Company representatives. Moreover, the used program is not connected with the head office system and is not equipped with the necessary security means required in this regard. Since Article (58/A) of the Income Tax Law obligates Taxpayer to keep commercial books and accounting records, and Article (63/B) of the same law gives ZATCA the right to make an estimate assessment in case of Taxpayer failure to keep accurate accounts and records; therefore, ZATCA confirmed the validity and legality of its action. With regard to Item (withholding tax imposed on estimated profits), ZATCA referred to its response mentioned in the appealed decision; therefore, ZATCA confirmed the validity and legality of its action. As for Item (delay fines related to income tax and withholding tax), ZATCA made its decision based on Article (77) of Income Tax Law and confirmed the validity and legality of its



action. (2) with regard to withholding tax imposed on non-resident entities: as for Item (expiration of ZATCA right to calculate withholding tax for the years 2007 AD and 2008 AD), ZATCA confirmed that its action was taken in accordance with Articles (68.C) & (68.D), and that the delay fine was imposed in accordance with Article (77) of the same law. Therefore, ZATCA confirmed the validity and legality of its action. With relation to Item (withholding tax imposed at the time of actual payment), ZATCA clarified that Taxpayer allegations already justify the reasons for making an estimate assessment, as Taxpayer cannot rely on the head office accounts and at the same time fails to keep the regular accounts required by the applicable tax law. Also, Taxpayer acknowledged that all amounts included in ZATCA assessment were actually paid through the head office. Therefore, withholding tax estimated by an authority in KSA shall be paid even if the same is not reflected in the head office account. ZATCA also confirmed that the payment process made through the head office for non-resident entities is the incident as a result of which withholding tax was imposed on these entities, as the head office was required to withhold the tax at this time, while the settlement process between the branch and the head office does not lead to imposing a withholding tax but rather reveals the same, because the branch will not deduct tax from the head office for transactions made with non-resident entities. This is in accordance with provisions of Article (5.B) of Income Tax Law, which provides that: "the income's place of payment shall not be taken into account in determining its source." With regard to correction of the material error in the assessment with the amount of (SAR 958,229.4), this item was not mentioned in Taxpayer objection provided to ZATCA, and therefore, ZATCA requested rejection of the same in form. As for Item (the responsibility for withholding taxes, if any, falls on the consortium leader with regard to the contract concluded with Al Khafji Joint Operations), ZATCA confirmed that its action was taken in accordance with Article (68) of Income Tax Law, which linked the withholding tax to the payer of the amount (Taxpayer in this case), and in accordance with Article (63.8) of Implementing Regulations of Income Tax Law. Therefore, ZATCA confirmed the validity and legality of its action. With relation to Item (impose withholding tax on equipment rent accompanied by service provision), ZATCA confirmed the validity of the Primary Committee decision. ZATCA also mentioned that the allegations mentioned by Taxpayer in its appeal brief regarding the existence of a conflict in the Primary Committee decision are incorrect, based on the fact that the equipment used in KSA, which constitutes a permanent establishment, is drilling equipment in accordance with Article (4.2.B) of Income Tax Law, which does not apply to equipment rented by Taxpayer, which is rented in exchange for marine units. Also, documents submitted by Taxpayer cannot be relied upon. Moreover, ZATCA representatives visited the Arab Company for Projects & Maintenance (APM), which confirmed that all imports are used by the branch of Company, and submitted an acknowledgement proving the same. Also, ZATCA representatives confirmed in the visit report that the total imports of Taxpayer branch are estimated at (SAR 377,683,017.2). Therefore, ZATCA confirmed the validity and legality of its action. With regard to Item (impose withholding taxes on subcontractors), ZATCA referred to defenses mentioned in the previous item, and added that its action was taken in accordance with Article (57.3) of Implementing Regulations of Income Tax Law. Thereby, ZATCA confirmed the validity and legality of its action. With respect to Item (impose withholding tax on the supply of labor by Company and Company), Taxpayer allegation that Company and Company are permanent establishments is incorrect, as the head office concluded contracts and made payments in accordance with Article (68) of Income Tax Law, and documents submitted by Taxpayer cannot be relied upon, and therefore, Taxpayer claims are groundless. The problem here is that Taxpayer Attorney incorrectly displayed the situation, as he claimed that the contract was concluded with Company to supply labor, so this company is not a permanent establishment for a non-resident entity, but rather it is located in Scotland, and the same applies to labor, as contracts are concluded with the head office, not with workers in their personal capacities, and this matter was verified in inspection minutes. With regard to Company, the disputed amount represents insurance paid by the head office, and the related



supporting documents are attached. Therefore, ZATCA confirmed the validity and legality of its action. As for Item (impose withholding taxes on salaries of Company employees), ZATCA clarified that Taxpayer failed to provide any new submissions with regard to this item and was satisfied with referring to the memorandum submitted to the Primary Committee. Therefore, ZATCA referred to the defenses mentioned in the appealed decision, thereby confirming the validity and legality of its action. With respect to Item (Impose withholding tax on the insurance of assets outside KSA), ZATCA clarified that Taxpayer failed to provide any new submissions with regard to this item and was satisfied with referring to the memorandum submitted to the Committee. Therefore, ZATCA referred to defenses mentioned in the appealed decision. Based on the above, ZATCA clarified that the intended insurance was paid with relation to units leased for operation inside KSA; therefore, they constitute income sources in accordance with Article (5/A/8) of Income Tax Law. Therefore, ZATCA confirmed the validity and legality of its action. With regard to Item (impose withholding taxes on the Item named “other”), ZATCA acceptance of the amounts paid to resident institutions and companies is conditional on submitting documents and filling out attached statements that clarify the data of these companies. However, Taxpayer failed to meet these conditions; therefore, this item was not accepted. As for other amounts, ZATCA believed that the same shall not be accepted due to their unspecified nature, and the violating party shall incur losses in accordance with Article (57.3) of Implementing Regulations of Income Tax Law. Therefore, ZATCA confirmed the validity and legality of its action. With reference to Item (Impose withholding tax on items exempted therefrom subject to the Double Taxation Avoidance Agreement), ZATCA clarified that Taxpayer failed to provide any new submissions with regard to this item and was satisfied with referring to the memorandum submitted to the Primary Committee. Therefore, ZATCA maintained its firm and valid position, which is fully consistent with provisions of applicable laws, especially since the tax agreements include details of cases covered thereby, and Taxpayer allegations mentioned in its claim were unsubstantiated and cannot be relied upon. So, the Department action of rejecting Taxpayer objection due to lack of sufficient information was valid. Therefore, ZATCA confirmed the validity and legality of its action. With regard to Item (additional reservations regarding withholding tax imposed on subcontractors, equipment lessors, and labor suppliers), ZATCA confirmed that Taxpayer failed to provide any new submissions with regard to this item and was satisfied with referring to the memorandum submitted to the Primary Committee. So, ZATCA referred to defenses included in the appealed decision. Therefore, ZATCA confirmed the validity and legality of its action. As for Item (a material error in calculating withholding taxes imposed on Maritime Company) and Item (reverse entry of expenses related to Company), ZATCA clarified that such reversed entries cannot be recognized because tax assessment was made using the estimate method due to Taxpayer failure to keep regular accounts for the reasons mentioned in Item (non-dependence on books and estimate tax accounting). Therefore, ZATCA confirmed the validity and legality of its action. With regard to Item (delay fines imposed with relation to withholding tax), ZATCA referred to its previous response with regard to delay fine. Therefore, ZATCA confirmed the validity and legality of its action and called for rejection of Taxpayer appeal and validation of the primary decision reached in this regard.

Grounds

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

On merits, with regard to Taxpayer appeal regarding Item (expiration of ZATCA right to make an assessment for the years 2007 AD and 2008 AD), upon considering the dispute subject matter, the Department found that Article (59) of the applicable tax law explicitly provided that ZATCA has the right to make an estimate tax assessment within five years. Since there is no scope for judicial



discretion where a statutory provision is provided explicitly, since the applicable law explicitly provided that ZATCA has no right to amend assessments after expiry of the five-year period except with a written consent from Taxpayer, and since the Department was satisfied that the five-year period passed without making any assessment by ZATCA throughout such period; therefore, the Department decided to accept Taxpayer appeal and overturn the primary decision taken in this regard.

As for Taxpayer appeal concerning Item (non-dependence on books and estimate tax accounting), upon considering the dispute subject matter, the Department was satisfied that ZATCA made a field inspection and found that Taxpayer adopts an Excel-based accounting system, which lacks the necessary security measures in accordance with the requirements of Article (56) of Implementing Regulations of Income Tax Law. ZATCA also tested the accounting system and found that it is vulnerable to change, so the Department was satisfied that such Taxpayer system is not safe based on Article (63) of Income Tax Law and Article (16) of its Implementing Regulations. Therefore, the Department decided to reject Taxpayer appeal for the period (2009-2012 AD). As for Taxpayer appeal for the years 2007 AD and 2008 AD, the Department decided to accept Taxpayer appeal with regard to these years due to expiration of the legally prescribed period for amending tax assessment.

With respect to Taxpayer appeal regarding Item (impose a withholding tax on estimate profits), upon considering the dispute subject matter, the Department was convinced that Taxpayer acknowledged before the Primary Committee that a part of its revenues is collected by the branch and a part of them are collected directly by the head office. Since Taxpayer appeal regarding Item (non-dependence on books and estimate tax accounting) was rejected, this in turn proves that there is no way for tracking transfers of the branch profits to the head office, and given that the revenues transferred directly to the head office include profits. Moreover, Taxpayer accounts were ignored, thus preventing determination of expense size based on Taxpayer accounting system. Therefore, the Department decided to reject Taxpayer appeal for the period (2009–2012 AD), and decided also to calculate revenues based on which transferred profits are estimated within the limits acknowledged by Taxpayer in its objection raised before the Primary Committee, for which ZATCA did not raise any objection. With regard to Taxpayer appeal for the years 2007 AD and 2008 AD, the Department decided to accept Taxpayer appeal due to expiry of the legally prescribed period for making amendments to tax assessments.

As for Taxpayer appeal regarding Item (late payment fine with relation to income tax and withholding tax imposed on transfer of virtual profits), upon considering dispute subject matter, the Department found that such fine was imposed as a result of the difference between Taxpayer returns based on its regular accounts and ZATCA tax assessments made based on the estimate method, which cannot be accurately verified until settlement of the related dispute due to absence of any legal provision based on which the legal assessment amount could be determined; therefore, considering that the Department accepted Taxpayer appeal related to the years 2007 AD and 2008 AD, the Department decided to accept Taxpayer appeal for the period (2007-2008 AD). With regard to the fine imposed as a result of the estimate assessment for the period (2009-2012 AD), the Department decided that such fine shall be calculated as of the date of issuing its decision, which is the date of notifying Taxpayer of the actual due tax imposed on it.

With regard to Taxpayer appeal against Item (withholding tax related to non-resident entities), upon considering dispute subject matter, the Department was satisfied that prescription does not apply to withholding taxes in accordance with provisions of Article (68.D) of Income Tax Law, which provides that: “if tax is not withheld in accordance with the provisions of this Article, the beneficiary remains indebted to the Department for the amount of tax and the Department may recover it from him, or his agent or sponsor.” Accordingly, the Department decided to reject Taxpayer appeal in which it claimed that it is not entitled to pay withholding taxes on the amounts paid to non-resident entities for the years 2007 AD and 2008 AD, due to expiry of the five-year period from the date of occurrence of the incident justifying imposition of such withholding tax.



The Department also decided to consider each item of Taxpayer appeal with regard to application of withholding tax requirements' entitlement.

With respect to Taxpayer appeal regarding Item (withholding tax imposed at the time of actual payment), upon considering dispute subject matter by the Department, it was clear that Taxpayer accounts were ignored due to unreliability of its accounting system, which in turn prevented tracking actual payments. Additionally, Taxpayer acknowledged that the amounts paid to non-resident entities were actually paid by the head office, to which the revenues are transferred; thus, the payment incident was included in the transfer of the total revenues to the head office. Therefore, the Department decided to reject Taxpayer appeal, with Taxpayer right to correct the material error represented in the difference between the actual amount paid by Taxpayer and the amount estimated by ZATCA, which is estimated at (SAR 4229958). It is worth noting that ZATCA argument that Taxpayer did not raise any objection before ZATCA in this regard does not affect Taxpayer right to correct that error, since errors should be corrected as soon as they are discovered, regardless of whether Taxpayer has formally objected thereto. Since Taxpayer requested correction of such error, and ZATCA did not deny the occurrence of the same, the Department decided that Taxpayer has the right to correct the disputed material error.

As for Taxpayer appeal regarding Item (the responsibility for imposing withholding taxes, if any, falls on the consortium with regard to the contract concluded with Al Khafji Joint Operations), upon considering dispute subject matter, the Department found that there was no dispute with regard to Taxpayer payment directly or through the head office; therefore, the responsibility for deducting withholding tax falls on Taxpayer, in accordance with provisions of tax law. Accordingly, the Department decided to reject Taxpayer appeal with regard to this item.

With regard to Taxpayer appeal regarding Item (impose withholding tax on equipment rent accompanied by service provision), upon considering dispute subject matter, it was clear that ZATCA did not deny that there are services accompanying the equipment rental. So, such services are provided in fact to Taxpayer by another permanent establishment, which is covered by the permanent establishment description mentioned in Article (4.A) of applicable Tax Law. Therefore, the Department decided by majority to accept Taxpayer appeal with regard to this item.

With regard to Taxpayer appeal regarding Item (impose withholding taxes on subcontractors), upon considering dispute subject matter, it was evidenced that ZATCA imposed a withholding tax on the amounts paid to subcontractors without verifying the period during which subcontracting services were provided or the possibility of considering those subcontractors as permanent establishments carrying out such business. Taxpayer provided the Primary Department with subcontracts concluded with those contractors. Moreover, it is established that Taxpayer perspective shall be adopted unless ZATCA provided convincing evidence that justifies ignoring Taxpayer returns. Since ZATCA failed to provide any substantial evidence in this regard, the Department decided by majority to accept Taxpayer appeal with regard to this item.

As for Taxpayer appeal regarding Item (Impose withholding tax on supply of labor by Company and Company), upon considering dispute subject matter, the Department found that there is no dispute with regard to concluding contracts with non-resident companies rather than individuals. The Department was also satisfied that the definition of a permanent establishment applies to these non-resident companies, which means that the withholding tax provisions also apply to the amounts paid to non-resident entities. Since the amounts paid fall under the category of technical and consulting services, the Department decided to amend the Primary Committee decision by determining that these amounts shall be subject to a (5%) withholding tax.

With respect to Taxpayer appeal regarding Item (impose withholding taxes on salaries of Company employees), upon considering dispute subject matter, it was clear that Taxpayer explained that there is an employment relationship between employees and the Company, Taxpayer also submitted a sample of employment contracts. Since no evidence to the contrary was submitted, the Department decided that such employees shall be considered among the Company labor



regardless of whether the contracting party is Taxpayer or the head office. Since it is established that the head office usually provides employment services, the Department decided by majority to accept Taxpayer appeal with regard to this item.

As for Taxpayer appeal regarding Item (Impose withholding tax on the insurance of assets outside KSA), upon considering dispute subject matter, it was evidenced that the disputed amounts are insurance against route risks related to units transferred on international shipping lines, which proves that such insurance is not an income source for insurance companies in KSA. The Department was also satisfied that there is no evidence supporting ZATCA claims that the insurance was provided for rented units intended to be operated or used inside KSA. Therefore, the Department decided to accept Taxpayer appeal with regard to this item.

With regard to Taxpayer appeal on Item (Imposing withholding taxes on other items), upon considering the dispute subject matter, the Department found that Taxpayer submitted a detailed statement of the amounts paid and confirmed that such amounts were paid inside KSA. The Primary Committee rejected Taxpayer objection due to insufficiency of documents without clarifying the deficiency therein so that Taxpayer could have been requested to submit the same. ZATCA failed to provide evidence of payment of disputed amounts to non-resident entities, which could be considered a basis for rejecting Taxpayer statements. Therefore, the Department decided by majority to accept the Taxpayer appeal with regard to that Item.

As for Taxpayer appeal on Item (Imposing withholding tax on other items exempted therefrom subject to the Double Taxation Avoidance Agreement), upon considering the dispute subject matter, the Department found that Taxpayer argued that such amounts were not subject to withholding tax because they were paid to non-resident entities in countries concluding Double Taxation Avoidance Agreements with KSA, noting that such amounts include the disputed withholding tax. However, Taxpayer failed to provide any evidence supporting its claim, and all statements included in the statement of appeal are groundless and cannot be relied upon for refraining from imposing withholding tax on any amount paid to a non-resident entity. Moreover, the Department did not observe any matter that required correction or commentary in light of the statements presented by Taxpayer; therefore, the Department decided to reject Taxpayer appeal with regard to that Item.

Regarding Taxpayer appeal on Item (Additional reservations with regard to withholding tax related to subcontractors, equipment lessors, and labor suppliers), Taxpayer objection was general and lacks details of the related amounts or parties receiving payments, except for the amount paid to Company in KSA. Therefore, the Department decided to reject Taxpayer appeal due to failure of submitting any evidence that could be discussed with relation to paid amounts or parties benefiting therefrom, except for the amount paid to Company in KSA, as Taxpayer has attached the documents supporting the same. Therefore, the Department decided by to accept Taxpayer appeal with regard to that amount.

With regard to Item (Material error in calculating withholding taxes imposed on Company), Taxpayer filed its appeal based on its accounting system, which was ignored, and failed to provide any evidence supporting its claims with regard to the amount related to the non-resident company. Accordingly, the Department decided to reject Taxpayer appeal with regard to that Item.

With regard to Item (Reversing entry of expenses related to Company), Taxpayer filed its appeal based on its accounting system, which was ignored, and failed to provide any evidence supporting reversal of entries. Therefore, the Department decided to reject Taxpayer appeal with regard to that Item.

As for Taxpayer appeal on Item (Late payment fines related to withholding tax), upon considering the dispute subject matter, the Department ignored Taxpayer financial statements. Since such dispute is not documentary on merits, which proves that Taxpayer was not aware of the value of the tax imposed on it until the issuance of the final decision on that dispute, the Department decided that the late payment fine shall be imposed on Taxpayer as of the date of issuing its decision.



Decision

First: Accept the Appeal filed by Taxpayer/ branch of Company, CR. No. (...), TIN (...), in form, against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (16) issued with regard to the Objection No. (36/37) of 1437 AH, regarding zakat assessment for the period (2007-2012 AD).

Second: On Merits:

1. Accept Taxpayer appeal on Item (Expiration of the period during which ZATCA has the right to make the tax assessment for the years 2007 and 2008 AD) and reverse the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
2. With regard to Item (Non-dependance on books and estimate tax accounting), reject Taxpayer appeal for the period (2009-2012 AD), and accept Taxpayer appeal for the years 2007 and 2008 AD in accordance with Grounds and merits mentioned herein.
3. As for Item (Imposing a withholding tax on estimate profits): reject Taxpayer appeal for the period (2009-2012 AD), and accept Taxpayer appeal for the years 2007 and 2008 AD in accordance with Grounds and merits mentioned herein.
4. With relation to Item (Late payment fine with relation to income tax and withholding tax imposed on transfer of virtual profits): accept Taxpayer appeal for the years 2007 and 2008 AD, and impose late payment fine for the period (2009-2012 AD) as of the date of issuing this decision in accordance with Grounds and merits mentioned herein.
5. Reject Taxpayer appeal with regard to Item (Withholding tax related to non-resident entities), and confirm the decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
6. Reject Taxpayer appeal with regard to Item (Withholding tax imposed at the time of actual payment) and confirm its right to correct the material error represented in the difference between the paid amount and the amount estimated by ZATCA in accordance with Grounds and merits mentioned herein.
7. Reject Taxpayer appeal with regard to Item (The responsibility for imposing withholding taxes, if any, falls on the consortium with regard to the contract concluded with Al Khafji Joint Operations) and uphold the decision of the decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
8. Accept Taxpayer appeal on Item (Imposing withholding tax on equipment rent accompanied by provision of services) and reverse the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
9. Accept Taxpayer appeal on Item (Imposing withholding tax on subcontractors) and reverse the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
10. Amend the decision taken by the Primary Committee on Item (Imposing withholding tax on supply of workers by Company and Company) through imposing a 5% tax on such amounts in accordance with Grounds and merits mentioned herein.
11. Accept Taxpayer appeal on Item (Imposing withholding tax on salaries of the Company employees) and reverse the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
12. Accept Taxpayer appeal on Item (Imposing withholding tax on the insurance of assets outside KSA) and reverse the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.



13. Accept Taxpayer appeal on Item (Imposing withholding tax on other items) and reverse the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
14. Reject Taxpayer appeal on Item (Imposing withholding tax on other items exempted therefrom subject to the Double Taxation Avoidance Agreement) and uphold the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
15. Reject Taxpayer appeal on Item (Additional reservations with regard to withholding tax related to subcontractors, equipment lessors, and labor suppliers), and accept Taxpayer appeal with regard to the amount paid to Company in KSA in accordance with Grounds and merits mentioned herein
16. Reject Taxpayer appeal on Item (Material error in calculating withholding taxes imposed on Company), and uphold the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein.
17. Reject Taxpayer appeal on Item (Reversing entry of expenses related to Company), and uphold the Decision taken by the Second Primary Committee for Zakat and Tax Objections in Riyadh in accordance with Grounds and merits mentioned herein
18. Confirm the validity of the late payment fine with regard to Item (Late payment fine related to withholding tax) as of the date of issuing this decision 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-2020-1)
Issued in Appeal No. (I-2018-
1484)

Principle No. 63

ZATCA shall have the right to make an estimate assessment if Taxpayer destroys its books that should be maintained in accordance with Law of Commercial Books, which obligates Taxpayer to keep records for ten years. Therefore, destruction of such books shall be considered negligence by Taxpayer, and in such a case, GAZT shall have the right to exercise its right guaranteed by law to make an estimate assessment in case of inability to verify data and information provided Taxpayer returns.

Principle No. 64

GAZT shall be responsible for proving receiving Taxpayer returns after expiration of prescribed period, given that GAZT is the entity before which such action is taken.

Principle No. 65

If there is evidence supporting absence of the intention to commit the criminal act of concealment, then the principle of presumption of innocence shall apply, as such action may have occurred incidentally or temporarily and not as a result of prior intention, and accordingly shall not be considered a criminal act that deserves punishment unless there is evidence of committing an actual crime.

Facts:

On Sunday 06/09/1442 AH, corresponding to 18/04/2021 AD, First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Decree 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, met at its headquarters in Riyadh to consider the appeal filed on 27/05/1439 AD by Institution C.R. No. (...), against the Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (12) dated 20/04/1439 AH in the Case No. (1-2018-1484) filed by Appellant against GAZT, in which the primary decision ruled as follows:

First: Accept the objection filed by Taxpayer /..... Institution in form, in accordance with Grounds and merits mentioned herein.

Second: On Merits:

1. Reject Taxpayer objection regarding Item (15% estimate tax).
2. Reject Taxpayer objection regarding Item (fine imposed as a result of late submission of 2009 tax return).
3. Reject Taxpayer objection regarding Item (Concealment Fine).
4. Dismiss Zakat Payer's objection to (Late Payment Fine) item.



Since this decision was not accepted by Plaintiff (..... Institution), to which we refer for avoidance of repetition, Plaintiff submitted a statement of appeal included the following in summary:

- Item (1): 15% estimate tax.

The Institution was operating for seven years in accordance with legal papers, documents, and records, which were then destroyed after cancellation of the commercial registry and expiration of Institution venue leasing term. The Institution was closed, workers were deported back to their countries, and the leased property was handed over to its owner. Moreover, GAZT request was late because the required documents were requested four months after closing the Institution, which shall be considered an administrative error by GAZT, as it is supposed to request such documents at the time of delivering the cancellation letter to the Institution and submitting the last tax return of the relevant year. At that time, it was easy to have the required records and papers. Moreover, failure to follow up on the Institution for 7 years by GAZT shall also be considered an administrative error, as GAZT failed to make any surprise visits to verify the credibility of works carried out therein, as papers were available at that time and the accountant was present. Furthermore, the Institution used to receive a certificate proving payment of the annual tax every year, and the commercial register and license were renewed every year based on these certificates. So, GAZT had to make a surprise field inspection to verify the credibility of the work in order to calculate the tax base in a fair manner, instead of ignoring the same till the end, as the required papers were available, could have been followed and discussed with the accountant, and could be used as a legal document supporting the financial event being estimated and recorded. Accordingly, the Institution confirmed the validity of its statements and rejected allegations raised by GAZT.

- Item (2): Fine imposed as a result of late submission of 2009 tax return.

GAZT claimed that Taxpayer did not comply with the provisions of paragraphs (A - B - D - F) of Article (60), and a fine estimated at (1%) of the total revenues was imposed due to noncompliance with Article (60.A), which provides that: “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”, and Article (60.B), which provides that: “The tax declaration shall be filed within 120 days”. In fact, the Institution submitted its return on the prescribed time and using the approved form, and there was nothing requiring imposing tax since the tax return provided to GAZT did not include any revenues, because the relevant financial year was short and consisted only of three months from 07/09/2009 AD to 31/12/2009 AD, the license was issued on 07/09/2009 AD, and there were no revenues, works, or workers (establishment phase). Moreover, the tax returns for the years 2010 AD and 2011 AD were submitted using the same form and TIN. Then, why were they received? Why were we held accountable based on the same? Why were we received certificates for the same? Therefore, the Institution/Taxpayer challenged GAZT decision side by side with the Tax Committee decision, confirmed the validity of it views, and rejected GAZT views.

- Item (3): Concealment Fine

GAZT claimed that the Institution submitted financial statements that did not exist on the ground. On the other hand, Taxpayer confirmed that all submitted accounts and tax returns were legally valid and were prepared by a chartered accountant and accounting firm, and the due amounts were paid annually without delay. So, If GAZT was uncertain of the submitted documents, it could have made surprise field inspections during the seven years and reviewed all supporting documents. Also, the Institution did not conceal any information, did not operate in any field other than its own field, and did not evade paying the annual due tax, and also the chartered accounting firm issuing financial statements rejects doing the same without official documents that could be relied upon.

On Wednesday, 04/06/1441 AH corresponding to 29/01/2020 AD, the Department held its session to consider the submitted appeal. Upon calling both litigants, Mr., holder of resident



ID No. (...), attended the session in his capacity as the Institution owner, while GAZT representative did not appear in the session. When asking Appellant about the reasons for his appeal against the decision, other than what was mentioned earlier in his memorandum submitted in this regard, Appellant responded that its memorandum included all reasons for challenging the appealed decision. Appellant also confirmed that receiving a zakat assessment certificate for the relevant year shall terminate any relation to the zakat year being assessed for which the certificate was issued by GAZT. Therefore, there is no valid reason for reopening the assessment and using the estimate method in an arbitrary manner and obligating Appellant to hold the documents proving the soundness of its position throughout the previous years for which certificates were issued. If there were any comments concerning these assessments, it would be better to be submitted before the Institution was closed. Moreover, the fine imposed for failure to submit the 2009 tax return was invalid and groundless, considering that Appellant has submitted the same to GAZT Branch in Riyadh. When asking Appellant if there were any other requests to add, Appellant responded that it seeks cancellation of the fines related to reopening assessments as ruled by the decision under appeal.

As such, the record was closed, and the Department decided to continue deliberating in the case and issue a ruling after careful consideration of its subject matter. The Department asked GAZT to respond to the Appellant memorandum, which included its Grounds for objection to the decision and its statements presented before this Department. Accordingly, GAZT submitted a memorandum that included in summary that GAZT rejected the Grounds for objection to the estimate tax assessment because GAZT exercised its right guaranteed by law and authorizing it to make an estimate assessment in case of absence of information, documents, and papers proving the validity of Taxpayer return, and this is what GAZT exactly did when dealing with Taxpayer, especially after discovering the absence of any accounting books and records required to ensure the validity of Taxpayer returns. With regard to fines imposed as a result of (concealment and delay in submitting 2009 tax return and the fine imposed as a result of delay in tax payment after assessment), it is worth noting that this fine was imposed in accordance with law provisions applicable in such cases. As for failure to submit 2009 tax return, Taxpayer failed to provide any valid documents proving submission of its return on the legally prescribed date, which reflects Taxpayer delay in submitting the tax return in an appropriate manner. Moreover, GAZT supported its view when responding to Appellant with decisions issued by Appellate Committees side by side with a sentence issued by the Board of Grievances with regard to Appellant, which proved the legitimacy of GAZT position in dealing with the Appellant.

After reviewing appeal memoranda, replies thereto, and statements made before the Department, and examining papers and documents contained in case file, the Department concluded that the case is ready for adjudication and issuance of a decision on its subject.

Grounds

Based on Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and its Implementing Regulations issued by the Minister of Finance Decision No. (1535) dated 11/06/1425 AH, and after reviewing Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH, the Department accepted the appeal request in form, given that it was submitted by a person with capacity and within the legally prescribed period, in accordance with provisions of Article (66) of the Law.

On merits, after reviewing the case file along with papers and documents contained therein, the statements mentioned in the appeal brief and replies thereto, and the statements made before the Departments in the hearing session of the case, the Department decided as follows:

- Item (1) - The 15% estimate tax: Based on the appeal Grounds, Appellant statements, and GAZT replies thereto with regard to the dispute related to this item, it turned out that the



dispute happened as a result of Taxpayer objection to GAZT right to use the estimate assessment method as mentioned in its appeal brief. It is worth noting GAZT exercised its right guaranteed by law to make an estimate assessment in case of uncertainty of data and information presented in Taxpayer returns. Also, Taxpayer mentioned before the Department that it has destroyed its documents and books after termination of its business activity. It is important to note that Taxpayer claim is not sufficient to prevent GAZT from making the estimate tax assessment, and in such a case, Taxpayer is the defaulting party, as it destroyed its books, although it should have kept the same in accordance with the Law of Commercial Books issued in 1409 AH, which obligates Taxpayer to keep accounting books for 10 years in order to be able to respond to any claims presented by GAZT with regard to the inaccuracy of the information and data contained therein. Therefore, Appellant argument in this regard is deemed groundless in accordance with applicable law. Accordingly, the Department decided to reject such objection and confirm the validity of GAZT action represented in using the estimate assessment method as mentioned herein.

- Item (2)- Fine imposed as a result of late submission of 2009 tax return: After examining the dispute subject matter, it turned out that the dispute is related to GAZT right to impose a delay fine. When reviewing Appellant statements along with details mentioned in its memorandum in this regard and GAZT replies thereto, it became clear that the dispute happened as a result of Appellant claim that it had submitted its tax return for that relevant year within the legally prescribed period. On the other hand, GAZT claimed that Appellant did not submit any documents proving that it had submitted that tax return within the legally prescribed period. Upon considering the dispute subject matter, the Department found that since Taxpayer submitted its tax return for the relevant year as normal, the receiving entity (GAZT) shall hold the responsibility for proving that the tax return was submitted after expiration of the legally prescribed period, as it is unacceptable for Appellant to be charged with providing evidence of his innocence while GAZT is the tax prosecution authority holding the responsibility for proving that it received Taxpayer return after expiration of the legally prescribed period, given that it is the authority before which such procedure is carried out. Moreover, the case papers did not include anything that supports GAZT claim concerning its right to impose a delay fine for failure to submit the tax return on the prescribed date. Therefore, the Department decided to uphold Taxpayer appeal in this regard and cancel the primary decision taken in this regard.
- Item (3) - Concealment Fine: The Department found that the dispute happened between Taxpayer and GAZT as a result of Appellant claim that it did not commit any action with the intention of concealing any documents related to the due tax or concealing its activity, while GAZT claimed that Taxpayer had committed a violation by destructing its accounting books and records, which resulted in concealing the actual data and activity based on which the correct assessment is made. As a result, GAZT made an estimate assessment and imposed a concealment fine. Upon considering Appellant statements and GAZT replies thereto with regard to this disputed item, the Department found that Taxpayer destructed its accounting books and records after termination of its activity and cancellation of its commercial register, which negates its intention to conceal the same in purpose. Also, there was no dispute with regard to Taxpayer failure to pay the amounts due based on the submitted tax return at the time of submitting the disputed tax returns. It is worth noting that such indications are relied upon as evidence of absence of any intention to commit the criminal act of concealment. Additionally, the statements of the tax prosecution authority/GAZT in this regard were general and did not include any specified and detailed actions that could be attributed to Taxpayer in order to be requested to defend itself against the same, so the presumption of innocence shall remain intact since Taxpayer accusation is temporary and shall not lead to a conviction unless a violation against Appellant is proven beyond a reasonable doubt. Therefore, the Department



decided with regard to this item to accept Taxpayer appeal and cancel the appealed decision taken in this regard.

- Item (4) - Delay Fine: The Department found that Appellant statements included its objection to the fines imposed on it and mentioned in the challenged decision, which include the delay fine stipulated in the verdict. Appellant believed that there is no reason for imposing such fine, given that Appellant has submitted its tax returns and paid the tax due thereby on time, subject to certificates issued by GAZT. On the other hand, GAZT argued that the estimate assessment showed that there is a difference between the tax paid subject to the submitted tax returns and the tax due subject to the estimate assessment made by GAZT. Upon considering Appellant situation and GAZT right to impose such fine, the Department decided that GAZT had no right to impose a fine for late payment of tax difference except after Taxpayer became aware of the exact estimate assessment made after submitting several tax returns based on regular accounts, for which GAZT did not raise any objection within a reasonable period from submitting the same. It is worth noting that the rationale for imposing such delay fine is the tax difference between the estimate assessment made by GAZT and the tax paid based on Taxpayer returns submitted and made based on its regular accounts. Therefore, the Department concluded that the due date of the tax difference concluded as a result of the estimate assessment is the same date of such estimate assessment, which was not known by Taxpayer at the date of submitting its tax returns related to tax rate or tax base, in accordance with provisions of Article (68/1/B) of Implementing Regulations of Income Tax Law, which gave GAZT the right to impose a delay fine in case of late payment of tax due subject to its assessment. Such conclusion by the Department was consistent with the relevant legal and regulatory rules, such as that regulatory rule stipulating that: "Taxpayer shall not be obligated to do anything that is impossible, beyond its capacity, or not known to it in a way that compels it to comply therewith." Based on the above, GAZT had no right to impose a delay fine for late payment of the tax difference due in accordance with the tax assessment as of the legally prescribed date for submitting tax returns for the disputed years, but rather GAZT had the right to impose such fine as of the date of notifying Taxpayer of its estimate assessment. This does not contradict the Grounds relied upon by GAZT and included in its Reply submitted in accordance with Article (77/A) of Income Tax Law, since such Article indicates that the delay fine shall be calculated as of the tax due date, and nothing in this Article indicates that the delay fine shall be imposed as of the date of submitting the tax return, and the due date cannot be determined without considering provisions of Article (68/1/B) of the Implementing Regulations as mentioned earlier. Furthermore, the Board of Grievances sentence mentioned by GAZT to support its situation in not responding to Appellant requests does not affect the conclusion reached in this decision, considering that the allegations made by GAZT have nothing to do with the subject matter of the appeal but rather resulted in postponing consideration of appeal subject matter, considering that the case was filed Plaintiff against the primary decision prematurely before the Board of Grievances, which was concerned at that time to consider appeals filed against decisions issued by the Appeal Committee for Tax Violations and Disputes.

Decision

First: Accept the appeal filed by Taxpayer/..... Institution, C.R No. (.....), owned by ..., resident ID No. (...), national, in form.

Second: On Merits:

- (Item (1): The 15% estimate tax): Reject Taxpayer appeal with regard to the estimate assessment and uphold the appealed decision in accordance with Grounds and merits mentioned herein.



- (Item (2): Fine imposed as a result of late submission of 2009 tax return): Accept Taxpayer appeal and overturn the appealed decision with regard to this item by cancelling the related fine, in accordance with Grounds and merits mentioned herein.
- (Item (3): Concealment fine): Accept Taxpayer appeal and overturn the appealed decision with regard to this item by cancelling the related fine, in accordance with Grounds and merits mentioned herein.
- (Item (4): Delay fine): Reject Taxpayer appeal against the appealed decision and amend calculation of delay fine so that it shall be estimated as of the date of notifying Taxpayer of the estimate assessment till the payment date, 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-2021-45)
Delivered in Appeal No. (I-1751-2018)

Principle No. 66

It is established that the basis for determining whether to allow deduction for losses or expenses shall be Taxpayer accounting system and the supporting information contained therein.

Facts:

On Sunday 06/09/1442 AH, corresponding to 18/04/2021 AD, First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Decree No. (65474) dated 23/12/1439 AH, convened in its headquarters in Riyadh to consider the appeal filed on 24/03/1436 AH, by/ Company, against the Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (3) for the year 1436 AH, issued with regard to Objection No. (35/22) to the tax assessment for the Period (2007-2011 AD), filed by Appellant against GAZT, in which the primary decision 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:

- Settlement of the dispute concerning Taxpayer objection with regard to Item (payments for technical service fees for the year 2011) based on the merits mentioned in the decision.
- Reject Taxpayer objection with regard to Item (exempted income not excluded for tax purposes the year 2011 AD) based on the merits mentioned in the decision.
- Reject Taxpayer objection with regard to Item (deduct investments for the period 2008 -2011 AD) based on the merits mentioned in the decision.
- Reject Taxpayer objection with regard to Item (actual incurred losses) based on the merits mentioned in the decision.

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

With regard to Item (long-term investments for the period 2008-2011 AD), Taxpayer filed its objection to challenge the Primary Committee decision rejecting its objection to Item (long-term investments for the period 2008-2011 AD) with the amount of (SAR 750,199,587). Taxpayer confirmed its right to deduct such investments from zakat base, as such investments include long-term investments in various securities and investment funds, long-term investments in Islamic deposits, and acquisition investments held until the maturity date, noting that the funds of such investments were derived from capital and reserves. Taxpayer also mentioned that the Company management made such investment with the objective of holding the same for a long term, not for commercial purposes, and also the revenues generated therefrom were recognized the income



statement. Taxpayer confirmed that such investments shall be deducted in accordance with Ministerial Resolution No. (1/2/8443/2) dated 08/08/1392 AH, and claimed that such Resolution indicated some conditions that apply to Taxpayer, including the following: the investments shall be financed from capital and reserves, shall be long-term investments, shall be intended to be held for a long term, shall not be acquired for the purposes of trading or resale, and the revenue generated therefrom shall subject to zakat, noting that all such conditions apply to investments covered by this Item. Moreover, Taxpayer filed its objection in accordance with Fatwa No. (22665) dated 15/04/1424 AH, which stipulates that there should be a distinction between dealers who speculate in stocks through purchase and sale and shareholders who acquire stocks for the purpose generating profits therefrom, noting that zakat shall be imposed only on the first case. Taxpayer believed that it is covered by the second case. Taxpayer also concluded its objection by requesting the Department to accept its appeal on this Item and overturn the primary decision taken in this regard.

With regard to Item (excluding actual incurred losses for the year 2008 AD with 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).

As for Item (exempted income not excluded for tax purposes for the year 2011 AD with the amount of SAR 559,897), Taxpayer filed its appeal to challenge the Primary Committee decision rejecting its objection to excluding exempted income for tax purposes for the year 2011 AD with the amount of (SAR 559,897). Taxpayer confirmed its right to deduct such amount from tax base based on the fact that the Company realized net profits as a result of selling shares in public joint-stock companies, and these securities were purchased and sold through Tadawul. Moreover, Taxpayer mentioned that in accordance with Article (7) of Implementing Regulations of Income Tax Law, profits realized through disposal of securities shall be exempted from tax if the sale transaction is carried out in accordance with Capital Market Law applicable in KSA and the sold shares are purchased after the effective date of the relevant tax law. Finally, Taxpayer concluded its objection related to this Item by requesting the Department to overturn the primary decision taken in this regard and exclude the exempted income for tax purposes for the year 2011 AD.

The Department decided to open pleadings. On 25/02/1442 AH corresponding to 15/11/2020 AD, the Department asked Taxpayer 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. The period specified by the Department passed without providing any new submissions other than those provided earlier in the appeal brief. On the other hand, GAZT submitted a Reply on 10/07/1442 AH, corresponding to 21/02/2021 AD, which included its responses to the allegations mentioned in Appellant brief with regard to the appealed item. With regard to Item (long-term investments for the period 2008-2011 AD), GAZT became clear that, after reviewing the financial statements of Taxpayer, these investments are related to securities, funds, bonds, and deposits, and that a sale movement on such stocks was proved, which indicates that they were held for the purpose of trading, buying and selling, not acquisition. Therefore, such stocks shall not be deducted from zakat base in accordance with Ministerial Letter No. (8676/4) dated 24/12/1410 AH and Ministerial Resolution No. (1005) dated 28/04/1428 AH, because they do not represent a direct investment in companies for the purpose of acquisition, and also the acquisition term is not the only criterion for determining whether the asset is held for acquisition. With regard to Item (excluding actual incurred losses for



the year 2008 AD), GAZT replied that it did not agree to exclude such losses requested by Taxpayer because the documents submitted by Taxpayer are invalid and insufficient for exclusion of such losses. As for Item (exempted income not excluded for tax purposes for the year 2011 AD), GAZT responded that its action is valid and was taken in accordance with relevant applicable laws, as Taxpayer failed to provide any documents supporting its request.

In 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 papers and 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 appeal Brief submitted by Zakat Payer, the Department found that conditions for hearing the appeal are fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law.

On merit: with regard to Item (long-term investments for the period 2008-2011 AD), after reviewing Case file and all papers included therein side by side with the appeal brief submitted by Taxpayer, it turned out that Taxpayer filed its appeal to call for deduction of long-term investments with the value of (SAR 750,199,587) from zakat base. Taxpayer mentioned that such investments included in investments in shares in Saudi companies, investments in 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 bonds 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, GAZT 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 bonds in Company, which were rejected subject to Ministerial Resolution No. (1005). As for the investments in shares and stocks of various Saudi companies, it was proved that a sale movement was performed on the same, which indicates that they were not held for acquisition and are not covered by an acquisition offer. Upon considering the disputed investment items and based on the financial statements of Company provided by Taxpayer, the Department decided to accept Taxpayer appeal calling for deduction of such investments from zakat base in order to calculate zakat based on the same in light of the financial statements, since it is established that the financial statement of Taxpayer shall be adopted unless valid evidence proves invalidity of the same. In respect of investment in Fund, and Fund in Kuwait, since these funds are not subject to zakat in KSA, and given that Taxpayer failed to provide any documents proving that they are subject to zakat in the country of investment or the financial statements of such funds that could be relied upon for calculating zakat, the Department decided that Taxpayer has no right to deduct the same from zakat base. As for investment in bonds of Company and investment in Islamic deposits outside KSA, since these investments are classified as debt instruments and are covered by zakat provisions applied on debts, since it is established that such investments are subject to zakat based on relevant fatwas, the Department decided that Taxpayer has no right to deduct the same from zakat base. With regard to Taxpayer investments in Saudi companies, since the Primary Committee decision was taken based on the fact that a movement of sale and trading was performed on such investments, the Department decided by majority that Taxpayer has no right to deduct these investments from zakat base.

With regard to Item (excluding actual incurred losses for the year 2008 AD with the amount of SAR 8,790,712), it was evidenced that Taxpayer filed its appeal to call for deduction of the value of aforementioned losses from zakat base, as such losses are incurred as a result of sale of shares in 2008. Taxpayer also challenged the primary decision taken in this regard. While GAZT believed that Taxpayer failed to provide sufficient documents required to exclude such losses. Upon considering the dispute subject matter, the Department found that Taxpayer used to submit tax



returns based on its audited financial statements that indicate such losses. It is worth noting that the sentence rejecting such losses can only be reached through tracking each purchase transaction related to a security and the subsequent sale thereof, which was not performed by GAZT. Also, it is established that Taxpayer accounting system shall be relied upon when determining deduction of such losses, so it is impossible to provide a single and specified document that proves the same as mentioned. Consequently, the Department decided to accept Taxpayer appeal and overturn the primary decision reached in this regard. This does not contradict what is mentioned in the primary decision with regard to not relying on documents submitted by Taxpayer, since Taxpayer action with regard to this item cannot be rejected except based on a field inspection covering all aspects of the sale and purchase operations related to each security.

As for Item (exempted income not excluded for tax purposes for the year 2011 AD with the amount of SAR 559,897), it is quite clear that Taxpayer filed its appeal to call for excluding profits realized from sale of securities in 2011 AD with the amount of (SAR 559,897) because such profits are not subject to income tax in accordance with provisions of Article (7) of Implementing Regulations of Income Tax Law, which provides that “Capital gains realized from disposal of traded securities shall be exempted according to the following conditions: (1) If the sale transaction is performed in accordance with the Stock Market Law in the Kingdom; (2) If the 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 Taxpayer failed to provide any documents supporting its point of view with relation to excluding this income.

Upon considering the dispute subject matter, the Department found that Taxpayer used to submit tax returns based on its audited financial statements that indicate such profits. It is worth noting that GAZT Grounds for rejecting deduction such profits from tax base in accordance with law are based only on Taxpayer failure to provide any documents supporting these profits, and since deduction such profits can only be determined through tracking each purchase transaction related to a security and the subsequent sale thereof, which was not performed by GAZT. Also, it is established that Taxpayer accounting system shall be relied upon when determining deduction of such profits from tax base, so it is impossible to provide a single and specified document that proves the same as mentioned. Consequently, the Department decided to accept Taxpayer appeal and overturn the primary decision reached in this regard. This does not contradict the primary decision with regard to not relying on documents submitted by Taxpayer, since Taxpayer action with regard to this item cannot be rejected except based on a field inspection covering all aspects of the sale and purchase operations related to each security.

Decision

First: Accept the appeal filed by Taxpayer/ ... Company, CR. No. (...), 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):
 - A. Unanimously accept Taxpayer appeal with regard to Item (deducting investment in ... Company) based on financial statements, and reverse the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
 - B. Reject Taxpayer Appeal with regard to investment in (... Fund in Kuwait) and uphold the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
 - C. Unanimously reject Taxpayer appeal with regard to investment in (bonds of Company and investment in outside KSA) and uphold the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
 - D. Unanimously reject Taxpayer appeal with regard to Item (investments in Saudi companies) and uphold the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.



2. Unanimously accept Taxpayer appeal with regard to Item (excluding actual incurred losses for the year 2008 AD with the amount of SAR 8,790,712) and overturn the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
3. Unanimously accept Taxpayer appeal with regard to Item (exempted income not excluded for tax purposes the year 2011 AD) and overturn the primary decision concluded 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-2021-76)
Issued in Appeal No. (IW-1696-2018)

Principle No. 67

Costs associated with Taxpayer activity and incurred for the purpose of realizing its target revenues are typically classified as operating costs for accounting purposes, regardless of whether revenues are actually realized or not. Also, applicable law does not explicitly define operating losses, nor does it define a minimum revenue threshold for expenses exceeding revenue to be classified as operating losses.

Facts:

On Sunday 22/09/1442 AH, corresponding to 04/05/2021 AD, First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Decree No. (65474) dated 23/12/1439 AH, convened in its headquarters in Riyadh to consider the appeal filed on 06/06/1438 AH, by/ Company, against the Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (7) for the year 1438 AH, issued with regard to the tax assessment case for the Period (2005-2009 AD), filed by Appellant against GAZT, in which the primary decision ruled as follows:

First: In Form:

Accept objection filed by Taxpayer/..... Company to the tax assessment for the period (2005-2009 AD) in form, based on the merits mentioned in the decision.

Second: On Merits:

1. Reject Taxpayer objection to Item (preventing deduction of losses confirmed by GAZT for the period 2004-2007 AD against the taxable income for the year 2009 AD), based on the merits mentioned in the decision.
2. Reject Taxpayer objection to Item (non-deduction of paid withholding tax imposed on insurance paid outside KSA from income tax for the year 2009 AD) based on the merits mentioned in the decision.
3. Reject Taxpayer objection to Item (withholding tax imposed on profits transferred to head office for the year 2009), based on the merits mentioned in the decision.
4. Reject Taxpayer objection with regard to Item (delay fines), based on the merits mentioned in the decision.

Since this decision was not accepted by Plaintiff (... Company), Taxpayer submitted an appeal brief that included the following, in summary:

With regard to Item (preventing deduction of losses confirmed by GAZT for the period 2004-2007 AD against the taxable income for subsequent years), Taxpayer filed its appeal to challenge the Primary Department decision that conforms to GAZT approach in considering this item. Taxpayer confirmed that the carried forward taxable losses related to the period (2004-2007 AD) with the amount of (SAR 7,590,469) are confirmed losses based on GAZT assessment for these years. Additionally, Taxpayer disagreed with GAZT approach in classifying such losses as



nonoperating losses, which was then adopted by the Primary Committee issuing the appealed decision, but rather Taxpayer confirmed that such losses are classified as operating losses, given that they were incurred as administrative costs necessary for carrying out Company business and grasping business opportunities (i.e., costs incurred for entering tenders and obtaining contracts). Taxpayer also mentioned that such administrative costs incurred throughout the referred years represent operating costs paid by Taxpayer for performing business and are allowed to be deducted in accordance with Article (12) of Income Tax Law, as well as Article (9.1) of Implementing Regulations of Income Tax Law. Based on Taxpayer appeal brief, such costs are supported by the required documents. With relation to the Grounds adopted by the Primary Committee issuing the appealed decision in which it confirmed that losses incurred for the period (2004-2007 AD) are not operating losses due to the lack of revenues for these years, Taxpayer responded that this is invalid because costs may only be deducted for tax purposes if the related services are incurred "entirely" for business purposes. As for administrative costs, the Company is allowed to deduct the same without the need for realizing any revenues during relevant years, and approved costs cannot be ignored simply because revenues have not been achieved. Based on the above, given that such losses are actually incurred and classified as operating losses, Taxpayer confirmed at the end of its objection that such carried forward losses for the period (2004-2007) shall be deducted against the confirmed taxable profits for the subsequent years in accordance with Article (21/A) of Income Tax Law, which states that: "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 Article (11) of Implementing Regulations of Income Tax Law, which states that: "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 the taxpayer's return." The argument here is that provisions of Income Tax Law cover this matter when it comes to profits recognized in tax returns, but do not include any explanations with regard to taxable losses recognized in tax returns that are then transformed into taxable profits recognized in tax returns after making tax assessments by GAZT. Taxpayer also believed that laws and regulations are not intended for distinguishing between taxpayers only based on disclosing losses or profits.

With regard to Item (non-deduction of paid withholding tax imposed on insurance paid outside KSA from income tax for the year 2009 AD), Taxpayer filed its appeal to challenge the Primary Committee decision, which confirmed the validity of GAZT action rejecting Taxpayer request to deduct the paid withholding tax imposed on insurance paid outside KSA from income tax for the year 2009 AD. Additionally, Taxpayer confirmed that it has the right to deduct withholding tax with the amount of (SAR 32,400) from 2009 income tax base, considering that such withholding tax was imposed on social insurance expenses paid outside KSA to Company head office, in accordance with provisions of Article (68.G) of Income Tax Law, given the fact that GAZT considered the amount paid to the head office as revenues related to the branch (Appellant) and did not allow deduction of the same as expenses, thus GAZT shall deduct withholding tax to avoid double taxation on the same amount.

With respect to rejecting Taxpayer objection to Item (withholding tax imposed on profits transferred to the head office for the year 2009 AD), Taxpayer filed its appeal to challenge the Primary Committee decision, which confirmed the validity of GAZT action of imposing withholding tax on profits transferred to the head office for the year 2009 AD. Moreover, Taxpayer confirmed invalidity of tax imposition, given that these profits are actually used to setoff Company accumulated losses for the previous years and shall not be classified as actual profits transferred to



the head office. In light of the foregoing, Taxpayer requested that no withholding tax be imposed on such profits.

With regard to Item (delay fines), Taxpayer filed its appeal to challenge the Primary Committee decision, which confirmed the validity of GAZT action of imposing a delay fine on tax differences not paid within the prescribed period with relation to withholding tax and income tax. Furthermore, Taxpayer confirmed invalidity of the imposed fine, considering that tax differences on which the fine was imposed are still under a technical dispute between Taxpayer and GAZT. Taxpayer also mentioned that it acted in a good faith when submitting the tax return within the prescribed deadlines and paying due taxes as well, so no delay fine shall be imposed based on the tax obligation calculated by GAZT in its amended assessment due to errors and differences between Taxpayer and GAZT perspectives, in accordance with provisions of Article (77.A) of Income Tax Law, which confirms that the delay fine shall be imposed as of the date of considering tax assessment as final, and in this case, tax differences have not been final yet due to existence of a serious dispute in this regard.

The Department decided to open the pleadings. GAZT submitted a Reply dated 10/04/1442 AH, corresponding to 25/11/2020 AD, which included GAZT responses to Appellant statements included in its appeal brief with regard to appealed items. With regard to Item (preventing deduction of taxable losses against the taxable income for subsequent years), GAZT responded that based on tax assessment, objection file, and financial statements, it was evident that there were no revenues for the period (2004-2007 AD), and it was also clear that incurred losses demanded to be deducted by Taxpayer are non-operating losses, so such losses were not deducted in accordance with Article (21) of Income Tax Law and Article (11) of Implementing Regulations of Income Tax Law. Therefore, GAZT confirmed the validity and integrity of its action. As for Item (non-deduction of paid withholding tax imposed on insurance paid outside KSA from income tax for the year 2009 AD), GAZT replied that withholding tax was imposed on insurance paid outside KSA in accordance with provisions of Article (63) of Implementing Regulations of Income Tax Law. With relation to Taxpayer request to deduct paid withholding tax imposed on insurance paid outside KSA, GAZT clarified that provisions of Article (68.G) of Income Tax Law, which was mentioned by Taxpayer, do not apply to Taxpayer case, given that the paid withholding tax was not deducted from Taxpayer account but from insurance companies outside KSA, and the aforementioned Article requires deduction of withholding tax deducted from Taxpayer with relation to amounts included in Taxpayer revenues and subject to income tax, not unapproved expenses. With respect to rejecting Taxpayer objection to Item (withholding tax imposed on profits transferred to the head office for the year 2009 AD), GAZT responded that withholding tax was imposed on profits in accordance with provisions of Article (68) of Income Tax Law. GAZT clarified that withholding tax was imposed because it was evident, based on financial statements, that the profits were closed in the head office account, which constituted a payment event that requires imposing a withholding tax in accordance with Article (63.1) of Implementing Regulations of Income Tax Law. With regard to Item (Delay fine), GAZT responded that the delay fine was imposed on tax differences not paid on time with relation to withholding tax and income tax in accordance with Article (77) of Income Tax Law.

On 19/03/1442 AH corresponding to 04/11/2020 AD, the Department asked Taxpayer 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. The period specified by the Department passed without providing any new submissions other than those provided earlier in the appeal brief.

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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On merits: with regard to Item (preventing deduction of losses confirmed by GAZT for the period 2004-2007 AD against the taxable income for subsequent years), Taxpayer filed its appeal to request deduction of losses carried forward for the period (2004-2007 AD) against confirmed taxable profits for subsequent years because such expenses may only be deducted for tax purposes if the related services are incurred "entirely" for business purposes, so they are operating expenses that have been paid. On the other hand, GAZT believed that losses demanded to be deducted by Taxpayer are non-operating losses, so they were not deducted in accordance with Article (21) of Income Tax Law and Article (11) of Implementing Regulations of Income Tax Law. The Department considered all submissions provided by both litigants of the appeal. The Department was satisfied that the Primary Committee established its decision considering the disputed losses as operating losses in the absence of Taxpayer revenues. However, it is established that costs related to Taxpayer activity and incurred to realize revenues are considered operating costs from an accounting perspective, whether such revenues are realized or not, and since the applicable law does not explicitly define operating losses, nor does it define a minimum revenue threshold for expenses exceeding revenue to be classified as operating losses, Taxpayer has the right to deduct such losses from profits of subsequent years. Accordingly, the Department decided to accept Taxpayer appeal and overturn the primary decision taken with relation to this item.

With regard to Item (non-deduction of paid withholding tax imposed on insurance paid outside KSA from income tax for the year 2009 AD), Taxpayer filed its appeal to request deduction of withholding tax with the amount of (SAR 32,400) imposed on social insurance paid by the head office outside KSA from the income tax base, given that non-deduction of the aforementioned amount leads to double taxation of the same income in accordance with Article (68.G) of Income Tax Law. On the other hand, GAZT believed that withholding tax was imposed on insurance paid outside KSA in accordance with provisions of Article (63) Implementing Regulations of Income Tax Law. GAZT also mentioned that provisions of Article (68) of Income Tax Law that Taxpayer referred to do not apply to Taxpayer case given that such withholding tax is not deducted from Taxpayer account, but rather is deducted from insurance companies outside KSA. Upon considering the appeal subject matter, the Department was satisfied that the paid insurance does not represent an income for the head office, but rather for independent parties/insurance funds to which those amounts in dispute were paid. Additionally, the Department did not observe any Grounds for making correction or further commentary based on the information presented. Accordingly, the Department was satisfied to decide that all presented submissions have no effect on the conclusion reached in the primary decision. Therefore, the Department decided to reject Taxpayer appeal and uphold the primary decision taken in this regard.

With respect to rejecting Taxpayer objection to Item (withholding tax imposed on profits transferred to the head office for the year 2009), Taxpayer filed its appeal to request not to impose a withholding tax on the profits transferred to the head office in 2009, since such profits were used to offset the accumulated losses of previous years. While GAZT believed that closing profits in the head office account is considered a payment event that requires imposing a withholding tax, and also it was evidenced that such profits were recognized in the head office account, and the same shall be considered a payment. Upon considering submissions of both litigants, the Department found that Taxpayer used to submit its tax returns based on regular accounts, and GAZT failed to prove that those profits were paid to the head office based on Article (68) of the Income Tax Law, which stipulates that a payment event shall occur in order for a withholding tax to be imposed. This does not contradict the primary decision, which indicates that recognition of profits in the head office account is considered payment of such profits, although such recognition of profits does not represent a payment either de facto or de jure, but rather an accounting action



similar to recognizing annual profits in retained earnings included in equity. Therefore, the Department decided to accept Taxpayer appeal and overturn the primary decision reached in this regard.

With regard to Item (delay fine), Taxpayer filed its appeal to request not to impose delay fines on income tax and additional withholding tax. Taxpayer also called for calculation of such delay fines as of the final decision issuance. While GAZT confirmed the validity of its action in accordance with Article (77) of Income Tax Law. Since the Department accepted Taxpayer appeal with regard to Item (preventing deduction of losses confirmed by GAZT for the period 2004-2007 AD against the taxable income for the year 2009) and Item (withholding tax imposed on profits transferred to the head office for the year 2009 AD), the Department was satisfied that fines imposed with relation to these items shall be cancelled due to invalidity of its Grounds, and overturn the primary decision taken in this regard. With regard to Item (non-deduction of paid withholding tax imposed on insurance paid outside KSA from income tax for the year 2009 AD), in which the Department decided to reject Taxpayer appeal, since the dispute related to this item is not technical and not related to interpretation of the relevant tax laws, and since the Department was satisfied that the delay fine shall be imposed as of the date Taxpayer knew, or should have known, about the imposed tax, which means that Taxpayer is assumed to have been aware of the tax from the date it was due according to applicable law. Therefore, the Department decided to reject Taxpayer appeal with regard to the delay fine related to this item and uphold the primary decision reached in this regard.

Decision

First: Accept appeal filed by Taxpayer/..... Company, C.R. No. (...), against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (7) for 1438 AH, in form.

Second: On Merits:

1. Accept Taxpayer appeal with regard to Item (preventing deduction of losses confirmed by GAZT for the period 2004-2007 AD against the taxable income for subsequent years) and overturn the primary decision reached in this regard, in accordance with Grounds and merits mentioned herein.
2. Reject Taxpayer appeal with regard to Item (non-deduction of paid withholding tax imposed on insurance paid outside KSA from income tax for the year 2009 AD) and uphold the primary decision reached in this regard, in accordance with Grounds and merits mentioned herein.
3. Accept Taxpayer appeal with regard to Item (rejecting Taxpayer objection to Item “withholding tax imposed on profits transferred to head office for the year 2009”) and overturn the primary decision reached in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Taxpayer appeal with regard to (delay fine), in the items for which Taxpayer appeal was accepted, overturn the primary decision reached in this regard, and confirm the validity of imposing the delay fine with regard to items for which Taxpayer appeal was not accepted, 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-2020-125)
Issued in Appeal No. (Z-1712-
2018)

Principle No. 68

It is customary for institutions to provide allowances for transportation or using personal cars for employees, and such allowances may be given to employees directly or calculated as part of their salaries.

Principle No. 69

Accepting an expense as a deductible expense by a Taxpayer is not contingent upon existence of a corresponding tangible asset, such as computers, vehicles, etc.

Facts:

On Saturday 13/04/1442 AH corresponding to 28/11/2020 AD, 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 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 its headquarters Riyadh to consider the appeal filed on 15/04/1437 AH, by..... Company, against Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (5) of the year 1437 AH delivered in Objection No. (59) and Objection No. (266) filed by Appellant against GAZT, in which the primary decision ruled as follows:

First: Accept the objection in form filed by Zakat Payer / Company, on zakat tax assessment conducted by ZATCA of 2001-2008.

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 base for the years 2001-2006, according to Grounds of the decision.
9. Uphold ZATCA in considering import difference as imports that Zakat Payer did not disclose in his declaration, and then holding Zakat Payer accountable on estimated basis for this difference for all years, according to Grounds of the decision.
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 this decision was not accepted by (.... Company) in some of its items, therefore, it filed a statement of appeal that 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 Salary (nicknamed ...)): The committee upheld ZATCA in its refusal to accept salaries into the 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 Factory Company. 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 issuing the decision upheld ZATCA in subjecting zakat due of 2002, 2006 and 2007, to zakat base. The Company objects to this procedure, as zakat money is not subject to zakat even if a year has passed thereon. Therefore, adding it to zakat base is considered a violation of Sharia. Profit of the year was subjected to zakat and tax before deducting it, and therefore adding zakat to the base again is a 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 to transfer these machines to the Company, including all details of the machines. Thus, there is no legal justification to uphold ZATCA in excluding these machines, especially since they are the only machines used in production and there cannot be a factory without machines. ZATCA has added the corresponding funding for these machines, represented in the rights of shareholders, to zakat base, which necessitates deducting the same from the base according to the system applied by ZATCA, which stipulates deducting acquisition assets from zakat base, as they are not subject to zakat according to Shariah.
9. (The Item of Establishment Expenses Amounting to SAR (1,473,637): The committee issuing the decision upheld ZATCA in not approving some of establishment expenses, which are represented in salaries of some workers in the period preceding the beginning of the activity. The objected assessment states that these expenses are duplicated with general and administrative expenses. The Company objects to this procedure because ZATCA's conclusion is incorrect. Establishment expenses are intangible assets that are deducted from zakat base according to the system applied by ZATCA in this regard.

The response of ZATCA to statement of appeal submitted by Zakat Payer pursuant to reply dated 02/08/1439 AH, which included ZATCA's point of view on items of the appeal as follows:

1. (The Item of Depreciation Differences for All Years): ZATCA confirms that these differences are due to the non-approval of equipment and establishment expenses, as no equipment or machinery has been proved in the first place, and that the reason for non-reliance on these assets will be stated when addressing the eighth and ninth items of the memorandum submitted by it.
2. (The Item of Car Expenses for the years 2001-2004): ZATCA confirms that this provision is not approved because there are no cars in the Company's assets, as indicated in Item (1), and what will be indicated in this Note concerning Items (8) and (9) thereof.
3. (The Item of Computer Expenses of 2001): ZATCA did not approve this item due to the absence of computers among the fixed assets.
4. (The Item of Salary, nicknamed (...) for the Period 2001-2006): ZATCA emphasizes that the employee is not on Company sponsorship and the name stated in the payroll is not ...,



since what is included in the payroll is the name of the employee not his title. Furthermore, the name of employee reported by the Company is not included in passport printout attached to the file, nor in the submitted residence in its copy no. (3), which ends on 30/12/1434 AH, meaning that the copy no. (1) which represents the first issue of residence was in 1431 AH, corresponding to 2010, and the employee has no relationship with the Company during the previous years from 2001 to 2008 AD.

5. (The Item of Imports Differences for All Years): ZATCA confirms that the declarations explain the value of internal purchases and the value of external purchases, and are signed and certified by the Company's auditor. This means that these declarations have been reviewed and audited before certification. Therefore, ZATCA's procedure is correct in holding Zakat Payer accountable for import differences resulting from review and comparison.
6. (The Item of Accounts Payable for the years 2005 to 2008): ZATCA confirms that the amounts of this item are fixed and there is no movement thereon according to analysis provided by the Company, as indicated in 2005 and 2006, noting that amounts included in the assessment are SAR (950) and SAR (250), not SAR (484), SAR (836), and SAR (220), as included in the objection. The amounts were added in accordance with Fatwa (22656) of 1424 AH.
7. (The Item of Zakat Provision for the years 2002, 2006, 2007): ZATCA affirms that these amounts withheld by the Company for the benefit of ZATCA have not been paid and a year has passed thereon, so they must be added to the base in accordance with ZATCA's Circular No. (8843) of 1392 AH, as stipulated in Clause (1), paragraph (4) of that circular.
8. (The Item of Fixed Assets for All Years): ZATCA confirms that, in accordance with the articles of association, the in-kind share provided by the institution did not appear to contain machinery, in addition to the fact that the invoice provided by the Company did not contain modified equipment.
9. (The Item of Establishment Expenses for All Years): ZATCA confirms that the non-approval of salaries included in the establishment expenses item was due to the fact that, according to documents provided by the Company, there is a duplication in charging, as these salaries are included in the general expenses payroll of 2001, which shows the existence of this duplication, in addition to labor that is not sponsored by the Company, and the Company provided two different analyzes of the same item.

ZATCA concluded its memorandum requesting that it uphold its procedure with respect to the items on appeal and their response to statement of appeal.

After the Department decided to open up court proceedings, it asked both parties for any additions they might have regarding what was submitted on the statement of appeal filed by Zakat Payer, and what was included in the reply submitted by ZATCA in response to the statement of appeal. Since the Department did not receive any addition from Zakat Payer after it was proven that he had been contacted via email on 09/11/1441 AH, and ZATCA's response to the Department included a reply on the statement of appeal submitted by Zakat Payer.

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 on its merits.

Grounds

Having reviewed case documents and statement of appeal submitted by Taxpayer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with capacity and within the period prescribed by law.

On merits, having perused the case file, and papers included therein, as well as the statement of appeal. The Department, when examining subject of the appeal and the items it included, and arrangement and classification of the contested items in the primary decision, concluded that the



proper sequence of zakat treatment associated with the fixed assets item, establishment expenses and depreciation differences are linked to each other. Therefore, adjudication on the dispute between Zakat Payer and ZATCA requires taking into account the completeness and arrangement of zakat treatment for it in order to arrive at what may be calculated within Zakat Payer's zakat base, and what may be deducted from it.

With regard to the Fixed Assets Item, it is evident that the appeal lies in the Appellant Company's request to deduct the full amount of fixed assets shown in the financial statements, as these machines were acquired in 2001 and therefore there is no legal justification preventing deduction of these assets. Since ZATCA considers that, according to the articles of association, in-kind shares provided by the establishment do not contain machines. In addition, the invoice provided by the Company does not contain modified equipment. Since Zakat Payer demands that the net fixed assets be deducted according to financial statements submitted by him, and since the decision-making Committee based its decision on what it concluded from the articles of association, which indicated that the in-kind shares amount to SAR (8,275,000) and these shares are composed of (.....), in the amount of SAR (6,000,000), buildings valued at SAR (2,000,000), parking lots and building services valued at SAR (275,000), and the articles of association did not include other assets. Considering the first audited financial statements issued to the Appellant Company upon its establishment (in 2001) and all subsequent years in dispute, it turned out through Note No. 1 that the Company's capital was set at SAR (13,150,000) divided into in-kind shares in the amount of SAR (8,275,000), and cash shares in the amount of SAR (4,875,000). Note No. 5 "Fixed Assets" stated that there are equipment of the Company that were added during in the amount of SAR (4,716,000), as well as tools and equipment in the amount of SAR (5,289), furniture and decoration in the amount of SAR (3,644) during 2001. This is confirmed by what is stated in cash flow statement regarding existence of a cash flow for investment activities amounting to SAR (12,999,993), including in-kind shares and other assets. In addition, the Company's current assets (cash, inventory) amount to only SAR (429,357), which confirms disbursement of cash share provided to purchase fixed assets. Accordingly, it is not possible to rely solely on what is established regarding estimation of in-kind shares stated in the articles of association to verify the existence of fixed assets without considering the value of cash shares, as fixed assets subject to dispute were purchased based on the Company's use of its funds and spending to acquire those assets. Therefore, it is confirmed to the Department that the basis for calculating fixed assets is as stated in the Appellant's declaration, which is confirmed by evidence referred to in the details of this item. Thus, ZATCA's conclusion is not based on a valid factual basis. Accordingly, the Department concluded to accept Zakat Payer's appeal and overturn the primary decision on the item under consideration.

Regarding the Establishment Expenses Item, it was found that the appeal lies in the Appellant's request to approve the deduction of all establishment expenses from zakat base, represented by salaries of some workers in the period preceding start of the activity. In contrast, ZATCA considers that, according to documents provided by the Company, there is a double calculation, as these salaries are included in the general expenses salaries of 2001, in addition to workers who are not sponsored by the Company. Since it is evident from facts of the appealed decision and statement of appeal, that nature of the dispute lies in expenses rejected by ZATCA are labor salaries that the Appellant Company claims were paid in the period preceding establishment of the Company. According to articles of association, it is confirmed that the Appellant Company was a branch of Agricultural and Industrial Corporation and was converted into a company. Since such a matter does not require the presence of a preparatory activity by a number of employees before the actual activity of the enterprise is carried out, as the activity is ongoing and continuous. Since ZATCA deducted the expenses necessary for the establishment to become a company such as license fees, fees for extraction of articles of association and the commercial register, and since the Appellant did not submit documents supporting his claim that there was no duplication between expenses of workers' salaries added as administrative expenses and workers' salaries



included as establishment expenses. Therefore, the Department concluded to dismiss Zakat Payer's appeal and uphold the primary decision in this regard. However, with regard to salaries of the Company's employees which ZATCA objects to deducting, on the Grounds that such expenses were included among the administrative expenses, namely salaries included in salaries of general expenses of 2001, in addition to workers who are not sponsored by the Company. Relying on the condition of workers in terms of not accepting the inclusion of their salaries within the expenses of the disputed years, did not take into account tracking of those expenses and the extent to which they were realized in those years. Since the mere fact that these workers are not sponsored by the Company does not negate existence of the expense, regardless of whether there was a legal violation or not when employing workers who are not sponsored by the Company. Based on the foregoing, the Department concluded to amend the primary decision by deciding to deduct the expenses related to salaries of workers who are not sponsored by the Company of 2001 AD, and to dismiss Zakat Payer's appeal on the remaining amounts claimed to be part of the establishment expenses.

With regard to the item of Depreciation Differences amounting to SAR (2,734,652), having considered Zakat Payer's appeal on this item and ZATCA's response to his appeal as stated in the Appellant's statement, and reply submitted by ZATCA, it was found that the appeal lies in the Appellant's request not to add depreciation differences for all disputed years, as these depreciations concerned machines which ZATCA had excluded from fixed assets as if the plant did not exist. In contrast, ZATCA considers that these differences are the result of non-approval of equipment and establishment expenses where the existence of equipment and machines was not established in the first place, because, according to in-kind share provided by the establishment, there are no machines, equipment and tools, in addition to the fact that the invoice provided by the Company does not include equipment and ZATCA holds the validity of its procedure. Since the decision of this Department as previously presented was based on the acceptance of Zakat Payer's appeal regarding deduction of the Fixed Assets Item, dismissal of Zakat Payer's appeal regarding his request to deduct the establishment expenses as detailed in the discussion of that item. Since consideration of the fate of depreciation differences item is related to the Department's decision issued regarding the other two above-mentioned items. Since the Department concluded to establish that the company had assets, which necessitated to decide to deduct depreciation amounts relating thereto, without responding to Zakat Payer's request to deduct depreciation related to the establishment expenses item. Based on what this Department has ruled on the subject of establishment expenses in the manner previously stated, and since the matter was as stated, the Department concluded to amend the primary decision by deducting the depreciation related to the fixed assets item and reject the depreciation related to the establishment expenses item.

Regarding the item of Car Expenses in the amount of SAR (28,497) of 2001 to 2004, 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, it was 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 necessary for activity and supported by supporting documents, while ZATCA considers that such expenses should not be deducted, as there are no assets in the Company's budget by which the adoption of these expenses is achieved as claimed by the Appellant. Since the dispute between the parties was based on the existence of proof that such expenses were realized in order to consider whether they were deducted or not, and since subject of such expenses is not necessarily related to presence of cars with Zakat Payer. It is customary for establishments to pay their employees transportation and car use allowances in the form of allowances given to them or calculated as part of their wages, and since result of this was that the dispute between both parties was based on the existence of documents supporting realization 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 cars held by him, which led the Department to decide that ZATCA's acceptance of that expense was not based on a valid reason. Therefore, the Department concluded to accept Zakat Payer's appeal to deduct car expenses, as stated in his declaration, and to overturn the primary decision on that 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, it was 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 Salary Item, 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, 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 by majority regarding the item of salary, 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. (IR-2021-84)
Issued in Appeal No. (IW-2018-1748)

Principle No. 70

One of the established principles in litigation is that the judicial authority, after deciding that the case is ready for adjudication and judgment, must settle with a decision that decides on the original request submitted by Zakat Payer.

Facts:

On Thursday, 24/09/1442 AH corresponding to 06/05/2021 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 29/11/1437 AH by ... Company, Branch of the Kingdom of Saudi Arabia, on the decision of Second Primary Zakat and Tax Objection Committee in Riyadh No. 29 of 1437 AH delivered in objection No. (18/37) on tax assessment of 2001 to 2010, filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

First: In Form:

Accept objection in form filed by Zakat Payer/ ... Ltd Company, KSA branch, on tax assessment of 2001 to 2010 according to Grounds stated in the decision.

Second: On Merits:

1. Dismiss Zakat Payer's objection to Estimated Accounting Item for income tax and withholding tax according to Grounds stated in the decision.
2. Dismiss Zakat Payer's objection to the Late Fines Item according to Grounds stated in the decision.

Since this decision was not accepted by Zakat Payer (... Company, KSA branch), Zakat Payer submitted a statement of appeal contained the following:

With regard to the item (Exemption of the Ministry of ... Contract (for the years 2001 to 2003)), Zakat Payer objects to the Primary Committee's decision upholding ZATCA in holding Zakat Payer accountable for this contract. Zakat Payer confirms that the confidential contract concluded with (...), under which it worked as a subcontractor to execute the contract concluded with ..., is a tax-free contract, as it relates to program, within the framework of royal orders and memorandum of understanding concluded between the Government of the Kingdom of Saudi Arabia and the Government of the United Kingdom on the said project. Zakat Payer indicates that letters issued from the UK Ministry of Defence confirm that (...) is the main contractor of ... project, Therefore, Zakat Payer, as a subcontractor of the project, is not subject to corporate tax in KSA on profits derived from this contract. Furthermore, Zakat Payer confirms that subjecting the contract - subject of this item - to tax is not based on real reasons and justifications. Zakat Payer considers that his position in not providing ZATCA with a copy of the contract or any related information is in the right direction, because disclosure of contract data is contrary to terms of the confidential contract, which is part of program agreed upon between the Government



of the Kingdom of Saudi Arabia and the Government of the United Kingdom, and Zakat Payer did not depart in the remainder of his appeal from what was stated in his memoranda before the primary authority, which was surrounded by facts of the decision subject of appeal.

With regard to the item (Waste of Company Accounts and Estimated Accounting), Taxpayer objects to the Primary Committee's decision upholding ZATCA in wasting the Company's accounts and holding it accountable for taxation purposes from 2001 to 2010. Moreover, Taxpayer confirms that reasons stated by ZATCA and upheld by the Primary Committee for wasting Taxpayer's accounts and accounting on an estimated basis are contrary to reality and the fact confirmed by ZATCA under Circular No. (18/2) dated 06/02/1410 AH, which confirmed that the moral in zakat or tax matters is reality of the situation, while the legal and regulatory situation is merely a formal presumption that accepts proof of the opposite, and contradicts in form and on merits directives of ZATCA, regarding not to waste Taxpayer's accounts audited by chartered accountants licensed to work in KSA without there being substantive reasons based on the provisions of laws, regulations and ministerial decisions. Besides, Taxpayer believes that, to the extent that he maintains appropriate books and records in Arabic as required under the Income Tax Law, there is no justification for estimated assessments. Taxpayer also confirms that he prepared his tax returns of 2001-2004 based on regular accounts audited and certified by an internationally recognized chartered accountants. In accordance with provisions of the Tax Law, it is required to accept his tax returns for the mentioned years, and failure to declare in those returns results of confidential contract work related to project, because it is exempt from tax as explained in the first item, and Taxpayer does not pay tax thereon to be declared in its returns, and therefore there is no justification for not taking into account results of the Company's accounts and wasting them, especially since there are no acceptable justifications for rejecting the Company's accounts as stated in the field examination report with ZATCA. Furthermore, Taxpayer states that, with regard to his tax returns of 2005 to 2010, the basis on which ZATCA relied in determining revenues subject to tax using the estimated basis is derived from financial statements and tax returns submitted to ZATCA, and with the same amounts of revenues recorded in its accounts. Since the presumption relied upon by ZATCA is the same as those contained in tax returns and approved financial statements, Taxpayer considers that it is necessary to accept the expenses stated in the same financial statements and tax returns, especially since elements of expenses that are not tax-acceptable were added to the net book profits according to those tax returns certified by a certified chartered accountant. In addition, Taxpayer confirms that the provisions of Ministerial Decision No. (32/312) dated 27/01/1412 AH, as well as Articles Nos. (58.A) and (63.B) of the Income Tax Law and Articles Nos. (56), (57.3) and (16.3) of the Implementing Regulations of the Income Tax Law do not apply to his case, as there are no violations requiring application. Furthermore, Taxpayer concludes his objection by upholding his right to apply provisions of Article 65.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which provides that "The Department may, with a reasoned notification, make or amend a tax assessment within five years of the deadline specified for filing the tax declaration for the taxable year, or at any time, upon the written consent of the taxpayer". Article 59.8 of the Implementing Regulations provides that "Without prejudice to the provision of Article 65.B of the Law, return shall be considered acceptable by the Department if it is submitted five years from end of deadline for submitting the return without Taxpayer receiving a notice from the Department thereon". Taxpayer believes that since ZATCA issued the estimated tax assessment on Taxpayer for the mentioned years on 18/11/1436 AH corresponding to 02/09/2015 AD, Taxpayer upholds his right to accept tax returns submitted to ZATCA of 2005 to 2009 as more than five years have passed since the end of regular deadline for submitting the same, without prejudice to its right to accept results of its work as stated in its accounts and tax returns for all years subject to this appeal. With regard to the item (Estimated-Determined Withholding Tax), Zakat Payer objects to ZATCA's procedure of imposing the estimated withholding tax, and requests cancelation of withholding tax calculated by assessment on unreal profits pursuant to the estimated tax



assessment and associated late payment fines that ZATCA requested to be paid and to adopt approved tax returns. Moreover, Zakat Payer confirms that the withholding tax determined by ZATCA in assessment violates the provisions of Article 68 of the Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, and Article 63 of the Implementing Regulations of the said Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as the estimated amounts determined by ZATCA have not actually been transferred to the head office, and they exceed the net book profits indicated in the audited financial statements, and it is not supposed to determine bases of the withholding tax on unrealized profits that have not actually been paid or transferred. Furthermore, Zakat Payer states that the withholding tax, if applicable, is imposed on the actual distributed realized profits, in accordance with the provisions of Article 63.6 of the Implementing Regulations of the Income Tax Law, which interpreted the meaning of distributed profits and defines it as "any distribution from a resident company to a non-resident shareholder", and any profits transferred from a permanent establishment to related parties. Accordingly, imposing such tax on Zakat Payers subject to it requires calculating its base from the distributed profits after excluding the tax due under tax returns. Zakat Payer also affirms that the basis for determining tax bases is the regular accounts, as it is not permissible to resort to determining the same using the estimated method, except after exhausting all available means to verify validity of the accounts submitted and returns.

Regarding Zakat Payer's appeal on the item (Calculated Fines), Zakat Payer objects to decision of the Primary Committee, which concluded to dismiss his objection regarding the late fines. Zakat Payer confirms that, with regard to late fines calculated in the assessment of 2001 to 2004, reliance of the Primary Committee regarding these years on Article 15 of the Tax Law promulgated by Royal Decree No. 3321 dated 21/01/1370 AH in upholding ZATCA in imposing a late fine of (25%) on the estimated tax differences is an inappropriate reliance, since such a fine is imposed in case of a delay in submitting the tax return. Circular No. (3) of 1379 AH stipulated that late fines are due in the event of late payment of tax or late submission of tax returns. Besides, Zakat Payer considers to be not applicable to his situation, as he submitted his tax returns for mentioned years and paid the tax due accordingly within legal dates. The aforementioned circular states that if Zakat Payer performs the work required of him, namely withholding tax and paying on the specified date or submitting the statement and paying on time, there is no room for a late fine, and that whoever performs these duties on time is always presumed to be in good faith until evidence to the contrary. With regard to late fines calculated in assessment of 2005 to 2010, Zakat Payer considers that late payment fines are not due on him, since the amendments made by ZATCA to tax bases of the said years were not provided for in the Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH. Article 13 of the Law and Article 10 of the Implementing Regulations of the aforementioned Law specified the expenses that cannot be deducted and do not include the amendments made by ZATCA to net book profit. Therefore, late payment fines, if any, shall be payable on tax differences resulting from the legal amendments within the framework specified in Article 68, paragraph 1/b and paragraph 2 of the Implementing Regulations, which required calculation of late payment fines amounting to 1% of tax differences if the delay period in paying tax due under the assessment is completed for thirty days, which does not apply to the Company's case since the amendments made by ZATCA are not prescribed by the Tax Law and were made with estimated amounts assumed by ZATCA and were not provided for in the Law. Furthermore, Zakat Payer confirms that tax assessment for the mentioned years is still subject to objection and has not yet become final, as the fine of 1% is calculated if the delay period is completed by thirty days from final assessment date.

ZATCA submitted a reply dated 11/07/1439 AH, which included a response to what the Appellant's reply contained regarding items subject to appeal. Its response stated that, with regard to the formal part of appeal filed by Zakat Payer, ZATCA confirms that Zakat Payer did not pay or provide a bank guarantee for the amount of late fines due to him under decision of the Primary Committee. Accordingly, ZATCA requested that Zakat Payer's appeal be dismissed in form, in



accordance with Article 66.E of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stated that “Zakat Payer who wishes to appeal decision of the Primary Objection Committee must file an appeal within the specified period, and pay the said tax due, in accordance with the said decision, or submit an acceptable bank guarantee”, as well as Article 61.11 of the Implementing Regulations of the Income Tax Law, which states that "if Zakat Payer wishes to appeal against decision of the Primary Objection Committee, he must: A. Pay ZATCA's tax obligation under the primary decision, or provide a full-value bank guarantee valid for a period of not less than one year, automatically renewable and confiscable after the final decision has been issued at the request of ZATCA without the need for approval of another party, and in accordance with the formula approved by SAMA, as a condition for accepting his appeal in from.

b. File a justified statement of appeal with any additional documents, together with payment receipt or a copy of the bank guarantee to the Appeals Committee, to register the appeal in the Committee's record within the specified appeal deadline. ZATCA also confirms that Zakat Payer violated these provisions and provided a bank guarantee that is not acceptable to ZATCA to suspend the renewal after the first year.

On merits, ZATCA replied that Zakat Payer had stated in his statement of appeal that “ZATCA confirmed, according to the examination report, that it had received all the required documents except for information relating to the secret contract of (...) project. ZATCA responds that this is incorrect and that the examination team stated in the examination report that required documents had not been submitted and that invoices and documents had not been examined because the examination team could not obtain true statements matching the expenses. In addition, as for Zakat Payer's comparison of himself to the International Finance Corporation, ZATCA considers that this is incorrect, since Zakat Payer represents himself and not a representative of a State with other laws and regulations that do not apply to Zakat Payer”. Moreover, ZATCA responded to Zakat Payer's objection that “ZATCA contradicted itself in the estimated assessment issued in letter no. ..., dated 24/11/1436 AH for the years 2000 to 2010, as revenues contained in tax returns derived from the Company's accounts and financial statements containing results of its business are taken from taxable contracts, and expenses related to those revenues were neglected. In contrast, it took into account costs related to the tax-exempt secret contract and considered them as discovered expenses representing 80% to the total that ZATCA considered as estimated revenues, and this is a clear contradiction in the same assessment). ZATCA responds to what was mentioned that there is no contradiction, as ZATCA still believes that there are other revenues that Zakat Payer did not declare due to his refusal to provide ZATCA with actual audit balances and appearance of expenses higher than what was declared. Furthermore, ZATCA confirms that Zakat Payer's statement that he maintains his right to accept the tax returns submitted to ZATCA for fiscal years from 2005 to 2009, due to the passage of more than five years from the end of legal deadline for submitting the same, responds to that by stating that it has a letter issued by Zakat Payer dated 26/04/1433 AH corresponding to 19/03/2012 AD and another letter dated 05/04/1435 AH corresponding to 05/02/2014 AD assigning employees from Zakat Payer and from an office that was authorized by Zakat Payer, to authorize examination of Zakat Payer's accounts from 2001 to 2010 AD. Zakat Payer did not object to examination of its accounts nor did it refer to prescription term. With regard to the item (Withholding Tax), ZATCA responds that it is noted that Zakat Payer did not object to the withholding tax in full, but rather to withholding tax determined by estimated method, as there are withholding taxes for transferred profits that were mentioned in the tax assessment issued under No. (7919/16/1436) and dated 24/11/1436 AH. ZATCA is satisfied with responding to it according to its point of view presented before the Primary Committee, and also with regard to the item (fines), it refers in this regard to its point of view stated in the Primary Decision.

Moreover, the Department requested Zakat Payer, on 16/05/1442 AH, corresponding to 30/12/2020 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. Zakat Payer did not submit any addendum to his statement of appeal.

On Thursday, 27/07/1442 AH corresponding to 11/03/2021 AD, the First Appeals Chamber for Income Tax Interventions and Disputes met and decided to convene a 10-day electronic pleading session, during which no addendum was received from the two parties to the appeal.

In its session held on 17/08/1442 AH corresponding to 30/03/2021 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 on its merits.

Grounds



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

Regarding the appeal filed by Zakat Payer, having perused the appealed decision, and having considered and responded to the appeal submitted thereto, it turned out that Zakat Payer's objection lies in the request to differentiate between the years 2001-2004, which include accounting items related to the contract in which Zakat Payer's obligation to confidentiality was stated, and the years 2005-2010, in which there is no link to the contract subject of confidentiality and the request to deal with each year separately, and not to judge the sum of years as if it were a single unit. Furthermore, Zakat Payer requests that withholding tax not be imposed on profits to be distributed according to the estimated profit, and accordingly requests to cancel late fees resulting from imposing taxes in accordance with ZATCA's point of view.

It is one of the established principles in litigation that the judicial authority, after deciding that the case has become ready for adjudication and issuing a ruling on its subject matter, must settle the dispute with a decision that decides on the original request submitted by Zakat Payer. Since wording of the contested decision was devoid of statement of the position of the committee issuing decision subject of appeal regarding requests submitted by Zakat Payer and only confirms that Zakat Payer does not abide by controls governing keeping of books and accounts, and without indicating connection of this to origin of the dispute. Therefore, the Department concludes that the primary decision did not rule on requests submitted by Zakat Payer in his objection before the committee that issued the decision, which makes the dispute not settled in the manner stipulated in wording of that decision. Accordingly, the Primary Committee has not exhausted its mandate to rule on subject of the dispute. Therefore, the Department concluded to cancel the primary decision and to refer subject of the dispute to the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh, in order to consider Zakat Payer's objection to the requests it contained and to decide on Zakat Payer's objection in respect of late fines relating to the items objected by Zakat Payer.

Decision

First: Accept the appeal in form filed by Zakat Payer/.... Company, branch of the Kingdom of Saudi Arabia against the Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (29) for 1437 AH.

Second: On Merits:

1. Cancel the primary decision on the item (Exemption of Contract (for the years from 2001 to 2003)) and refer subject of the dispute to the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh, according to reasons and Grounds set forth herein.
2. Cancel the primary decision on the item (Loss of Company Accounts and Accounting on an Estimated Basis), and refer subject of the dispute to the Second Department for the



Determination of Income Tax Violations and Disputes in Riyadh, according to reasons and Grounds set forth herein.

3. Cancel the primary decision on the item (Estimated Withholding Tax), and refer subject of the dispute to the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh, according to reasons and Grounds set forth herein.
4. Cancel the primary decision on the item (Calculated Fines), and refer subject of the dispute to the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh, according to reasons and Grounds set forth herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-135)
Issued in Appeal No. (IW-
2018-1729)

Principle No. 71

Judgment on validity of Zakat Payer's claim requires submission of evidence supporting the validity of his claim.

Facts:

On Tuesday, 19/11/1442 AH, corresponding to 29/06/2021 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 the city of Riyadh, to consider the appeal submitted on 19/03/1437 AH. by / Company, on decision of the First Primary Zakat and Tax Objection Committee in Riyadh No. (1) of 1437 AH, issued in Case No. (25/35) concerning the tax assessment of 2005 to 2009, filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

First: Accept the objection in form.

Second: On merits:

1. Uphold ZATCA's point of view in adding revenues difference of 2006.
2. Uphold ZATCA's point of view in not deducting losses carried forward of 2007 and 2008.
3. Uphold ZATCA's point of view in not imposing a withholding tax on amounts paid to both Company and Company Of 2005.
4. Uphold ZATCA's point of view on excluding added amounts from Company.
5. Uphold ZATCA's point of view on excluding bank charges for 2007.
6. Uphold ZATCA's point of view on excluding the depreciation difference for 2005 to 2009.
7. The dispute was settled with ZATCA's approval of Zakat Payer's point of view.
8. Uphold ZATCA's point of view on imposing a withholding tax on net income after deducting tax for 2005 and 2006.
9. Uphold ZATCA's point of view on imposing a withholding tax on interest added by the head office.
10. Uphold ZATCA's point of view on imposing a withholding tax on amount of technical services for 2005 to 2009.
11. Uphold ZATCA's point of view on imposing fine for not submitting a declaration for 2008.
12. Uphold ZATCA's point of view on imposing a late fine on Zakat Payer with regard to items in which the Department supported ZATCA.

Since this decision was not accepted by (.....) Zakat Payer, he submitted a statement of appeal, which contained the following:

With regard to the item (Exclusion of Added Amounts and Cost of Services from Company for 2005-2009), Zakat Payer appeals decision of the Primary Department, which concluded with upholding ZATCA in excluding amounts from ... due to the failure to submit supporting documents. Zakat Payer confirms that Company is an independent entity from ..., and cost of services provided by Company To Company is recorded in Company books, while the



same cost of services is recorded as expenses in ... Company books, and Zakat Payer confirms that he has submitted supporting documents for costs and expenses of service readded from ... Company for 2005 to 2009. With regard to the item (Exclusion of Cost of Technical Services Obtained from ... Company in the amount of SAR (570,758) for 2007), Zakat Payer bases his appeal on the fact that ... Company provided various technical services to Zakat Payer, and confirms that expenses of these services are deductible as they represent deductible commercial costs and are supported by necessary documentation.

With regard to the item (Exclusion of Depreciation Differences for 2005-2009), Zakat Payer confirms that there were additions to fixed assets for 2005, and this error affected the depreciation calculation for 2005, in addition to subsequent years. Zakat Payer requests that the material error be corrected in accordance with the correct calculation issued according to the financial statements.

With regard to the item (Imposition of Withholding Tax on Net Income after Calculating Tax for 2005/ SAR 4,487,984) and for (2006/SAR 3,428,101), Zakat Payer bases his appeal on the fact that the branch did not transfer any profits, in addition to the absence of payment for which withholding tax is due. Zakat Payer confirms that including profits in the head office account does not mean that profits were settled against other items in the account.

With respect to the item (Imposition of Withholding Tax on Interest Added by the Head Office for payments to ... of 2008 AD /SAR 2,595,545), Zakat Payer bases his appeal on the invalidity of imposing a withholding tax on these interests, because banking burdens incurred by the branch represent costs related to financing the branch through a coalition of several banks, noting that these banks include two local Saudi banks and another bank in Finland and therefore are not subject to withholding tax in respect of amounts belonging to local Saudi banks.

As for the item (Imposition of Withholding Tax on Expenses Added in Statement No. 3 of Tax Returns of 2005, 2007, 2008 and 2009), Zakat Payer confirms that withholding tax on these expenses is not valid, as there is no actual payment and the deduction tax is only due upon actual payment. These amounts disclosed in Statement No. 3 are recorded for the supply of materials, not for services, and therefore are not subject to a withholding tax.

With regard to the item (Imposition of a Late Fine on Amended Tax Returns for 2005, 2008 and 2009), Zakat Payer bases his objection on the Grounds that he submitted the tax return for the year ended December 31, 2008 on 29/04/2009 AD, i.e., within 120 days of the end of fiscal year, as provided for in Article 60 (b) of the Income Tax Law.

With regard to the item (Imposition of a Late Fine on Tax Obligation Resulting from ZATCA's Procedure), Zakat Payer bases his appeal on the fact that fines referred to in Article 76 of the Income Tax Law relate to delay in tax payment and has no relation to tax assessment. Furthermore, difference in the tax resulting in a late fine, was due to a difference in views between Zakat Payer and ZATCA, which prevents the imposition of a late fine in accordance with the Income Tax Law. Regarding the item of not deducting losses carried forward for 2007 and 2008, which are respectively SAR 50,814,870 and SAR 109,396,197, Zakat Payer requests that losses carried forward for 2007 and 2008 be deducted from profits of 2009, as compared to tax profits confirmed by ZATCA, in application of Article 11 of the Implementing Regulations of the Income Tax Law. Since the Department decided to open up court proceedings, the case papers contain a memorandum dated 08/08/1439 AH, in which ZATCA responds to Zakat Payer's appeal against items subject of appeal, where its response regarding the item (Amounts Added From (...)) was that during the field examination, Zakat Payer did not submit any supporting documents for their deduction.

With regard to the item (Bank Charges Amounting to SAR (570,758) of 2007 and its Tax SAR (114,152), ZATCA responded that it had approved the Banking Services item for all years supported by external documents in the name of the Company, except for the amount of SAR 570,758 of 2007, which is not supported by external documents as in the rest of years.

With regard to the item (Exclusion of Depreciation Variances), ZATCA responded that during perusal and revision of statement No. 4 in the Company's declarations attachments of 2005 to



2009, a material error was observed by the Company in filling in the fields of Statement No. 4 in all years. Accordingly, Statement No. 4 of 2005 to 2009 was refilled in light of what was stated in the Company's audited financial statements in the correct manner, which resulted in the aforementioned differences that were exceeded in profits.

With regard to the item (Imposing a Withholding Tax on Net Income after Deducting Tax), ZATCA responded that it subjected profits of 2005 and 2006 that were closed in the head office account to a withholding tax of 5% in accordance with Article 68 of the Income Tax Law, taking into account that withholding tax is due upon occurrence of payment and its equivalent, such as clearing and settlement between accounts, for which the date of settlement is considered as payment.

With regard to the item (Imposing a Withholding Tax on Interest Added from the Head Office), ZATCA replied that the amounts that were subject to withholding tax in accordance with Article 68 of the Income Tax Law and Article 63 of its Implementing Regulations are amounts paid from a resident to a non-resident entity (head office) in exchange for receivables collection service amounting to SAR (1,574,000,000), which was paid by the head office through its agreement with the aforementioned banking coalition, which is the indebtedness that was eventually transferred to the head office.

With regard to the item (Withholding Tax on the Amount of Technical Services), ZATCA replied that it imposed a tax of 5% on value of these services in application of Article 68 of the Income Tax Law, as amounts were added to accounts under technical services item. We have not been able to confirm validity of the Company's objection that these amounts have not yet been paid to non-resident entities and are due expenses.

Regarding the item (Late Fine on 2008 declaration in the Amount of SAR 20,000), ZATCA responded that Zakat Payer submitted settlements (amended declaration) after the legal dates that ZATCA took into account when assessing and which canceled the effect of previous declarations. With regard to the item (Late Fine on Additional Tax Liability Resulting from ZATCA's Procedure), ZATCA replied that it imposed the fine for 2005 and 2006 based on Article (7) of the Tax Law and Article (68) of the implementing Regulations. In 2009, a fine was imposed for failing to submit a declaration in accordance with Article (76) of the Law.

On Thursday, 12/08/1442 AH, corresponding to 25/03/2021 AD, the Department decided to convene an electronic hearing for a period of 10 days, and the period passed without submitting an addition from parties to the appeal in addition to what was received from parties to the appeal. On 16/09/1442 AH corresponding to 28/04/2021 AD, the Department decided to address Zakat Payer and request submission of attachment contents Nos. 6 and 8 referred to in statement of appeal. Since Zakat Payer's objection relates to a material error in calculating additions to fixed assets for 2005 that affected depreciation calculation for subsequent years. Accordingly, the Department requested Zakat Payer to provide supporting documents, reasons for error and how to reach the correct amount. Moreover, Zakat Payer indicated in his appeal on withholding tax on amount of technical services that the amount consisted of three components, one was a due amount and the other was not paid for supply of goods and the third was paid to a resident entity. Furthermore, Zakat Payer indicated details of these amounts in the attached appendix to his appeal (15/2), and since the Department did not find this attachment with the appeal list, it requested Zakat Payer to provide it with all documents supporting his case, as detailed in his appeal, while specifying the amounts related to the three components in dispute. Moreover, the Department decided to request ZATCA to provide it with field examination for all the years of assessment subject of appeal. Required documents must be submitted within one month from its date. On 08/10/1442 AH corresponding to 20/05/2020 AD, the Department received from ZATCA the minutes of field examination. The prescribed period has elapsed without a response from Zakat Payer.

On 24/10/1442 AH, corresponding to 05/06/2020 AD, having taken cognizance of appeal memorandums and reply thereto, and having examined papers and documents contained in the



case file, the Department decided that the case is ready for adjudication and issuance of decision on its subject. Accordingly, the Department decided to close the pleading and schedule the case for adjudication.

Grounds

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

On merits, with regard to the item (Exclusion of Added Amounts and Cost of Services from Limited Company for 2005 to 2009), it is evident that appeal lies in Zakat Payer's request to deduct these expenses due to the existence of supporting documents for their deduction, while ZATCA considers that documents submitted by Zakat Payer are insufficient. Having taken cognizance of subject of dispute, and since the dispute between the two parties is a documentary dispute, the Department reviewed the minutes of field examination dated 03/07/1432 AH, and it has found that Zakat Payer has submitted documents supporting the expenses subject of dispute, based on the contents of minutes, and has confirmed its conformity by ZATCA representative. In its response to Zakat Payer's appeal, ZATCA did not prove anything other than what Zakat Payer stated in his appeal regarding the field examination, and that Limited Company is a Company registered with ZATCA, and therefore Zakat Payer's expenses added by this Company represent its revenues that were disclosed in the declarations submitted to ZATCA, or that they were excluded from its expenses. Since ZATCA did not challenge declarations submitted by Zakat Payer to that Company, and since it was not established to the Department the contrary to what Zakat Payer asserted in his statement of appeal, the Department concluded to accept Zakat Payer's appeal and to overturn the initial decision in this regard.

With regard to the item (Exclusion of Technical Services Cost Obtained from ... Company In the amount of SAR 570,758 of 2007), it was found that the appeal lies in Zakat Payer's objection to ZATCA's procedure of excluding these expenses despite the submission of supporting documents thereto, while ZATCA considers that the documents submitted by Zakat Payer are insufficient.

Having perused subject of the dispute, and since the Department found that the dispute is documentary in its subject, and having perused minutes of the field examination dated 03/07/1432 AH, it is evident that Zakat Payer submitted documents supporting expenses in dispute based on minutes' contents and their conformity was confirmed by ZATCA representative. ZATCA did not prove in its response to Zakat Payer's appeal anything other than what Zakat Payer stated in his appeal regarding the field examination. Moreover, ... Limited Company is a Company registered with ZATCA, and therefore Zakat Payer's expenses added by this Company represent its revenues that were disclosed in the declarations submitted to ZATCA, or that they were excluded from its expenses. Since ZATCA did not challenge declarations submitted by Zakat Payer to that Company, and since it was not established to the Department the contrary to what Zakat Payer asserted in his statement of appeal, the Department concluded to accept Zakat Payer's appeal and to overturn the initial decision in this regard.

With regard to the item (Exclusion of Depreciation Differences for 2005-2009), it was found that the appeal lies in Zakat Payer's objection to the decision of Primary Objection Committee, which ended up supporting ZATCA in excluding depreciation differences for years in dispute in application of the Income Tax Law and its Implementing Regulations. Since Zakat Payer considers that there was an error in ZATCA's calculation of fixed assets of 2005 which affected calculation of depreciation for previous years, while ZATCA considers that its procedure regarding this item is valid and sound. Having perused subject of dispute, and since judgment on the validity of Zakat Payer's claim requires provision of evidence supporting validity of his case, since Zakat Payer was addressed to prove the amount of assets he claims contrary to what ZATCA has proven, and since



the Department did not receive a response from Zakat Payer proving the validity of his claim that there was a material error in calculating fixed asset additions for 2005, which makes it impossible to verify validity of this case. Therefore, the Department concludes to dismiss Zakat Payer's appeal and uphold the primary decision in this regard.

With regard to the item (Imposing a Withholding Tax on Net Income After Tax Calculation), the appeal lies in Zakat Payer's objection to the Primary Objection Committee decision which ended up upholding ZATCA's procedure of imposing a withholding tax of 5% on profits transferred to the head office in accordance with the Income Tax Law and its Implementing Regulations and in accordance with ZATCA procedures and decisions of previous committees, whether it is actual or constructive payment. Zakat Payer considers that the branch has not transferred any profits to the head office and that the transferred amounts was for purchasing machinery and equipment with accumulated losses incurred by the branch. Having considered subject of the dispute, and since the appeal relates to ZATCA's procedure of imposing a withholding tax on net income assuming that it represents dividends distributed to the head office. Since it is legally established that the withholding tax is imposed and incurred on occurrence of payment, and since ZATCA's procedure is based on an assumption which is not supported by substantial evidence establishing the payment, since Zakat Payer submits its declarations according to a regular calculation by which payments can be traced, ZATCA has conducted a field examination of Zakat Payer and it was not proven that the payment occurred. This does not affect ZATCA's argument, supported by the Primary Committee, that the date of entry or recording in books is considered as a payment, as it is not supported by the explicit provisions of law. Therefore, the Department concludes to accept Zakat Payer's appeal and overturn the primary decision.

Regarding the item (Imposing a Withholding Tax on Interest Added by the Head Office for Payments to Saudi Banks Coalition of 2008), the appeal lies in Zakat Payer's objection to the Primary Objection Committee decision as it upholds ZATCA's procedure of imposing a withholding tax of 5% on interest added by the head office in application of Article 68 of the Income Tax Law and Article 63 of the Implementing Regulations of the Income Tax Law. Zakat Payer considers that the head office has not made any revenues according to documents attached to its statement. Having considered subject of the dispute, and since the essence of process is that the head office paid interest amount on behalf of Zakat Payer, and those amounts were not paid to the head office. Furthermore, Zakat Payer indicated in his appeal that the disputed amount was paid to local and foreign banks, and that the amount that belongs to foreign banks amounts to SAR (14,9 million). Moreover, ZATCA reviewed Zakat Payer's appeal, and did not deny the explanations made by Zakat Payer in his appeal regarding payment of these disputed amounts to local and foreign banks. Since it was not established to the Department anything contrary to what Zakat Payer confirmed, the Department therefore concluded to amend the primary decision by deciding to subject financing burdens related to the amount paid to a foreign bank, amounting to SAR 14.9 million, to withholding tax.

With regard to the item (Imposing a Withholding Tax on Expenses Included in Statement No. 3 of Tax Returns of 2005, 2007, 2008 and 2009), the appeal lies in Zakat Payer's claiming that withholding tax is invalid to be imposed on these expenses, as there is no actual payment and the withholding tax is only due upon actual payment. In addition, disclosure of withholding tax in Statement No. 3 was recorded for the supply of materials and not for services, while ZATCA considers that these amounts were recorded under technical services item, which requires imposition of a withholding tax. Having perused subject of the dispute, and since the Primary Committee based its decision on the fact that the amount that ZATCA subjected to tax was not reflected in due expenses that appeared in the financial statements. Since ZATCA did not respond to Zakat Payer's objection in accordance with the details it contained regarding components of the disputed amount, and since ZATCA had previously conducted field examination on Zakat Payer, and did not raise the subject at the time, the validity of Zakat Payer's claim regarding withholding tax on the amount of technical services is then strengthened. Furthermore, it was not established



to the Department anything contrary to what Zakat Payer confirmed, the Department therefore concluded to accept Zakat Payer's appeal and to overturn the primary decision in this regard. Regarding the item (Late Fine on Amended Tax Returns of 2005 to 2009), the appeal lies in Zakat Payer's request to rescind late fine of 2008 as he submitted the return within the legal period. In contrast, ZATCA considers that Zakat Payer was late in submitting his return based on the date of submitting the amended assessment. Having reviewed contents of what Zakat Payer submitted confirming his right to amend the return within ten years in accordance with the provisions of Article 59 of the Implementing Regulations, without imposing a late fine as a result of amending the decision after lapse of the legal period for submitting the original return. On the other hand, ZATCA considers that submitting the amended return after the lapse of prescribed legal period constitutes cancellation of the original return, and this entails, according to ZATCA, that the amended return is considered submitted after the expiry of legal period, which necessitates imposing a fine for not submitting the return stipulated by law. Having considered the foregoing, and since the basis for ZATCA's argument is the imposition of a fine on Zakat Payer as a result of his amendment of a return that had previously submitted, and since fines in light of the regulations are considered penalties, and since there is no penalty except by a legal or legitimate provision, and since the tax law does not stipulate such a fine. The Department has by a majority concluded that the correction and modification in the light of provisions of the tax law should not be considered a substitute for the original return, but rather a correction of the original return, unless it contains substantial amendments that cannot be considered a correction in light of their nature or scope, in which case it is considered a new return, which was not proven before the Department and was not argued by ZATCA. Accordingly, the Department decided by a majority that it was not valid to impose a late fine on amending the return, as it was submitted within the legal period. Therefore, it is decided to accept Zakat Payer's appeal regarding the fine for not submitting the return of 2008, and to disregard other years because the primary decision did not address the same.

With regard to Zakat Payer's appeal regarding the item (Late Fine on Tax Differences), the appeal lies in Zakat Payer's request to rescind the late fine resulting from tax differences established by ZATCA, since it is a matter of considerable disagreement between Zakat Payer and ZATCA, while ZATCA considers the validity of imposing the fine in application of the Income Tax Law. Having considered subject of the dispute, and that since the fine, whether existent or non-existent, relates to acceptance or rejection of the item thereon, the Department decides to rescind the fine imposed on items for which Zakat Payer's appeal was accepted, as the fine is canceled with the absence of its reason. Regarding the item (Exclusion of Depreciation Differences from 2005 to 2009), and since the Department decides to reject Zakat Payer's appeal on this item, the Department therefore decided to dismiss his appeal regarding late fine on this item, and therefore the fine is due on differences in this item if Zakat Payer did not pay it, from the date of its legal due date.

With regard to Zakat Payer's appeal regarding the item (Deduction of Losses Carried Forward of 2007 and 2008), the appeal lies in Zakat Payer's request to deduct losses carried forward of 2007 and 2008 from 2009 profits, in application of the provisions of Article 11 of the Implementing Regulations of the Income Tax Law, while ZATCA considers that there are no profits for 2009 according to Zakat Payer's declaration so that these losses can be deducted. Having considered Zakat Payer's appeal on this item, and since Zakat Payer's appeal is based on his request to deduct the losses carried forward from the profits of 2009, based on the fact that tax assessment carried out by ZATCA indicated that Zakat Payer made profits in 2009, contrary to what Zakat Payer's declaration showed of the existence of losses in that year. Furthermore, Article 11 of the Implementing Regulations stipulates that Zakat Payer's right to deduct losses from previous years is related to the existence of annual profits in accordance with Zakat Payer's declaration. Since Zakat Payer's declaration indicated existence of losses, Zakat Payer's is not entitled to deduct the preceding losses based on profits indicated through assessment. Therefore, it is decided to dismiss



Zakat Payer's appeal and uphold the Primary Decision based on its Grounds, in addition to reasons for this decision.

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/.... against the First Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (1) for 1437 AH

Second: On Merits:

1. Accept Zakat Payer's appeal with regard to the item (Exclusion of Added Amounts and Cost of Services from Company of 2005-2009 AD) and overturn the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer's appeal with regard to Item (Excluding Costs of Technical Services Obtained by Company in the Amount of SAR (570,758) of 2007), and overturn the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
3. Reject Zakat Payer's appeal with regard to Item (Excluding Depreciation Difference for the Period 2005-2009 AD) and uphold the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
4. Accept Zakat Payer's appeal with regard to Item (Imposing Withholding Tax on the Net Income After Tax Calculation) and reverse the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
5. Amend the primary decision taken with regard to Item (Imposing a Withholding Tax on the Interest charged By the Head Office Against Payments provided to the Saudi Banks Consortium of 2008), so that it reflects imposing a withholding tax on financing burdens related to the amount paid to a foreign bank estimated at (SAR 149 million), in accordance with Grounds and merits mentioned herein.
6. Accept Zakat Payer's appeal with regard to Item (Imposing Withholding Tax on Charged Amounts Recognized in Statement No. (3) of the Tax Returns of the Years 2005, 2007, 2008, and 2009 AD) and reverse the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
7. With regard to Item (Late Payment Fine Imposed on Amended Tax Returns of 2005-2009 AD):
 - A. Accept Zakat Payer's appeal by majority regarding the year 2008 and overturn the primary decision concluded in this regard, in accordance with Grounds and merits mentioned herein.
 - B. Dismiss Zakat Payer's appeal with regard to other years, in accordance with Grounds and merits mentioned herein.
8. Accept Zakat Payer's appeal with regard to Item (Late Fine Imposed on Tax Differences) in items for which Zakat Payer's appeal was accepted, and confirm the validity of imposing a late fine as of legal due date on tax differences related to Item (Excluding Depreciation Differences), in accordance with Grounds and merits mentioned herein, and dismiss Zakat Payer's appeal regarding the item (Deduction of Losses Carried Forward of 2007 and 2008), and uphold the primary decision rendered in this regard, in accordance with the reasons and Grounds set forth herein.



Appeal

Appeal Committee

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

Decision No. (VA-2021-111)
Issued in Appeal No. (V-2020-24164)

Principle No. 72

If the Department, when examining the objected item, limits its consideration to the generality without going into details provided by the plaintiff, which are influential in deciding on the objected item, conclusion of its decision in this case shall be overturned and returned by the Appeals Committee in accordance with its discretion, the outcome of this item is that it will be returned to the Department that issued the ruling to decide thereon, taking into account observations of the Appeals Department.

Facts:

On Sunday, 21/03/2021 AD, First Appeals Chamber for Tax Violations and Disputes Value Added and Excise Goods, formed under Royal Decree No. (65474) dated 23/12/1439 AH, in accordance with Paragraph (b) of Article 67 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 08/09/2020 AD, by Appellant \ ... Company (under C.R No. ...) on the decision of First Department to Adjudicate the Value Added Tax Violations and Disputes in Jeddah No. (VJ-2020-256) in the case filed by Appellant against Appellee, ZATCA.

Since facts of this case have been stated in the decision subject matter of appeal, Appellate Department refers to this decision for avoidance of repetition. Since Primary Department's decision ruled as follows:

- Dismiss the objection filed by the Plaintiff (... Company), (C.R. No.), with regard to the final assessment of January 2018.
- Dismiss the Plaintiff's/ ... Company objection, CR No. (...) regarding penalty for error in submitting the declaration.
- Dismiss the objection filed by the Plaintiff/ ... Company, C.R. No. (...), with respect to late payment fine.

Since this decision was not accepted by the Appellant (... Company), therefore, it filed a statement of appeal to the Appeals Department that included the following: First: Local sales subject to zero-rate tax: The Appellant objects to the validity of final assessment for January 2018 issued by the Appellee, as it demands reconsideration of the case and the validity of its submission of declaration, as it is a zero-rate sales based on Articles (79), (25) and (34) of the Implementing Regulations of the Value Added Tax Law. Second: Fines for error in submitting the declaration and late payment: The Appellant objects to the imposition of fines for error in submitting the declaration and late payment and demands that they not be applied, as the final assessment was in violation of law and incorrect”.



Having presented the statement of appeal filed by the Appellant to Appellee, it responded: ZATCA adheres to the validity of procedure followed with regard to local sales subject to zero-rated tax and fines for error in submitting the declaration and late payment, and demands that the Committee's decision be upheld."

On Sunday, 21/03/2021, the Appeals Chamber held its session to consider filed appeal, and reviewed the decision of First Department to Adjudicate the Value Added Tax Violations and Disputes in Jeddah where the appeal was filed. The Case file and all attached memoranda and documents were also reviewed. After deliberation, having perused pleas and documents submitted by the parties, and in accordance with the provisions of Value Added Tax Law and its Implementing Regulations, and Tax Dispute and Violation Committee Procedures. Therefore, the minutes were closed, and the Department decided to complete consideration of the case and adjudicate thereon after careful consideration.

Grounds

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

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

On merits, having perused the case papers and having examined documents and papers contained therein, and having reviewed memoranda and responses submitted by the parties, the Department found that the Primary Decision rejected Plaintiff's objection in all the objected items. Since the Department found that finding reached by the Primary Department in its decision was incorrect. Regarding the final assessment of January 2018, it was found that Plaintiff's argument lies in objection to ZATCA'S assessment and modification of zero-tax sales item and subjecting the same to the base rate of 5%. Since Plaintiff stated that it was zero-tax sales in accordance with the provisions of transitional Article (seventy-nine) and the provisions of international transport according to articles (twenty-five) and (thirty-four) of the Implementing Regulations of the Value Added Tax Law. It became clear from the submitted appeal and what was included in the appealed decision that the subject of dispute is a total amount of SAR (7,166,361), consisting of three parts, a part subject to zero rate, based on the transitional provisions, a part subject to zero rate related to international transport, and a part subject to the basic rate related to domestic transport. After considering what the decision was based on when deciding to reject Plaintiff's objection, it was found that the decision was based on the general item in application of transitional provisions of the aforementioned Article (seventy-nine). The Primary Department did not provide details of Plaintiff's objection to sales of international and domestic transport services, despite the Defendant's initial objection to the Primary Department. Furthermore, Plaintiff indicated that the Department considered the item on sales in general without detailing that might be productive in the case. Therefore, we conclude by deciding to reconsider the objection regarding the item subject of the case to First Department to Adjudicate the Value Added Tax Violations and Disputes in Jeddah, to decide on the objection submitted by Appellant in light of contents of its letter.

With regard to fines for error in submitting the declaration and late payment, and since Appellant objects to imposition of fines for error in submitting the declaration and late payment resulting from the final assessment of the disputed period. The Department concluded in the first item to accept its appeal, which requires to accept the appeal and cancel the decision of First Department to Adjudicate the Value Added Tax Violations and Disputes in Jeddah and return the case to it for reconsideration based on Article 45.3 of Tax Dispute and Violation Committee Procedures.

Decision



Therefore, and after legal deliberation, the Department unanimously decided the following:

First: Accept the appeal filed by / Company (C.R No.) for submission within the period specified by law.

Second: Accept the appeal filed by / Company on merits and overturn the decision of First Department to Adjudicate the Value Added Tax Violations and Disputes in Jeddah.

Third: Remand the case to the Department that issued the decision for consideration.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2020-2)
Issued in Appeal No. (I-1699-2018)

Principle No. 73

If the appealed decision does not include in its facts what can be used as evidence to verify that the Appellant has been notified, it is merely included an indication that he did not attend the hearing and did not apologize for not attending, without any date or document of such notification, then the appealed primary decision shall be considered void and returned to the first department for adjudication.

Facts:

On Sunday, 21/03/2021 AD, First Appeals Chamber for Income Tax Interventions 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 12/02/1437 AH, by ... factory, C.R. No. (...), on the decision of Second Primary Zakat and Tax Objection Committee in Jeddah No. 4 of 1436 AH delivered in case No. (I-1699-2018) filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

First: Accept the objection filed by Zakat Payer /... factory regarding the tax assessment of 1430 AH to 1433 AH, in form according to Grounds of the decision.

Second: On Merits:

1. Uphold ZATCA in estimated assessment conducted regarding Zakat Payer and that the basis on which ZATCA was based in the estimate was reasonable, according to Grounds of the decision.
2. Uphold ZATCA in ensure that travel and transportation expenses, excess consumption of assets, hospitality and cleaning are not considered to be deductible fees from Zakat Payer's base in accordance with Grounds of the decision.

Since this decision was not accepted by the Plaintiff (... factory), he submitted to the Department a statement of appeal to challenge the decision issued against him on the ground that the decision was made in absentia without his notification or attendance, which is a procedure that invalidates the decision.

On Wednesday, 04/06/1441 AH corresponding to 29/01/2020 AD, the Department held its hearing to consider the filed appeal. Having called on litigants, the following attended: ..., holding national ID No. (...), in his capacity as the plaintiff's attorney, and ZATCA representatives also attended:, holder of National ID No. (...), and, holder of National ID No. (...), Pursuant to Authorization No. (...) issued by ZATCA on 19/05/1441 AH. Having asked the Appellant's attorney about reasons for appealing the decision, he replied that the initial decision was issued without informing us of hearing date and presenting our defense before the committee that issued the decision. When the Department asked him about the reason for the delay in submitting the appeal against the initial decision, which was confirmed to have been received on 02/12/1436 AH



and the appeal request was submitted on 12/02/1437 AH. He replied that we received the decision shortly before Hajj vacation and there was no time to submit an appeal request, especially since the vacation was extended after that and we submitted the appeal. Having asked ZATCA's representatives about what Appellant's attorney stated regarding his appeal against the decision, they responded that Zakat Payer's non-attendance does not undermine validity of the decision and that the Committee is independent in its discretion to continue considering the case despite non-attendance of Zakat Payer or his representative. Having asked Appellant's attorney about the reasons for his appeal against the decision, he replied that he had previously submitted a memorandum of appeal to appeal the decision before the Appeals Committee in Riyadh and then they informed us that a session was held before that committee. We then waited for a date to complete the consideration, and they informed us that the Committee had moved and that the case and its file had been referred to the General Secretariat of Tax Violations and Disputes Resolution Committees. When the Department asked ZATCA's representatives regarding Zakat Payer's objection to the decision and his final request to cancel the decision issued against Zakat Payer's factory, they responded by requesting the Department to reject Zakat Payer's appeal, as the decision of the primary committee was received on 02/12/1436 AH, and the appeal was submitted to the Appeals Department on 02/12/1437 AH, despite the Hajj holiday falling during this period, as this does not change calculation of the regular period for appeal. We will inform the Department of reality of delivering the aforementioned letter and its existence or nonexistence within two weeks from its date. The minutes were closed, and the Department decided to continue examining the case after consideration.

The Department, having taken cognizance of memorandums 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

Based on 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, and its Implementing Regulations issued by Minister of Finance Decision No. 1535 dated 11/06/1425 AH as amended. Having reviewed Tax Committees Procedures issued by Royal Decree No. 26040 dated 21/04/1441 AH, and having perused the appealed decision, and the appeal submitted by the Appellant and statements made by the parties before the Department, Since Appellant confirmed before the Department, that a session had been held to consider his appeal before the previous tax committee and that consideration of his appeal had been suspended following moving of jurisdiction to consider tax disputes to Tax Violations And Disputes Resolution Committees. Since ZATCA's representative did not object to statements made by the Appellant regarding the acceptance of his appeal by that committee at that time, and having reviewed the decision subject to appeal and the Appellant's statement regarding not being able to exercise his right of defense before the issuing committee. Since the appealed decision did not include in its facts any evidence that the Appellant had been notified of the same, as it only contained an indication that the Appellant had been informed without stating any date or document of such notification. Therefore, the Department decided to cancel the primary decision subject of appeal and refer the Case to First Department for the Determination of Income Tax Violations and Disputes in Jeddah for reconsideration, after properly notifying the Appellant to enable him to exercise his right to defense so that the Appellant does not miss out on any litigation degree.

Decision

First: Accepting the appeal filed by Zakat Payer/ Factory in form, C.R. No. (...), on the Second Primary Committee for Zakat and Tax Objections in Jeddah No. 4 of 1436 AH.



Second: Cancel decision of the Second Primary Committee for Zakat and Tax Objections in Jeddah No. 4 of 1436 AH, and reconsider the case before First Department for the Determination of Income Tax Violations and Disputes in Jeddah for reasons and Grounds set forth herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-69)
Issued in Appeal No. (ZI-2018-
1720)

Principle No. 74

Customs data issued by a reliable entity is not conclusive evidence. However, they cannot be discarded without verifying the lack of confidence and reliability in data contained therein for determining the zakat base.

Principle No. 75

Although customs data is an indicator of imports cost, existence of a difference between it and what Zakat Payer declared in the accounts does not require reliance on it as a justification for accounting for these differences. Imports must be verified by means of field or office inspections to check all supporting documentary evidence that confirms the truth of what was recorded in Zakat Payer's books to determine the reasons for discrepancy between what was declared and what was contained in customs data.

Facts:

First: Accept objection filed by (...) limited Company in form, on 2008 tax zakat assessment, according to Grounds of the decision.

Second: On Merits:

1. Uphold ZATCA in not accepting import difference as part of Zakat Payer's goods cost, according to Grounds of the decision.

Since this decision, with regard to what was stipulated in its wording in paragraph (1) thereof, was not accepted by the Plaintiff (... Ltd Company), it filed a statement of appeal to the Department, which included the following:

Zakat Payer objects to calculating the differences in foreign purchases that recognized in the amount of SAR (27,804,316) of 2008 and to adding the same to his zakat base after it was confirmed to ZATCA that these differences exist when comparing the amount of foreign purchases of Zakat Payer, which showed an increase from the amount inferred from import data with Saudi Customs, which showed a difference in the referred amount.

Appellant Company considers that its financial statements were audited by a certified chartered accountant in accordance with KSA laws, and that auditors issued an absolute opinion on financial statements in accordance with standards of Saudi Organization for Chartered and Professional Accountants (SOCPA), that amounts of foreign purchases were not supported by the auditors except with documents supporting their validity, and that there is a difference between the Company's report on foreign purchases and data approved by Saudi Customs Authority, since the amounts of those differences resulted from the fact that some of the items of those purchases were related to contracts entered into by the Company for manufacture of iron buildings with customers outside the Kingdom, and therefore those amounts did not appear on imports list of the Saudi Customs Authority. Therefore, not taking into account these differences, reasons for



their non-conformity with the customs data and deciding to add the difference to the base is a procedure that is not based on reality and truth of these foreign purchases that were declared by the Company. Declaring differences in these purchases for customs purposes in the Kingdom is out of the question when these purchases are not supplied through Saudi customs. Accordingly, the Company requires that the amount of such differences not be included within its zakat base regarding zakat/tax assessment of 2008.

Since the Department requested ZATCA to respond to Appellant's statement on the item subject of objection within 10 days from the date of sending that request to ZATCA, which was signed on 07/09/1441 AH, corresponding to 30/04/2020, and the Department did not receive a response from ZATCA to Zakat Payer's statement of appeal after giving it a grace period. Therefore, the Department decided to complete consideration of the case in the light of papers contained in its file, and what was included in ZATCA's response to Zakat Payer's objection before the Primary Committee, given that the appeal conveys the case to its state when it was considered at the time of the appeal, and since the case is ready for consideration based on the foregoing, the Department decided to decide on the appeal filed by Zakat Payer Company regarding the item subject of objection.

Grounds

Having reviewed the case documents and the statement of appeal submitted by the Appellant Company, the Department found that the formal requirements for accepting the appeal are met as stipulated in the relevant laws, regulations and decisions. Accordingly, this appeal is accepted in form for being submitted by a person with a capacity and within the period prescribed by law.

On merits, having perused the case file, the papers it contained, and contents of statement of appeal, and having considered the Appellant's overall pleas, the Department found that the source of dispute lies in Appellant's claim to deduct the total foreign purchases as a real deductible expense according to the final declaration of 2008. In addition, ZATCA does not accept the difference in imports amounting to SAR (27,804,316), which represents the differences between imports (foreign purchases) received by the customs extract and imports (foreign purchases) contained in the Appellant's declaration, and since the Appellant claims that the import difference amounting to SAR (27,804,316) that is not included in the customs data is as follows:

- a. SAR (18,919,571) as the value of goods purchased from (...) Company, in the United Arab Emirates and shipped to locations outside the Kingdom of Saudi Arabia.
- b. SAR (4,889,571) as the value of goods purchased from (...) Company, in Kuwait but they are shipped by the supplier in the name of Company, - a sister Company in the Kingdom of Saudi Arabia.
- c. SAR (4,137,822) as the value of goods purchased from (...) Company, in the United Arab Emirates shipped to a location outside KSA, the Primary Committee requested the Appellant to provide accounting entries proving that they were recorded within the revenue and their certification by the chartered accountant. In addition, the previous Tax Appeal Committee held a hearing on 02/08/1439 AH and requested the Appellant to submit accounting entries proving the difference and the chartered accountant's certification thereof.

In addition, ZATCA Circular No. (2030/9) dated 15/04/1430 AH states: "Although customs data is an indicator of imports cost, existence of a difference between it and what Zakat Payer declared in the accounts does not require reliance on it as a justification for accounting for these differences. Imports must be verified by means of field or office inspections to check all supporting documentary evidence that confirms the truth of what was recorded in Zakat Payer's books and determine the reasons for discrepancy between what was declared in its books and what was showed in such data". Accordingly, it is necessary to verify the import differences with documents supporting validity of data submitted by the Appellant. Otherwise, the data submitted by the Appellant will not be considered in the light of data from an impartial government agency, the Saudi Customs Authority.



Since Paragraph (A/1) of Article (9) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH stipulates that: “All regular and necessary expenses to achieve taxable income, whether paid or due, provided that the following controls are met: A. The expense must be an actual one, supported by documentary evidence or other proof that allows the Authority verify its accuracy”. Since the Appellant submitted to the Primary Committee a file containing goods delivery permits and certain invoices, and the Committee or ZATCA did not challenge their validity, as the dispute is essentially and subjectively a documentary dispute. Since the Appellant submitted a procedural report certified by the legal auditor (...), and included the following:

1. Match the total value of foreign purchases executed by the Appellant's books with the value of foreign purchases by customs data.
2. Obtain details regarding matching items mentioned in (a, b, c) above and verify the calculation accuracy.
3. Match the details of five samples of invoices of each supplier mentioned in (A, B, C) above with the supporting documents.
4. Verify that sample revenues are included in the Company's revenue for the year ended 31/12/2008 AD.

Since the findings reached by the legal auditor (...) were correct and consistent with the documents, and they did not find any exceptions thereon. Based on the foregoing, and since the Appellant submitted supporting documents that are legally valid and certified by a chartered accountant proving that what he claims that differences in foreign purchases are real expenses and deductible, and that its revenues were recorded within the Appellant's revenues. Therefore, the Department concluded that there is the preponderant presumption in its conviction to support the position of Zakat Payer Company in not relying solely on customs import data, since it did not include imports of the Appellant's company that it supplies to its customers abroad without passing through Saudi Customs. Data issued by Customs is not conclusive evidence if there are other evidences, indicators and indications that support the non-reliance on what is stated in those customs data in order to calculate differences in imports based on the amounts included in those data and comparing the same with what Zakat Payer provided to deny reliance on them to determine validity of his position when calculating his zakat/tax base. Therefore, the Department concludes to uphold the Appellant in deducting foreign import differences from his zakat/tax base of 2008, based on the declaration he submitted to ZATCA.

Decision

First: Accept the appeal in form filed by Zakat Payer /... Company, C.R. No. (...), against Decision No. (9) of 1436 AH, issued by the Second Primary Zakat and Tax Objection Committee in Jeddah.

Second: On Merits:

Accept Zakat Payer's appeal to deduct the amount of foreign import differences from his zakat/tax base of 2008, and overturn the primary decision in this regard, for the reasons and Grounds set forth herein.

Similar Decisions:

First Appellate Department for Income Tax Violations and Disputes

Appeal Decision No: IR-2020-67

Appeal Decision No: IR-2021-389

Appeal Decision No: IR-2020-18

Appeal Decision No: IR-2022-16



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-80)
Issued in Appeal No. (ZI-2018-
1720)

Principle No. 76

Since it is established in principles of litigation and nature of judgements rendered by judicial bodies, decisions rendered must be sufficiently based on the facts of the case and reasons for their conclusion, to learn the basis of judgment and to understand how much it relates to the dispute, so that the decision can be reviewed upon dispute regarding the result it reached.

Facts:

On Saturday, 16/02/1442 AH corresponding to 03/10/2020 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 10/04/1437 AH corresponding to 20/01/2016 AD by / Company, on Decision of the Second Primary Zakat and Tax Objection Committee in Riyadh No. (4) of 1437 AH, issued in Objection No. (36/25), filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

First: Accept Objection in form of zakat part filed by Company, on zakat tax assessment of 2010 and 2011, and dismiss the same with regard to the tax part, in accordance with Grounds of the decision.

Second: On Merits:

1. Settle the dispute in the item of change in ownership percentage according to Grounds stated in the decision.
2. Dismiss Zakat Payer's objection to the loss provision item according to Grounds stated in the decision.
3. Dismiss Zakat Payer's objection by majority to the increased social insurance item according to Grounds stated in the decision.
4. Dismiss Zakat Payer's objection to the item of consulting fees paid to Saudi shareholders in the Company according to Grounds stated in the decision.
5. Dismiss Zakat Payer's objection to the item of advance payments from customers according to Grounds stated in the decision.
6. Dismiss Zakat Payer's objection to item of investment in joint venture according to Grounds stated in the decision.

Since this decision was not accepted by the Plaintiff (.... Company), it submitted a statement of appeal on 10/04/1437 AH, since the Department requested Zakat Payer Company, after opening up court proceedings, to submit any additions it had regarding filed appeal. Their response was provided to the Department in the memorandum dated 29/11/1441 AH, corresponding to 20/07/2020 AD, which included a repetition of statements made by the Appellant Company in its basic statement, as well as some annexes containing the annex to the amendment of the Company's articles of association, and a copy of ZATCA Circular No. (2547/9) dated 14/05/1426



AH concerning addressing relationship between zakat payers and tax payers in joint companies by applying some procedural provisions and accounting requirements included in that circular, in addition to the Company's registration certificate with the Ministry of Commerce.

Since the Department requested ZATCA to respond to statement of the Appellant regarding the two items 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 two items 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.

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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On merits, having perused the case file and papers it contained, and contents of the statement of appeal, and having considered appeal of Zakat Payer Company, it was found that it was related to two of the objected items when examining Zakat Payer's objection before the primary committee that issued the decision, namely, the items (losses carried forward of 2011) and (loss provision of 2010).

Since the content of appeal with respect to the item of carried forward losses of 2011 is based on a request to uphold Zakat Payer's point of view, in view of the reasons for calculating such losses in order to reach the tax base and to calculate the tax on foreign shareholders, after taking into account the change in ownership structure of shares in the Company's capital after purchasing shares of some Saudi shareholders in the details provided in statement of appeal filed by Zakat Payer Company. Furthermore, ZATCA's response to what raised by Zakat Payer Company was based on the fact that such objection was not subject to consideration by the decision-making committee, and since the Department after considering the decision on the subject of appeal on that item, found that the Committee disregarded to consider all matters relating to the tax-related part included in the objection filed by Zakat Payer, given its assessment that Zakat Payer's failure to pay the uncontested withholding tax amounting to SAR (139,676), in addition to his delay in paying the late payment fine after the legal period causes the non-acceptance of appeal consideration in form. Moreover, since the Department concluded that the withholding tax is different in its base from the income tax arising from Zakat Payer's activity and business and profit or loss achieved therefrom. Since person liable for withholding tax is the one to whom Zakat Payer Company paid amounts which may be subject to the withholding tax to be paid by the person who paid such amounts. Therefore, Zakat Payer company is only a supplier but not the Zakat Payer, regardless of legal responsibility that this would entail when it is late in supplying the same. Since the dispute with respect to the objected item was related to the income tax of the Appellant Company, and since facts of the decision did not indicate non-payment of income tax by that Company, and since the matter was as stated, the Department did not find anything that would justify the position of the committee issuing the decision regarding to consider Zakat Payer's objection in its tax part based on reasons to decide not to consider Zakat Payer's objection before it regarding the item of losses carried forward of 2011. Therefore, the Department concluded to return subject of the dispute to the Primary Department to examine subject of the objection



regarding the contested item in light of evidence submitted by the parties to support each of their positions, and then decide on the same in the light of the Department's conviction according to result of its consideration.

With regard to the appeal related to objection to the item (Loss Provision of 2010), since the appeal of Zakat Payer Company was based on the fact that the decision included within its reasons indication of (laboratory costs) and that Zakat Payer did not submit to the Committee any indication of the detailed movement of that account from data requested therefrom. Accordingly, the Committee issuing the decision decided that Zakat Payer's objection was not valid and correct. Besides, statement of appeal submitted by Zakat Payer confirmed that there was confusion on the part of ZATCA and the Committee issuing the decision, given that there was no indication in its records of laboratory expenses. Having reviewed the decision in the light of statements of the Appellant, it became clear that the laboratory costs in the context of the objected item were not a subject to dispute, in light of the absence of any indication thereof in facts of dispute regarding loss provision item. Since omission of the decision to indicate the effect and relevance of that decision to subject matter of the dispute on that item raises doubts about the extent of the Committee's understanding of subject of the dispute, its briefing and reassurance on editing of its subject. In addition, this conclusion by the Committee confirms the apparent inconsistency of decision reasons regarding that item with the subject of the dispute, and since ambiguity, obscurity and lack of reasoning on decision render it flawed and necessitates its invalidation and cancellation. Since the extent of relationship of that reason to the subject of disputed item has not been clarified to determine the extent to which decision is correct and conclusion reached so that the Department can be assured that the solution reached in the case arises from sufficient and valid introductions that lead to what the Committee concludes in its decision. Since it is established in principles of litigation and nature of judgements rendered by judicial bodies, decisions rendered must be sufficiently based on the facts of the case and reasons for their conclusion, to learn the basis of judgment and to understand how much it relates to the dispute, so that the decision can be reviewed upon dispute regarding the result it reached. Since omission of the same is considered to be a fundamental flaw because the Appellant's request could not be examined in the light of flaws in reasoning affected the appealed decision, this Department concluded to cancel the decision the appealed decision regarding the objected item before the Primary Committee, and to reconsider subject of the dispute regarding the objected item before the Primary Committee in the light of evidence provided by the parties to support their respective positions, and then to decide thereon by the Primary Committee as required for adjudication of the item subject of objection.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept Taxpayer's (..... Company) appeal against Decision No. (4) of 1437 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Riyadh, in form.

Second: On Merits:

Remand the objection to the Second Primary Committee for Zakat and Tax Objections in Riyadh for consideration on its merits regarding items (Loss Provision of 2010) and (Deferred Losses of 2011), for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-130)
Issued in Appeal No. (I-2018-
1891)

Principle No. 77

The existence of attachments to the Assessment Notice must be verified, since they represent the basis on which Taxpayer would be able to determine the Grounds on which it based its objection to the Assessment regarding the items contained therein that are under dispute.

Facts:

On Monday 29/04/1442 AH, corresponding to 14/12/2020 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 13/02/1440 AH, by Institution (“Appellant /Taxpayer”); against Decision No. (11/39) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (44) of 12/01/1438 AH, filed by Taxpayer against General Authority of Zakat and Tax (“GAZT”). The appealed decision ruled as follows:

First: Uphold GAZT’s decision for the non-acceptance of Taxpayer’s Objection No. (44) of 12/01/1438 AH regarding the Tax Assessment of 2009 – 2013 in form for failure of payment of the tax due on the uncontested items, and reject consideration of the same on its merits.

Second: On Merits:

Reject consideration of Taxpayer’s Objection No. (44) of 12/01/1438 AH submitted to GAZT on its merits for being inadmissible in form.

Since Taxpayer (..... Institution) dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

Taxpayer clarifies that it has received a copy of the Tax Assessment No. of 2009 – 2013 dated 23/04/1437 AH from the Administrative Communications Department at GAZT without any attachments (a copy of the archiving system is attached hereto), as the Assessment did not clarify the statutory period specified for submitting objections pursuant to Article (59.7) of the Implementing Regulations of Income Tax Law (a copy of Assessment is attached hereto). The objection to the Assessment in question was submitted within the statutory period prescribed by the Law, which is sixty (60) days, which included responding to the discussion of accounts for the year 2014, and it was registered under No. (44) of 12/01/1438 AH, as the discussion of accounts of 2009 – 2013 was the basis of Taxpayer’s objection to the Tax Assessment in question. In addition, Taxpayer did not receive any attachments to the Assessment, as it based its objection on item (Rents), representing the largest value over the years in question. Moreover, Taxpayer stated that, based on the discussion of the accounts conducted by GAZT, it has submitted a memorandum objecting to the entire amount as per the copy of the Assessment received, along with all documents supporting the item in question. The objection was rejected by GAZT in form



for failure of payment of the uncontested amounts. Accordingly, Taxpayer addressed GAZT under No. of 23/03/1438 AH, requesting the provision of attachments of the Assessment that clarify its details. GAZT replied by virtue of its letter No., stating that “the Tax Assessment has been attached to the submitted objection, which establishes Taxpayer’s knowledge of the Assessment’s contents”. Taxpayer replied that “the Officer of the Inward Correspondence Department at GAZT has informed Taxpayer that he cannot receive the objection without the details of the Assessment in order to refer the objection to the officer in-charge at GAZT”. Accordingly, the said Officer informed Taxpayer that he would print a copy of the Tax Assessment and attach thereof to the memorandum of objection, and had provided Taxpayer with a review ticket under No. (44), which proves that Taxpayer did not submit a copy of the Tax Assessment within its attachments to the objection that was attached by the said Officer at GAZT. Furthermore, this misunderstanding was the reason for Taxpayer’s failure to pay the uncontested amounts due to its lack of knowledge of their existence in the first place. In addition, Taxpayer, out of its good faith and after obtaining the details of the Tax Assessment, has paid the uncontested difference amounting to (SAR 20,827). Based on the foregoing, Taxpayer requests to overlook the formal aspect of the objection and consider the same on its merits regarding item (Rents).

The Department has requested GAZT to respond to Taxpayer’s statement of appeal. On 25/04/1442 AH, GAZT submitted its Rejoinder as requested by the Department, in which it stated that “GAZT had provided Taxpayer with a copy of the Tax Assessment on 23/04/1437 AH, and that Taxpayer had signed the receipt of the Assessment Notice on 12/11/1437 AH. Accordingly, GAZT has considered this date as the actual date of receipt of the Tax Assessment Notice by Taxpayer. In addition, GAZT stated that Taxpayer had received the Assessment with all of its details, and that Taxpayer’s statement regarding its receipt of the Assessment without its details is a false claim. Based on the foregoing, GAZT requests that Taxpayer’s appeal be dismissed and the appealed decision be upheld as to conclusion it had regarding the non-acceptance of Taxpayer’s objection in form.”

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 taken cognizance of Case documents and statement of appeal submitted by Taxpayer, the Department 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, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Taxpayer’s request regarding the acceptance of its objection in form and consider the same on its merits, as Taxpayer claims that it had received a copy of the Tax Assessment No. of 2009 – 2013 dated 23/04/1437 AH from the Administrative Communications Department at GAZT without any attachments as the Assessment did not clarify the statutory period specified for submitting objections pursuant to Article (59.7) of the Implementing Regulations of Income Tax Law, and that the objection to the said Assessment was submitted within the statutory period prescribed by the Law.

The Department, having reviewed the appealed decision, also found that the Objection Committee did not discuss Taxpayer regarding its pleas for the lack of attachments upon receiving the Assessment Notice, which requires consideration by this Department, as it represent the basis on which Taxpayer would be able to determine the Grounds on which it based its objection to the Assessment regarding the items contained therein that are under dispute; and since neither GAZT response nor its Assessment to Taxpayer has established that Taxpayer has been informed that the period specified for objecting to the Assessment, as prescribed by the Law, is sixty (60) days from



the date of receipt of Assessment Notice by Taxpayer; and since the copy of the Tax Assessment submitted by Taxpayer, having been reviewed by the Department did not also state the condition of the said objection period, under which the Legislator aimed to remind Taxpayer of the necessity of considering that period upon exercising its right to object to the Assessment during the same; and since GAZT has failed to comply with this condition upon making its Assessment, which results in the existence of a reason precluding the lapse of the period claimed by GAZT to have been lapsed to determine invalidity of Taxpayer's objection to the Assessment in question; Therefore, the Department satisfies to accept Taxpayer's appeal, reverse the appealed decision, and remand the objection to the First Primary Committee for Zakat and Tax Objections Jeddah for consideration on its merits, after informing Taxpayer of the date of the hearing set for considering the objection in accordance with the principles established by Tax Dispute and Violation Committee Procedure and the provisions of Income Tax Law and its Implementing regulations.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept Taxpayer's (..... Institution, C.R. No) appeal against Decision No. (11/39) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah, in form.

Second: On Merits:

Abolish the appealed decision and remand the objection to the First Primary Committee for Zakat and Tax Objections 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-2020-75)
Issued in Appeal No. (I-2018-1904)

Principle No. 78

GAZT's right to make the said Estimated Assessment is restricted by the conditions set by the Legislator regarding the necessity of the existence of evidence, facts, or indicators, in the case for which the Estimated Assessment is to be made, that, with their existence, entitles GAZT to disregard Taxpayer's Returns, determine the estimated profit, and make Estimated Assessment thereon.

Facts:

On Wednesday, 28/01/1442 AH, corresponding to 16/09/2020 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 16/01/1440 AH, corresponding to 26/09/2018 AD, by General Authority of Zakat and Tax ("GAZT"), against Decision No. (35) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Riyadh in Objection No. (39/9), filed by Taxpayer against GAZT. The appealed decision ruled as follows:

First: Accept Taxpayer's (Branch of Company) objection to the Tax Assessment of 2010 – 2014.

Second: On Merits:

Accept Taxpayer's objection to GAZT's procedure for raising of the estimated profit rate from (7%) to (20%) of total expenses for 2010 – 2014, according to the Grounds stated in this decision, and correct the material errors related to the component of the end-of-service provision in 2011, and the tax paid in fines in 2012.

Since GAZT dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

GAZT objects to the appealed decision in question, claiming that: "The appealed decision did not take into consideration the conclusion that GAZT had for estimating Taxpayer's profit by making an Assessment on an estimated basis at a rate of (20%) instead of the estimated profit contained in Taxpayer's Return of (7%) under the agreement between the Company's branch (Taxpayer) and its head office for the purpose of estimating the profit margin on the business that takes place between customers and the Company's head office through Taxpayer and calculating those profits at the same rate. In addition, the basis of GAZT's objection is the lack of confidence to adopt the said estimated profit rate, as the agreement between parties does not reflect Taxpayer's independence as a branch of its head office to which it is affiliated; hence, Taxpayer's addition of (7%) of its total expenses in its Return and being compensated thereof from its head office under that agreement cannot be taken into consideration, since such agreement does not demonstrate, pursuant to Paragraph (1/2) of Article (63) of Income Tax Law, the actual status of Taxpayer's



activity, as that Article has entitled GAZT to “reclassify transactions whose form does not reflect their substance and put them in their real form”, and to “make a tax assessment due on Taxpayer using the estimated tax method according to facts and circumstances pertaining to Taxpayer if Taxpayer fails to file its declaration on time, to keep precise accounts, books, and records, or to comply with the form, declaration form, and method required in its books and records.”, as stated in Paragraphs (B) and (C) therein.

Moreover, since Taxpayer’s activity is to provide technical support services for the products of the Company’s head office, the Legislator has set a minimum estimated profit for such activity of not less than (20%) in accordance with Article (16.4) of Implementing Regulation of Income Tax Law and Item (5) of the table contained therein regarding the calculation of the estimated profit for those activities whose profit estimation is subject to “the available evidence, facts, or indicators relevant to Taxpayer’s activity, its nature, or the surrounding circumstances”, and not less than the rates stated in such table. Furthermore, the field inspection conducted by GAZT was not for the purpose of the profit rate estimation on which the Objection Committee could rely to establish the existence of Taxpayer’s regular accounts in its decision, but rather was to verify the implementation of an agreement signed between the Ministry of Defense and the Company’s branch (Taxpayer). Based on the foregoing, GAZT requests that its view on the item in question be upheld and abolish the appealed decision as to conclusion it had in this regard.”

The Department has requested Taxpayer to respond to GAZT’s statement of appeal regarding the item in question. Taxpayer submitted its Rejoinder as requested by the Department; stating that: “Taxpayer maintains its statements made before the Objection Committee when considering the dispute, and affirms that GAZT did not provide any evidence or information that entitles the same to make an Estimated Assessment pursuant to Article (63) of Income Tax Law, as it did not prove that Taxpayer has provided incorrect information, has failed to submitted its Returns within the statutory period, or that the subject of the transactions between Taxpayer and its head office is in violation of Income Tax Law; especially since Taxpayer confirms that there are no other revenues for its head office, as the source of those revenues for Taxpayer was from a contract signed between Taxpayer and its head office, and that the entire activity and its operations are recorded in its accounts; hence there is no evidence that Taxpayer concealed those revenues or evaded their disclosure. Accordingly, Taxpayer affirms that the Returns in question for the years subject to appeal are sound and valid, and are consistent with the approved accounts; hence, GAZT has no right to make an Estimated Assessment as long as Taxpayer maintains regular and approved accounts. In addition, GAZT did not examine those accounts during its field inspection as stated in its statement of appeal, as the field inspection was conducted for another purpose. Accordingly, it is inadmissible not to take those approved accounts into consideration as long as GAZT did not submit any evidence supporting the invalidity of those accounts. Based on the foregoing, Taxpayer adheres to objecting to all the differences resulting from GAZT’s Assessment and the fines it calculated accordingly, in addition to requesting correction of the accounting errors contained in Estimated Assessment’s Notice, so that the errors in proving these figures are as stated in the accounts submitted by Taxpayer, which were confirmed by the appealed decision in question.”

Having reviewed the statement of appeal and response thereto, and after examining the documents included in the Case file, the Department decided that the Case was ready for adjudication and issuance of decision.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted 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 appeal is accepted in form for being filed by party having capacity and within the prescribed statutory period.



On Merits: The Department, having taken cognizance of documents included in the Case file, GAZT's statement of appeal and the Grounds on which it is based, Taxpayer's Rejoinder, as well as the factual account of the appealed decision and its conclusion, found that GAZT's request to raise the estimated profit rate of total expenses from (7%) to (20%) for 2010 – 2014, was based on Taxpayer's submission of its Return that included its income which is represented by adding a rate of (7%) of its total expenses each year and being compensated thereof from its head office by virtue of an agreement signed between Taxpayer and its head office for determining the profit margin on the business carried out by Taxpayer on behalf of its head office, as GAZT claims that the said agreement lacks the principle of independence due to the upper hand of Taxpayer's head office in decision-making, which entitles GAZT to make an Estimated Assessment to determine the profits under the manner it claimed without considering the said agreement; and since GAZT's claim regarding its right to make the Estimated Assessment as stated in its appeal that the Income Tax Law has entitled the same to carry out such a procedure cannot be taken into account in absolute terms, since the Law has restricted GAZT's right by a set of conditions and situations that, when met, it may invoke such a right to make the said Estimated Assessment, including those mentioned in Article (63) of Income Tax Law, which are the failure of Taxpayer "to file its declaration on time, to keep precise accounts, books, and records, or to comply with the form, declaration form, and method required in its books and records", or its failure to "prove the validity of the returns information by supporting documents", as well as the restrictions set forth in Article (16.3) of Implementing Regulation of Income Tax Law regarding GAZT's right to make an Estimated Assessment, as it stipulates: "In order to enforce Taxpayers' compliance with statutory requirements and curtail tax evasion, the Department may use tax assessment based on Taxpayer's relevant facts and circumstances, in the following cases:

a. (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 Taxpayer's return according to standard procedures and subject to statutory penalties.

b. (b) Taxpayer's failure to keep accurate books and records that truly reflect its transactions in the Kingdom.

(c) Taxpayer's failure to prove the validity of the return's information by supporting documents.

(d) Taxpayer's failure to comply with the format, form and manner of books and records as required by the Law of Commercial Books.

(e) 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, after being notified to do so in writing.

The Department also found that, since Article (63) of Income Tax Law is titled "Anti-Tax Avoidance Procedures," which included a set of procedures that were assigned to GAZT to carry out for the purpose of calculating the tax; and since GAZT has failed to provide substantial evidence of Taxpayer's attempt to evade or reduce the tax; and since Taxpayer, as established from the Case file, has submitted regular accounts certified by a licensed external auditor; and since GAZT's claim that it's procedure to make the Estimated Assessment was based on Article (14/B) of Income Tax Law, which stipulates: "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.", cannot be applied to Taxpayer due to its submission of certified accounts without any observations or objections from GAZT on the validity of those accounts upon conducting its field inspection; and since the aforementioned conclusion is not affected by GAZT's claim that the said field inspection was only for the purpose of verifying the implementation of an agreement between Taxpayer and the Ministry of Defense, since GAZT had the right to conduct an inspection on Taxpayer to substantiate its claim to determine the soundness of the adoption of the Estimated Assessment of profits if it found non-conformity of Taxpayer's books and documents with the Returns submitted, which renders invalidity of invoking the Estimated Assessment by relying on data that is contrary to those contained in Taxpayer's accounts



as a basis for making the Tax Assessment thereon, especially since GAZT also did not substantiate its claim in accordance with Article (16.4) of Implementing Regulations of Income Tax Law, which specified the method of determining the estimated net profit according to the available evidence, facts, or indicators relevant to Taxpayer's activity, its nature, or the surrounding circumstances; and since GAZT's appeal, when mentioning the statutory provisions of Income Tax Law and its Implementing Regulations to establish the soundness of its procedure to make the Estimated Assessment, was not fundamentally disputed, but rather demonstrated that GAZT's right to make the said Estimated Assessment is restricted by the conditions set by the Legislator regarding the necessity of the existence of evidence, facts, or indicators, in the case for which the Estimated Assessment is to be made, that, with their existence, entitles GAZT to disregard Taxpayer's Returns, determine the estimated profit, and make Estimated Assessment thereon; and since the aforementioned is not affected by GAZT's claim that the agreement on which the realized profit margin was determined based on the Company's branch (Taxpayer) activity within the Kingdom and its relationship with the Company's head office was pursuant to an agreement in which Taxpayer's independence was not achieved in order to be taken into consideration, since this matter, although it is correct in principle and reality in that the branch, in managing its business, follows its head office, does not negate the apparent fact under which it is decided whether to take Taxpayer's Return into consideration based on the information contained therein, by relying on its accounts audited by a licensed accounting office; and since GAZT's appeal lacks any evidence that refutes those accounts and their credibility, it is not inadmissible to rely on the mere statement that Taxpayer is not genuinely independent in order to conclude that its business operations recorded in its accounts are not sound and valid and to disregard thereof, as GAZT claimed in its appeal that those accounts should not be taken into consideration upon determining the profit, but rather it should be determined on an estimated basis and make an Assessment on Taxpayer accordingly; Therefore, the Department satisfies to dismiss GAZT's appeal and uphold the appealed decision as to conclusion it had in this regard for making the Assessment based on Taxpayer's Return and reject GAZT's request to make the Assessment on an estimated basis, and for obliging GAZT to correct the arithmetical errors included in the appealed decision upon enforcing this Decision as to it had in its wording.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept GAZT's appeal against Decision No. (35) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Riyadh, in form.

Second: On Merits:

Dismiss GAZT's appeal, uphold the appealed decision as to conclusion it had in this regard by rejecting GAZT's request to raise the estimated profit rate from (7%) to (20%) of total expenses for 2010 – 2014, according to the Grounds stated in this decision, and correct the material errors related to the component of the end-of-service provision in 2011, and the tax paid in fines in 2012, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-128)
Issued in Appeal No. (IW-
2018-1813)

Principle No. 79

It is unreasonable for Taxpayer to remain within the Kingdom for a long period after the completion of its work, and that the existence of Taxpayer's accounts is a natural matter considering the lack of activity of Taxpayer within the Kingdom after the contract expiration.

Facts:

On Wednesday, 17/04/1442 AH, corresponding to 02/12/2020 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 01/05/1439 AH, by General Authority of Zakat and Tax ("GAZT"), against Decision No. (8) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Riyadh in Case No. (38/15), filed by Taxpayer (Branch of Company) against GAZT. The appealed decision ruled as follows:

First: Accept Taxpayer's (Branch of Company) objection to the Tax Assessment of 07/06/2009 to 15/05/2014 AD.

Second: On Merits:

1. Accept Taxpayer's objection to item (Value of Civil Work Contract).
2. Accept Taxpayer's objection to item (Non-Squander of Accounts).
3. Accept Taxpayer's objection to item (Non-Imposition of Withholding Tax on Estimated Profits).
4. Dismiss Taxpayer's objection to item (Imposition of Withholding Tax on Payments to Head Office) and uphold GAZT's decision regarding the same.
5. Accept Taxpayer's objection to item (Abolishment of Withholding Tax Difference on Royalties and Technical Services).
6. Uphold GAZT's decision on item (Imposition of Late Payment Fine on Difference of Withholding Tax Arising from Items in Which Objection Committee Upheld GAZT's Decision).

Dissatisfied with the decision, ZATCA filed a statement of appeal summarized as follows:

1. Item (Acceptance of Taxpayer's objection to the value of the civil work contract in the amount of "SAR 42,412,219"): GAZT contends, regarding the contract in question, that its value must be subject to withholding tax at the net profit rate, considering such value as revenues for Taxpayer within the Kingdom, since these civil works were carried out by Taxpayer and were by agreement with the General Authority of Civil Aviation ("GACA"). In addition, Taxpayer has listed the expenses of the subcontractor within its revenues, confirming that those civil works are related to Taxpayer, and that GACA did not agree with Taxpayer to assume the cost



of the said civil works, which is contrary to the content of the agreement regarding the imported machinery and equipment, as it stipulated that GACA is the actual importer of machinery and equipment; hence, the conclusion reached by the Objection Committee in limiting the liability of Taxpayer to merely coordinating with the bank for payment of subcontractors dues has no relation to the subject of the dispute, nor has no legal effect on the action taken by GAZT against Taxpayer.

2. Item (Acceptance of Taxpayer's objection to non-squander of accounts): GAZT contends that its decision was a result of the field inspection, which revealed that the Company's branch (Taxpayer) did not exist, nor did the Company have headquarters within the Kingdom, and that the accounts were found to be mere interpretations of those prepared by the auditor. In addition, the inspection team was also unable to review Taxpayer's accounts due to the absence of terminal end system within the Kingdom. Furthermore, Taxpayer's representatives have failed to provide the mandatory documents and books, such as the General Journal and General Ledger, violating Article (56) of Implementing Regulations of Income Tax Law. Accordingly, GAZT adheres to the validity of its procedure due to the violation of the Law by the appealed decision.
3. Item (Acceptance of Taxpayer's objection to the non-imposition of withholding tax on the estimated profits): GAZT appeals to the item in question, having found out the reasons that led to the Estimated Assessment on Taxpayer, as the imposition of the withholding tax came in accordance with the estimation of those profits, meaning that if Taxpayer had kept its records, it would have been held accountable for those records in light of data shown therein to calculate the withholding tax on the profits distributed. Accordingly, Taxpayer was held accountable on the basis of profits that had been estimated due to the lack of dependence on Returns and documents submitted by Taxpayer. In addition, this approach has been supported by several decisions, including Decision No. (1663) of 1438 AH delivered by the Tax Appeal Committee.
4. Item (Non-imposition of a late payment fine on items in which the Objection Committee upheld Taxpayer): GAZT clarifies that it has the right to impose a late payment fine on items in which the Objection Committee upheld Taxpayer, as its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulations. Accordingly, GAZT adheres to the validity of its procedure in imposing a late payment fine under Article (76/B) and Article (77) of Income Tax Law by obligating Taxpayer to pay "a delay fine of (1%) for every thirty (30) days of delay on unpaid tax", as well as Article (68/A/B) of its Implementing Regulations, which stipulates: "(1%) of unpaid tax for every thirty (30) days of delay shall be added in the following cases: (a) Delay in payment of due tax as per the return. (b) Delay in payment of due tax as per the Department's assessment."

Grounds

Having taken cognizance of the Case documents and statement of appeal submitted by GAZT, the Department 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 the Case file and GAZT's statement of appeal, found that; since the Case has become ripe for adjudication on its merits as decided by this Department regarding the statement of appeal filed by GAZT on items in question; 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 Objection 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 Objection Committee's decision; and since the aforementioned is not affected by GAZT's claim for the first item regarding the value of civil work contract, that contract value must be subject to withholding tax at the net profit rate, considering the same as revenues for Taxpayer within the Kingdom, and that the conclusion reached by the Objection Committee in limiting the liability of Taxpayer to merely coordinating with the bank for payment of subcontractors dues has no relation to the subject of the dispute, nor has no legal effect on the action taken by GAZT against Taxpayer, since GAZT based its claim on the existence of contracts between Taxpayer and those subcontractors, while such direct relationship between Taxpayer and those subcontractors has not been established, as Taxpayer's activity and income were based primarily on the revenues generated from installation services of equipment requested by the Government Agency; hence, the civil work contracts have no relation to Taxpayer's direct commitment before that Government Agency; and since the matter was as stated, there is no evidence that revenues were generated for Taxpayer as a result of those actions, as detailed 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.

Additionally, since the said conclusion reached by the appealed decision regarding the second item for the issuance of Estimated Assessment on Taxpayer and the dismissal of GAZT's decision for making that Assessment, is not affected by GAZT claim regarding the existence of violations on Taxpayer due to the inspection team's inability to review the mandatory books and the absence of a terminal end system within the Kingdom through which the inspection team could review Taxpayer's accounts, in addition to the inspection team's observations regarding the absence of a Company's headquarters within the Kingdom and that the Company's accounts were found with its auditor, as the fact is that GAZT reviewed Taxpayer's accounts after the lapse of two (2) years from the expiration date of the contract and the departure of Taxpayer's personnel outside the Kingdom accordingly; hence, it is unreasonable for Taxpayer to remain within the Kingdom for a long period after the completion of its work, and that the existence of Taxpayer's accounts is a natural matter considering the lack of activity of Taxpayer within the Kingdom after the contract expiration. Accordingly, there is no justification for Taxpayer's continued existence to establish that violations have occurred due to the irregularity of Taxpayer's accounts and books after the lapse of that period; Therefore, the Department satisfies to dismiss GAZT's appeal and uphold the appealed decision as to conclusion it had in this regard.

Moreover, since the said conclusion reached by the appealed decision regarding the third item for the dismissal of GAZT's decision to impose a withholding tax on the estimated profits distributed to the head office, is not affected by GAZT's claim that the basis for subjecting the estimated net profit to withholding tax after deduction of the income tax is Taxpayer's failure to submit the necessary Returns, books, and documents that can be relied upon to verify the payment of the withholding tax and the possibility of tracking the same, and that GAZT's decision came in accordance with Article (68) of Income Tax Law and Article (63) of its Implementing Regulations, as the fact is that GAZT estimated the amount of the withholding tax on profits distributed to the head office based on the Estimated Assessment on Taxpayer after squandering its accounts; and since GAZT's procedure, by adopting the estimated method upon making the Assessment on Taxpayer and the resulting disregard of its Returns, has become incorrect based on the conclusion reached by the appealed decision and in light of the Grounds supported by this decision that does not require squandering Taxpayer's accounts as detailed 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.



Finally, as for the Grounds on which GAZT based its appeal regarding the non-imposition of a late payment fine on items in which the Objection Committee upheld Taxpayer; since the basis for imposing those fines for Taxpayer's delay in paying the tax due or required to be remitted to GAZT, is the fulfillment of the obligation to pay those taxes and GAZT's entitlement thereto; and since GAZT has failed to prove the existence of such obligation on Taxpayer to pay those taxes that GAZT had claimed; and since taxes in which the Objection Committee did not support GAZT's decision regarding its entitlement thereto were related to the estimated profits that GAZT had claimed from Taxpayer; and since the obligation for payment of these taxes was dismissed due to lack of support of GAZT's decision for making the Estimated Assessment on Taxpayer, the associated late payment fine is dismissed accordingly; Therefore, the Department satisfies to dismiss GAZT's appeal and uphold the appealed decision as to conclusion it had in this regard.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept in from the appeal filed by GAZT against Decision No. (8) of 1439 AH, delivered by the First Primary Zakat and Tax Objection Committee in Riyadh.

Second: On Merits:

1. Dismiss GAZT's appeal on item (Value of Civil Work Contract) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Dismiss GAZT's appeal on item (Estimated Assessment) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Dismiss GAZT's appeal on item (Imposition of Withholding Tax on Estimated Profits) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Dismiss GAZT's appeal on item (Late Payment Fine) 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-2020-74)
Issued in Appeal No. (I-2018-
1886)

Principle No. 80

The purpose of determining the period during which GAZT can make the Final Assessment without exceeding that period, is represented by the desire to maintain financial and legal positions of Taxpayers and GAZT not jeopardized.

Principle No. 81

GAZT's right to make the Final Assessment, as authorized by the Law, after conducting inquiries and requesting information from Taxpayer to issue an Assessment in its final form is subject to the period of five (5) years, the beginning date of which was specified by the Law from the final date set for submitting Tax Return.

Principle No. 82

GAZT may not exceed the period prescribed by the Law, without informing Taxpayer of the Amended Assessment.

Facts:

On Wednesday, 28/01/1442 AH, corresponding to 16/09/2020 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 22/07/1440 AH, corresponding to 28/03/2019 AD, by (..... Company) against Decision No. (32) of 1439 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Riyadh in Case No. (39/32), filed by Taxpayer against General Authority of Zakat and Tax ("GAZT"). The appealed decision ruled as follows:

First: Accept Taxpayer's (..... Company) objection to the Tax Assessment of 2007 – 2013, in form.

Second: On Merits:

1. Dismiss Taxpayer's objection to item (GAZT Amendment of Tax Returns of 2007 and 2008 After the Lapse of Five Years).
2. Dismiss Plaintiff's objection to item (Tax Liabilities).
3. Dismiss Plaintiff's objection to item (Imposition of Late Payment Fine by "1%" for Every Thirty Days of Delay).

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



1. Item (GAZT Amendment of Tax Returns of 2007 and 2008 After the Lapse of Five Years), wherein Taxpayer objects to the invalidity of the appealed decision by upholding GAZT's procedure in making amendments to the Tax Assessments for the years in question, as these Tax Assessments must not be amended after the lapse of five (5) years from the date set for submission of Tax Return within the period prescribed by the Law; however, GAZT has made these amendments after the lapse of that period; hence, they should not be taken into consideration and make the Assessment based on the Tax Returns submitted by Taxpayer. In addition, GAZT's mere notification to Taxpayer during that period set for making amendments to Assessments for inquiries and requesting information does not affect the non-calculation of that period as five (5) years from the date of submission of Assessment within the period prescribed by the Law until GAZT's notification of the Final Assessment. Moreover, GAZT's requests for information and its constant communication with Taxpayer regarding the Assessments for the purpose of issuance of a Final Assessment do not affect the presumption that the period set for GAZT to make Assessment on Taxpayer through its Tax Return, or to make amendments to the Assessment and inform Taxpayer of the Final Assessment under these amendments is not considered valid unless the Final Assessment took place within the period prescribed by the Law. Accordingly, GAZT's notification of the Final Assessment for the years in question after the lapse of five (5) years is incorrect procedure and in violation of the Law. Furthermore, Taxpayer requests that its objection, regarding the item in question, shall not be limited to years 2007 and 2008 as stated in the wording of the appealed decision, since Taxpayer, regarding the Assessments from 2007 to 2010, has not been informed of the Final Assessment after making the amendments and conducting inquiries by GAZT except after the lapse of five (5) years for each year, as the Assessment for the last year of which was made in January 2017, despite being submitted in April 2011.
2. Item (Tax Liabilities), wherein Taxpayer claims that the tax of for years from 2007 to 2013 should not be imposed thereon, since the registration in the Kingdom of the technical and scientific office affiliated with Company in the United States, was for the purpose of providing technical and scientific support services to customers and distributors of Company within the Kingdom; hence, Taxpayer does not engage in any activity for the purpose of profitability, as the Company has only declared the expenses incurred to provide technical and scientific services that were charged to the account of the head office, which was confirmed by the license issued by the Saudi Arabia General Investment Authority ("SAGIA"), as it does not authorize the office to carry out any contracts or any commercial activity; thus, the imposition of the tax on the contracts accompanying the supply contracts that were entered into between the head office and its distributor within the Kingdom as stated in the appealed decision, has no valid ground, but rather is the result of a misunderstanding by the Objection Committee and SAGIA of the nature of the office's activity and business, which is limited only to provide technical and scientific support services to the Company's customers and distributors within the Kingdom with regard to price of ledgers and data, product brochures, and provision of assistance in market survey studies and sales promotion plans. Therefore, the in the Kingdom has not issued any service invoice to distributors accordingly, nor it did receive any money in return for providing these support services. As a result, the misunderstanding has occurred by assuming that the office carries out a commercial activity that generates revenues, while the actual business of the office is to provide technical support services to help customers, and there is no profit generating form carrying out such activity by the office. Moreover, this matter was also confirmed by notes to the audited financial statements, which included that Taxpayer does not engage in any activity that generates revenues, and that the only support provided to the distributor of the head office's products is the support provided by the technical and scientific support office of in the Kingdom; hence, there is no business accompanying the supply contracts on which the imposition of the tax is determined, on the basis that these businesses represent technical



services that were provided to the distributor due to their connection to the supply contract entered into with the distributor.

3. Item (Imposition of Late Payment Fine by “1%” for Every Thirty Days of Delay), wherein Taxpayer objects to the imposition of the fine in question, claiming that the existence of the tax does not exist as stated in its appeal in the second item of the appealed decision in question, as Taxpayer has submitted its Returns within their statutory deadlines. In addition, Taxpayer stated that, even assuming that the income tax is correctly imposed, the disagreement between in the Kingdom and GAZT is an actual disagreement due to the unclarity of the imposition of the tax as deemed by GAZT; hence, these fines should be charged from the end date of objection and appeal procedures on the dispute related to the existence of the tax. Moreover, the decisions delivered by the Tax Appeal Committee has established in various cases of dispute that the late payment fine should not be imposed until after the issuance of a decision on GAZT’s right to collect the tax after the issuance of a final ruling regarding that tax, which was also confirmed by Paragraph (2/D) of Article (71) of Implementing Regulations of Income Tax Law, which stipulates: “(2) Due amounts shall be deemed final in the following cases: (d) Issuance of a final ruling from the Preliminary Objection Committee, the Appeals Committee or the Board of Grievances.” Accordingly, it is inadmissible to impose a late payment fine by GAZT under Income Tax Law except with the issuance of the final ruling on the tax due, which GAZT failed to consider upon informing Taxpayer of the Final Assessment, regarding which the Objection Committee supported GAZT’s decision, along with the imposition of the late payment fines in question resulting therefrom.

The Department has requested GAZT to respond to Taxpayer’s statement of appeal on the items in question within ten (10) days as of 07/09/1441 AH, corresponding to 30/04/2020 AD. Since the Department has not received a response from GAZT to Taxpayer’s statement of appeal regarding the contested items after the lapse of the period set for submitting such response and without stating any excuse for such delay by GAZT as previously requested by the Department; and since the appeal remands the case to its previous state prior to its consideration before this Department, it is necessarily entails referring to GAZT’s statements and responses included in the appealed decision regarding items in question.

The Department, having taken cognizance of the statement of appeal and 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.

The Department, having taken cognizance of Case documents, and Taxpayer’s statement of appeal and the summary of its pleas, found the following:

1. As for item (GAZT Amendment of Tax Returns of 2007 and 2008 After the Lapse of Five Years); since Taxpayer’s appeal on the item in question was based on the Grounds that were previously summarized therein; and since GAZT, as established from consideration of the Case papers and documents, as well as the facts included in the appealed decision upon considering the dispute on the item in question by the Objection Committee; has made the Final Assessment after conducting inquiries and requesting information from Taxpayer by exceeding five (5) years from the date of the statutory period set for submitting each Return for years 2007 to 2010; and since the purpose sought by Legislator in determining the period during which GAZT can make the Final Assessment without exceeding that period, is represented by its desire to maintain financial and legal positions of Taxpayers and GAZT not jeopardized; and since GAZT right to make the Final Assessment, as authorized by the Law, after conducting



inquiries and requesting information from Taxpayer to issue an Assessment in its final form is subject to the period of five (5) years, the beginning date of which was specified by the Law from the final date set for submitting Returns; and since the Legislator has enabled GAZT to review the Assessment and inquire from Taxpayer within a period of five (5) years calculated from the statutory period through which Taxpayer must submit the Tax Return for the fiscal year covered by the Assessment; and since the criteria governing the consideration of Tax Returns submitted by Taxpayer as final and subject to the make of Assessment are if these Returns reflect the actual position of Taxpayer regarding its tax liabilities towards GAZT, and that GAZT may inquire and review the Assessment for approval or amendment during the said period; hence, GAZT may not exceed such period, as stipulated by the Law, without informing Taxpayer of the Amended Assessment, as stating otherwise would make the provision specifying the period of five (5) years during which GAZT may review and inquire to make the Final Assessment, deprived of its binding nature when arguing that GAZT is not entitled to do so if it exceeds the period set for issuing the Final Assessment and obliging Taxpayer of the same, based on the fact that any procedure taken by GAZT before the lapse of those five years leads to the continuation of its right to review and inquire until the issuance of its decision of the Final Assessment, as the Income Tax Law, upon determining that period, has taken into account the sufficiency of the five (5) years for GAZT to decide whether to issue the Assessment or make amendments thereon, and then issue the Assessment after amendment as it deemed appropriate without exceeding the five-year period stipulated by the Law, by calculating the same from the date set for submitting Tax Returns by Taxpayer; and since GAZT, as established from the facts of the appealed decision, has failed to inform Taxpayer of the Final Assessment until after the lapse of five (5) years from the date set for submitting Tax Returns by Taxpayer; and since Taxpayer, as also established, has requested to include GAZT's procedure in amending the Tax Assessments and informing Taxpayer of the expiration of those Assessments after amendment for years 2007 to 2010, in its objection; and since the appealed decision was limited in stating the Tax Assessments of 2007 and 2008 only in its wording; and since this Department has decided to accept Taxpayer's appeal by considering the Tax Returns submitted by Taxpayer to GAZT as the basis for making the Assessment of 2007 and 2008, and dismissing GAZT's procedure to make amendments and issue the Final Assessment after the lapse of the period prescribed by the Law to make amendments on Taxpayer's Assessment; and since Taxpayer has reiterated its request within its appeal that its objection includes the remaining years (2009 and 2010); and since as established from Taxpayer's statements before the Objection Committee that GAZT's notification of the Final Assessment of 2010 did not take place until 2017; and since GAZT has failed to provide evidence that refutes the aforementioned; Therefore, the Department satisfies to accept Taxpayer's appeal by deciding to consider the basis for making the Assessment of 2007 and 2010 is the Tax Returns submitted by Taxpayer, and reverse the appealed decision as to conclusion it had in this regard.

2. As for item (Tax Liabilities); since Taxpayer's appeal on the item in question was based on the Grounds that were previously summarized therein; and since the appealed decision has concluded to the existence of reasons for imposing the tax on Taxpayer after the Objection Committee found that Taxpayer is a branch of the head office that provides technical and scientific services to customers and distributors of the head office's products, and that such business is of a technical and scientific nature that constitutes business accompanying the supply contracts entered into between the head office and its distributor within the Kingdom; and since the value of such business work was not specified in detail for those contracts in detail, the Objection Committee has concluded to uphold GAZT's decision for imposing the tax on those contracts accompanying the supply contracts as stated in the appealed decision; and since Taxpayer, by claiming the existence of a misunderstanding of the nature of the technical office's business, as it is non-revenue-generating business; hence, its activity is not based on profitability, but rather is to provide assistance to customers and distributors within



the Kingdom; does not refute the basis on which the tax is imposed on Taxpayer for the contracts entered into between the head office and the distributor within the Kingdom, for which the office has provided technical support services; and since Taxpayer, by claiming that the tax should not be imposed due to the existence of a license issued by SAGIA that specified the activity of the office of Company in the Kingdom and prevented the same from carrying out any commercial activity; cannot be relied upon, as the said license, upon preventing the exercise of commercial activities, is related to the branch registered with GAZT when it carries out a sale activity any other activity that results in a violation of that license; and since such a matter has no bearing on the application of the provisions of Income Tax Law and its Implementing Regulations, whenever the Grounds establishing the tax are occurred, for which of Income Tax Law and its Implementing Regulations have stipulated provisions governing thereof; and since the obligation of Taxpayer who was sentenced to pay the tax is subject to consider that the office is providing scientific and technical services related to supply agreements between the head office and the distributor within the Kingdom; and since the provisions of Income Tax Law stipulated that the tax is imposed on the basis of the estimated profit for the business accompanying the supply contracts that was not separately included therein by determining the value due under those agreements related to the supply contracts; therefore, GAZT's decision in estimating the tax on the Grounds on which the appealed decision was based is sound and valid that is consistent with the proper application of the Law for such business that the office has undertaken to serve the distributor and customers within the Kingdom due to their connection to the supply contract that were entered into between the distributor and the head office; and since the aforementioned conclusion is not affected by Taxpayer's claim that it did not receive any compensation for those services provided, but rather they were for the purpose of assisting customers and the distributor within the Kingdom, and that there are no invoices or documents proving the realization of revenue from that activity undertaken by the office, since the provisions of Income Tax Law and its Implementing Regulations have settled that matter when stipulating that the profit shall be calculated on an estimated basis if the supply agreements did not detail the accompanying business with clear, independent amounts; and since the matter was as stated, the estimation of these profits for business accompanying the supply contracts is consistent with provisions of the Law; and since it is unreasonable to provide these services to customers without being actually calculated within the estimated costs in the supply contract, as such a matter is the same requirement implied by commercial transactions in which all costs are calculated upon contracting; hence, it not acceptable to argue that the tax should not be imposed on business related to the contract, claiming that no compensation was received, as stated by Taxpayer in its appeal; Therefore, the Department satisfies to dismiss Taxpayer's appeal and uphold the appealed decision as to conclusion it had in this regard.

However, since this Department has decided that GAZT is not entitled to make the Final Assessment on Taxpayer for years 2007 to 2010 and considered that the Tax Return submitted by Taxpayer is the basis for making the Final Assessment thereon for those years; Therefore, the Department decided to impose the tax on the accompanying business for years 2011 to 2013 only.

3. As for item (Imposition of Late Payment Fine by "1%" for Every Thirty Days of Delay); since Taxpayer's appeal on the item in question was based on the Grounds that were previously summarized therein; and since the dispute between Taxpayer and GAZT is on payment of the tax on the business accompanying the supply contracts as detailed in the second item above and also in the appealed decision; and since the principle of good faith assumed is established when taking Taxpayers' statements into consideration as per their Tax Returns submitted; and since the existence of the license issued by SAGIA may lead to confusion that a tax is due on the business accompanying the supply contracts, considering the activities permitted and prohibited under the said license; and since the benefit of the doubt is attributed to Taxpayer;



stating that a late payment fine must be imposed is not correct unless it is calculated from the date of establishing Taxpayer's obligation for payment thereof, which entails calculating the late payment fines for the tax imposed on Taxpayer for the business accompanying the supply contract in accordance with the conclusion reached in this Decision regarding years of 2011 to 2013, from the date of proof of notification to Taxpayer of the issuance of this Decision resolving the dispute on the tax and determining the beginning of the application of the late payment fine upon failure for payment, since such a conclusion is consistent with the sound consideration of the purpose sought by the Legislator in imposing late payment fines to urge Taxpayers to fulfill their legal obligation of paying the tax due as soon as they become aware of that and to achieve the certainty of calculating its amounts, without being related to GAZT's decision in calculating fines from the date of submitting the Returns, despite its delay in informing Taxpayers of the Final Assessment and the consequences resulting therefrom of the imposition of a late payment fine in the event of failure to pay the tax due, especially if the dispute between Taxpayer and GAZT is an actual dispute that addresses the Grounds of the imposition of the fine through the facts and surrounding circumstances that led to the situation that established the tax; and since the above dispute on the item in question was of the same type as those disputes in which the disagreement is genuine, as detailed previously in the items contested in this Decision; Therefore, the Department satisfies to impose a late payment fine on the tax due for years 2011 to 2013 and to calculate the said fine from the date of notification to Taxpayer of the issuance of the Appeal Decision resolving the dispute.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:

First: Accept the appeal in form filed by Zakat Payer (... Company) against Decision No. (32) of 1439 AH rendered by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Accept Taxpayer's appeal on item (GAZT Amendment of Tax Returns of 2007 and 2008) and reverse the appealed decision as to conclusion it had in this regard by deciding to consider the basis for making the Assessment of 2007 and 2010 is the Tax Returns submitted by Taxpayer, for the Grounds stated herein.
2. Dismiss Taxpayer's appeal on item (Tax Liabilities) and amend the appealed decision by imposing the tax only for years 2011 to 2013, for the Grounds stated herein.
3. As for item (Imposition of Late Payment Fine by "1%" for Every Thirty Days of Delay):
 - a. Accept Taxpayer's appeal for the non-necessity of the late payment fine for years 2007 to 2010, for the Grounds stated herein.
 - b. Dismiss Taxpayer's appeal on the late payment fine for years 2011 to 2013, and calculate the fine from the date of notification to Taxpayer of this Decision, for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-55)
Issued in Appeal No. (V I-2018-1890)

Principle No. 83

The Zakat, Tax, and Customs Authority is the body entrusted with determining the actual date of receipt of the Assessment by Taxpayer by all means of notification until the actual date of the beginning of the statutory period of the objection is determined.

Facts:

On Tuesday, 10/08/1442 AH, corresponding to 23/03/2021 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 06/02/1442 AH, by Company ("Appellant /Taxpayer"), against Decision No. (06/21) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (1435/22/4025) of 23/09/1435 AH, filed by Taxpayer against General Authority of Zakat and Tax ("GAZT"). The appealed decision ruled as follows:

Dismiss Taxpayer's Objection No. (1435/22/4025) of 23/09/1435 AH, to the Tax Assessment of 2010 and 2011 in form and reject consideration of the same on its merits.

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

Taxpayer objects to the Objection Committee's decision in question that concluded in its wording to dismiss Taxpayer's objection to Tax Assessment of 2010 and 2011 in form and reject consideration of the same on its merits, as Taxpayer contends the following: "In Form, Taxpayer has received the Assessment's Notice on 05/08/1435 AH, and has submitted the objection within sixty (60) days on 23/09/1435 AH. On Merits, Taxpayer objects to the following:

1. Item (Import Differences of 2010 Amounting to "SAR 239,215" and 2011 Amounting to "SAR 1,200,487"), wherein Taxpayer states that there is no difference by increase or decrease, and that there are imports documented as assets and not procurements, as well as the difference in the dollar exchange rate between Customs and the Company user. In addition, the difference in the invoice dates is due to the receipt of goods and the additions of the customs broker's invoices to the offshore procurements.

2. Item (Allowance and Bonus of 2010 Amounting to "SAR 126,669" and 2011 Amounting to "SAR 141,778"), wherein Taxpayer states that these amounts are not subject to social insurance, as the commissions and incentives are allowances for overtime hours and an annual bonus for employees. Based on the foregoing, Taxpayer requests that the amounts of items in questions be abolished and GAZT's Assessment be amended accordingly."

Since the Department decided opening of pleadings, GAZT submitted a Rejoinder dated 28/07/1441 AH, corresponding to 11/03/2020 AD, in which it responded to the Department's request provide proof of receipt of the Objection Committee's decision by Taxpayer, as GAZT stated that: "the Objection Committee is the body entrusted with sending its decision to Plaintiff (Taxpayer) on the same date of its issuance, as it is an independent quasi-judicial body, and in the



event of failure of receipt of the decision by Plaintiff on the same date, the burden of prove otherwise falls on Plaintiff. GAZT also stated that it does not have the right to inquire about the arrival of the decision at Saudi Post (“SPL”), as it does not have the authority to inquire about Plaintiff documents at SPL.”

GAZT also submitted a supplementary memorandum dated 11/06/1442 AH, corresponding to 24/01/2021 AD, in which it responded to Taxpayer’s appeal, stating that: “the appealed decision was sound and consistent with the relevant legal provisions, as it made the Assessment on Plaintiff (Taxpayer) on 18/03/1435 AH, while Taxpayer submitted its objection to GAZT on 23/09/1435 AH, i.e. after more than sixty (60) days, which renders its objection submitted after the lapse of the statutory period for accepting the objection. GAZT also states that Taxpayer did not pay the tax due on the uncontested items during the objection period, as the payment took place on paid on 26/10/2014 AD, corresponding to 02/01/1436 AH. In addition, GAZT states its procedure is in accordance with Articles (66/A) and (66/B) of Income Tax Law.”

On 05/06/1442 AH, corresponding to 18/01/2021 AD, the Department 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 its earlier submissions. The period elapsed without any further submissions from Taxpayer.

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

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

The Department, having taken cognizance of Case documents, statement of appeal submitted by Taxpayer and the appeal decision, found that: With regard to Taxpayer’s appeal against the Objection Committee’s decision in question, which concluded in it wording to dismiss Taxpayer’s objection to Tax Assessment of 2010 and 2011 in form; since Taxpayer’s appeal lies in its request to accept the objection filed before the Objection Committee in form and consider the same on its merits after acceptance in form, as Taxpayer contended that it had received the Assessment’s Notice directly from GAZT and not from SPL, while GAZT argued that the appealed decision was sound and consistent with the relevant legal provisions, since Taxpayer did not submit its objection within the period prescribed by the Law for accepting the objection, nor did it pay the tax due on the uncontested items during the objection period; and since the appealed decision has stated that the decision of the Assessment was issued by GAZT’s branch in Jeddah by virtue of its Notice No. of 18/03/1435 AH, while Taxpayer objected to the same by virtue of its Letter No. of 23/09/1435 AH; However, having examined the Letter submitted by Taxpayer and addressed GAZT’s branch in Jeddah on 18/07/1435 AH, the Department found that Taxpayer has exercised due diligence to receive the Assessment’s Notice by requesting the same directly from GAZT, as the Director General’s signature on the Assessment’s Notice indicated that Taxpayer had received the Assessment’s Notice on 05/08/1435 AH and filed its objection to the same on 23/09/1435 AH, as stated in the appealed decision, which establish that Taxpayer submitted its objection within the period prescribed by the Law; and since Taxpayer stated that there were no amounts that were uncontested or unpaid, and that the Objection Committee did not consider this matter and prove the existence of uncontested amounts that require payment; and since the issuance of an Assessment by GAZT on specific date does not necessarily entail that Taxpayer was informed by that Assessment on the same date of issuance and assumption of its receipt by Taxpayer on the same date of issuance by GAZT. Accordingly, the Department



concluded, through those circumstances surrounding the determination of the date of receipt of Tax Assessment by Taxpayer, that Taxpayer was informed of the Assessment on 05/08/1435 AH, as the Case file lacked of any valid document establishing that Taxpayer was informed of the Assessment on the date of its issuance; Therefore, the Department satisfies to accept Taxpayer's appeal, abolish the appealed decision regarding the dismissal of Taxpayer's objection in form, and remand the Case to the First Primary Committee for Zakat and Tax Objections in Jeddah for consideration on its merits.

Decision

First: Accept Taxpayer's (..... Company, C.R. No.) appeal against Decision No. (06/21) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in form, for the Grounds stated herein.

Second: On Merits: Abolish the appealed decision regarding the dismissal of Taxpayer's objection in form and remand the Case to the First Primary Committee for Zakat and Tax Objections in Jeddah for consideration on its merits.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-250)
Issued in Appeal No. (I-32612-2020)

Principle No. 84

If the appealed decision was found to be devoid of consideration of a fundamental pleading of Taxpayer, which is the lack of knowledge of ZATCA's Assessment, in addition to Taxpayer claim that it faced technical difficulties when accessing ZATCA's website, therefore, the decision is flawed and must be reversed.

Facts:

On Tuesday, .../.../1443 AH, corresponding to .../.../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 19/05/1443 AH, corresponding to 23/12/2020 AD, by Branch of Company ("Appellant/ Taxpayer"), against Decision No. (IFR-239-2020) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in Case No. (I-2382-2020) in connection with Tax Assessment of 2015 – 2017 AD, filed by Taxpayer against Zakat, Tax, and Customs Authority ("ZACTA") "Previously General Authority of Zakat and Tax (GAZI)". The appealed decision ruled as follows:

Dismiss Plaintiff's (Branch of Company, TIN No.) case filed against Defendant "ZATCA /GAZI" for failure of submission of its objection to Defendant's decision within the period prescribed by Law.

Since Taxpayer (Branch of Company) dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

Taxpayer objects to the Primary Department's decision in question, claiming that: "the Primary Department has taken ZATCA's statement in to consideration that it had delivered Appellant (Taxpayer) a Tax Assessment Notice the fiscal years 2015, 2016, and 2017 (the years in question), which clearly did not happen, since ZATCA' claim, as mentioned in the appealed decision, that: "Plaintiff, as established from Defendant's e-records, did not access the said e-system", was not supported by any substantial evidence for the Department to peruse. In addition, ZATCA stated, as per the wording of the appealed decision, that "It is assumed that the Tax Assessment be known.", since the Primary Department upheld that assumption without any compelling evidence of its validity. Moreover, Taxpayer has communicated with ZATCA's Representative on a weekly basis to clarify the invalidity of the contested Assessment to, which its response was to cease contacting ZATCA in this regard. Based on the foregoing, Taxpayer requests that the appealed decision be reversed for the stated Grounds."

On Sunday, 23/12/1442 AH, corresponding to 01/08/2021 AD, the Department decided to hold a 10-day e-hearing session, in which ZATCA submitted a Rejoinder to Taxpayer's appeal, a summary of which included that it adheres to its view presented before the Primary Department. Also, ZATCA reaffirms that claims raised by Taxpayer are consistent with the earlier submissions,



which ZATCA responded to at that time, and that it adheres to the validity and soundness of its procedures. Furthermore, ZATCA requests the Department not to accept any new petitions from Taxpayer that have not been submitted to the Primary Department pursuant to Article (186) of Law of Civil Procedures. Based on the foregoing, ZATCA requests that Taxpayer's appeal be dismissed and the appealed decision be upheld as to conclusion it had in this regard. The Department having asked Taxpayer whether had any additional submissions, it responded that it satisfied with earlier submissions.

On Sunday, 05/02/1443 AH, corresponding to 12/09/2021 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. Accordingly, 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 Taxpayer, the Department 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 Taxpayer's appeal, found that the dispute lies in the invalidity of the Primary Department's adoption of ZATCA's statement regarding the date of Assessment and its notification thereof, as the Assessment to which Taxpayer has been notified differs from ZATCA's statement, while ZATCA argued that it adheres to the validity and soundness of its procedures and requested that the appealed decision be upheld.

The Department, having considered the subject of dispute, found that, 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 appealed decision was found to be devoid of consideration of a fundamental pleading of Taxpayer, which is the lack of knowledge of ZATCA's Assessment, in addition to Taxpayer claim that it faced technical difficulties when accessing ZATCA's website, which determines that the decision is flawed and must be reversed; and since Taxpayer to have the right to litigate at both degrees; Therefore, the Department satisfies to abolish the Primary Department's decision and remand the Case for consideration of the same on its merits.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: Accept Taxpayer's (Branch of Company, C.R. No.) appeal against Decision No. (IFR-239-2020) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in Case No. (I-2382-2020) in connection with the Tax Assessment of 2015 – 2017 AD, in form.

Second: On Merits:

Accept Taxpayer's appeal, abolish the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, and remand the Case 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. (VA-2021-390)
Issued in Appeal No. (V V-58134-2021)

Principle No. 85

Appellant's appearance or its representative at the hearing at the specified time through the link sent as per the supported documents does not entitle the Department to dismiss the Case.

Facts:

On Tuesday, 30/01/1443 AH, corresponding to 07/09/2021 AD, the First Appellate Department for Value Added and Excise 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 07/07/2021 AD, by Mr., holder of National ID No., in his capacity as the Appellant Company's Representative; against Decision No. (VTR-2021-414) delivered by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh in Case filed by Appellant against Appellee. Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

First: In Form:

- Dismiss Plaintiff's case for the second time.

Since Appellant dissatisfied with this decision; it submitted a statement of appeal that included its objection to the Primary Department's decision regarding the dismissal of the Case for the second time, as Appellant requests that the said decision be abolished on the Grounds that the e-hearing link sent was not related to its Case, in addition to the fact that the Judge had asked Appellant to leave the hearing since it was not concerned with that hearing. Moreover, Appellant has contacted the Customer Service to send the correct link. Based on the foregoing, Appellant requests that its appeal be accepted and the Primary Department's decision be abolished.

On Tuesday, 30/01/1443 AH, corresponding to 07/09/2021 AD, the Department held its session to consider the appeal filed by Appellant, and to review Decision No. (VTR-2021-414) delivered by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, as well as the Case file and all memoranda and documents included therein.

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Income Tax Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, has decided to close the transcript of the hearing and to continue consideration of the Case and issuance of a decision thereafter.

Having taken cognizance of Case file, documents included therein, memorandums and replies submitted by both parties, the Department found that the Case has become ripe for adjudication.



Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since the Primary Department has decided to dismiss the Case for the second time; and since the Appellant's Representative, as established from the documents submitted, has appeared at the hearing at the specified time through the link sent; and since that link was not the link specified for the hearing that the Appellant's Representative was required to appear at; and since the Judge has asked Appellant's Representative to leave the hearing since he was not concerned with that hearing; Therefore, the Department decided to accept Appellant's appeal and reopen the Case for consideration.

Decision

Therefore, and after legal deliberation, the Department unanimously decided the following:

- Accept Appellant's (..... Company, C.R. No) appeal and reopen the Case for consideration.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-225)
Issued in Appeal No. (I-2020-
33635)

Principle No. 86

Taxpayer's Return shall be considered final after the expiration of the statutory period for making Assessment, and that its accounts for these years covered by its Tax Return may not be squandered.

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 under Royal Decree No. (65474) of 23/12/1439 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 09/03/2020 AD, by Zakat, Tax, and Customs Authority ("ZACTA") (Previously referred to as General Authority of Zakat and Tax "GAZT"), against Decision No. (IR2) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in Case No. (I-18-2018). The appealed decision ruled as follows:

First:

1. Abolish Defendant's ("ZATCA") decision regarding Plaintiff's (..... Institution, C.R. No.) Tax Assessment of 1429 – 1432 AH.
2. Dismiss Plaintiff's (..... Institution, C.R. No.) objection to Defendant's ("ZATCA") Tax Assessment of 1433 – 1436 AH.

Second:

1. Abolish Defendant's ("ZATCA") decision regarding Plaintiff's (..... Institution, C.R. No.) Estimated Assessment and squander of its accounts of 1429 – 1432 AH.
2. Dismiss Plaintiff's (..... Institution, C.R. No.) objection to Defendant's ("ZATCA") decision regarding the Estimated Assessment and squander of accounts of 1433 – 1436 AH.

Third:

1. Abolish Defendant's ("ZATCA") decision regarding the imposition of concealment fine on Plaintiff (..... Institution, C.R. No.) for years 1429 – 1432 AH.
2. Dismiss Plaintiff's (..... Institution, C.R. No.) objection to Defendant's ("ZATCA") decision regarding the imposition of concealment fine for years 1433 – 1436 AH, and amend the fine charge by 25% of the difference of the unpaid tax, not from the amount of Defendant's Assessment.
3. Abolish Defendant's ("ZATCA") decision regarding the imposition of non-submission fine on Plaintiff (..... Institution, C.R. No.) for years 1429 – 1432 AH.

Fourth:



- Dismiss Plaintiff's (..... Institution, C.R. No.) objection to its previous paid amounts.

Since ZATCA dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

ZATCA clarifies that the appealed decision was contradictory in some of its provisions, as the Primary Department stated in its decision, regarding the Tax Assessment of 1429 – 1432 AH, that ZATCA had no right to make the Assessment for those years, while it agreed with ZATCA in Item No. (Second/2) of its decision in charging Taxpayer on an estimated basis for years 1433 – 1436 AH for Taxpayer's refusal to submit the required documents, as well as its failure to keep the documents. Additionally, ZATCA stated that, pursuant to Paragraph (B/5) of Article (77) of Income Tax Law, the Primary Department's statement in its decision in Item No. (Third/2) by upholding ZATCA to impose a concealment fine of 1433 – 1436 AH by (25%) of the unpaid tax difference, indicates its acknowledgment of the existence of a tax evasion through Plaintiff concealing the documents and books of its institution for all years; Accordingly, Article (65/B) of Income Tax Law is applied to years 1429 – 1432 AH regarding the statutory period for making the Tax Assessment. Moreover, ZATCA stated that it had requested Taxpayer to submit the trial balances and some detailed documents related to the accounts submitted by Taxpayer, while Taxpayer stated in its response No. dated 25/10/1438 AH, that “there were no accounting books or trial balances,” as ZATCA does not request documents from Taxpayer unless its Return required this procedure, which indicates that Taxpayer violated Article (58/A) of Income Tax Law and Article (8) of Commercial Books Law, and that Taxpayer did not meet the conditions required by the Law to keep its books; Accordingly, ZATCA made an Estimated Assessment pursuant to Article (57.3) and Article (16.3/B-C) of Implementing Regulations of the Income Tax Law, which was upheld by Appeal Decision No. (1309) of 1434 AH. Furthermore, ZATCA clarifies that all contested items are related to a single incident, which is proving ZATCA's right to make the Tax Assessment for years 1429 – 1432 AH pursuant to Article (65/B) of Income Tax Law, and thus proving its right to make an Estimated Assessment within ten (10) years and impose fines of late payment, concealment, and non-submission for years for years 1429 – 1432 AH. Based on the foregoing, ZATCA requests that the appealed decision regarding the following items:

1. Abolish Defendant's (“ZATCA”) decision regarding Plaintiff's (..... Institution) Tax Assessment of 1429 – 1432 AH.
2. Abolish Defendant's (“ZATCA”) decision regarding Plaintiff's (..... Institution, C.R. No.) Estimated Assessment and squander of its accounts of 1429 – 1432 AH.
3. Abolish Defendant's (“ZATCA”) decision regarding the imposition of concealment fine on Plaintiff (..... Institution, C.R. No.) for years 1429 – 1432 AH.
4. Abolish Defendant's (“ZATCA”) decision regarding the imposition of non-submission fine on Plaintiff (..... Institution, C.R. No.) for years 1429 – 1432 AH.

On Tuesday, 26/11/1442 AH, corresponding to 06/07/2021 AD, the Department decided to hold a 10-day e-hearing session. The period elapsed restoration without any additional submissions from either party to the appeal.

On Wednesday, 03/01/1443 AH, corresponding to 11/08/2021 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.

Grounds

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

In Merits, As for ZATCA's appeal regarding item (Tax Assessment), the Department, having taken cognizance of the Case file, found that; since ZATCA's right to make Tax Assessments



ceases to end after the lapse of five (5) years from the final date set for submitting Tax Returns; and since ZATCA has made the Tax Assessment for years in question on 28/04/1439 AH, while the period prescribed by the Law ends on 28/06/1438 AH, which indicates that ZATCA made the Tax Assessment after the lapse of statutory period; thus, its right to make the Assessment is forfeited pursuant to Article (65/B) of Income Tax, which is not affected by ZATCA's claim of its right to make the Tax Assessment within ten (10) years from the final date set for submitting Tax Returns under the said Article, as such right cannot be claimed in absolute terms, since it is restricted in cases where it is established that Tax Return submitted by Taxpayer is incomplete or incorrect for the purpose of tax evasion; and since ZATCA has failed to provide any substantial evidence that could be relied upon to establish incorrectness or incompleteness of Taxpayer's Return for the purpose of tax evasion; and since this Department found that the conclusion reached by the Primary Department was sound and valid; Therefore, the Department satisfies to decide invalidity of ZATCA's procedure for making these Assessments due to the lapse of the period prescribed by the Law, which is five (5) years from the final date set for submitting Tax Returns and, by extension, to uphold the appealed decision as to conclusion it had in this regard. As for ZATCA's appeal regarding item (Squander of Accounts), the Department, having taken cognizance of the Case file, found that; since it has concluded in above item by deciding the expiration of the statutory period for ZATCA's right to make or amend the Tax Assessments for years in question of 1429 – 1432 AH, therefore, Taxpayer's Return is considered final, and its accounts for these years may not be squandered; and since Taxpayer's failure to keep books necessitates an Estimated Assessment, it does not entitle ZATCA to make or amend the Tax Assessments after the lapse of the period prescribed by the Law, except by proving tax evasion; and since the Department did not find any requirement for correction or further response in light of arguments presented thereto; Therefore, the Department satisfies to decide that the foregoing does not affect the Primary Department's decision as to conclusion it had in this regard and, by extension, to dismiss ZATCA's appeal and uphold the appealed decision on the item in question. As for ZATCA's appeal regarding item (Imposition of Fines of Late Payment, Concealment, and Non-Submission), the Department, having taken cognizance of the Case file, found that; since it has concluded in first item by deciding the expiration of the statutory period for ZATCA's right to make or amend the Tax Assessments for years in question of 1429 – 1432 AH, therefore, Taxpayer's Return is considered final, which results in dismissal of these fines due to the dismissal of items under which they were imposed, as the Legislator linked the concealment fine to tax evasion; since the Department found that the conclusion reached by the Primary Department was sound and valid, and that the Grounds on which its decision was based were sufficient to uphold this decision; and since the arguments presented thereto have no effect on this decision; Therefore, the Department satisfies to uphold the appealed decision as to conclusions it had in this regard. As for ZATCA's appeal regarding item (Amounts Paid), the Department, having taken cognizance of the Case file, found that; since Taxpayer has received ZATCA's final certificate proving the submission of Tax Returns by Taxpayer and payment of the tax due; and since the Department has concluded in first item by deciding the expiration of the statutory period for ZATCA's right to make or amend the Tax Assessments for years in question of 1429 – 1432 AH, therefore, Taxpayer's Return is considered final; and since this Department found that the conclusion reached by the Primary Department was sound and valid, and that the Grounds on which its decision was based were sufficient to uphold this decision; and since the arguments presented thereto have no effect on this decision; Therefore, the Department satisfies to uphold the appealed decision as to conclusions it had in this regard.

Decision

In light of the foregoing and the above Grounds, the Department unanimously decided to:
First: In Form:



Accept ZATCA's appeal against Decision No. (IR2) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in form.

Second: On Merits:

1. Dismiss ZATCA's appeal on item (Tax Assessment) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Dismiss ZATCA's appeal on item (Squander of Accounts) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Dismiss ZATCA's appeal on item (Imposition of Fines of Late Payment, Concealment, and Non-Submission) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Dismiss ZATCA's appeal on item (Amounts Paid) 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-2021-326)
Issued in Appeal No. (IW-
37605-2021)

Principle No. 87

In the event that the Department for Determination of Income Tax Violations and Disputes decided to accept a Case in form without providing Appellant with an opportunity to present its substantive pleas regarding the subject of the dispute and issued its decision, then that decision shall be flawed and must be reversed.

Facts:

The Decision of Defendant (Zakat, Tax, and Custom Authority “ZATCA”) against Plaintiff (..... Company) regarding the Tax Assessments in question.

Since ZATCA dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

ZATCA objects to the Primary Department’s Decision in question, as it requests annulment of the appealed decision and remand of the Case to the Primary Department for consideration on its merits for ignoring the examination of the original pleas, issuing a ruling of more than Taxpayer requested, prejudicing the right to litigate at both degrees, ignoring the importance of considering the merits of the Case, depriving ZATCA of the right to defense and submission of a substantive response pursuant to the Primary Department’s acceptance of the case in form in that hearing, and violating the applicable legal provisions and established principles in administrative disputes regarding the procedures of default, the impact of which was set up for parties other than the party in a position of judicial authority. Based on the foregoing, ZATCA requests abolishment of the appealed decision and remand of the Case to the Primary Department for consideration on its merits.

Since the Department decided opening of pleadings, Taxpayer submitted a Rejoinder dated 17/08/1442 AH, corresponding to 30/03/2021 AD, to ZATCA’s appeal, a summary of which included that it requests that ZATCA’s appeal be dismissed and the appealed decision be upheld, attributed to its Grounds.

Grounds

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

On Merits: The Department, having taken cognizance of subject of dispute, found that ZATCA’s appeal lies in its request to annul the Primary Department’s decision due to its inability to present the substantive pleas and the issuance of a ruling of more than Taxpayer requested, while Taxpayer argued that it requests dismissal of ZATCA’s appeal and uphold of the appealed decision; and since the appealed decision did not clarify whether ZATCA was able to present its pleas regarding



the subject of dispute, especially since the Primary Department decided to accept the Case in form, which determines that the appealed decision is flawed and must be reversed; and in order enable ZATCA to litigate at both degrees; Therefore, the Department satisfies to accept ZATCA's appeal, abolish the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, and remand the Case for consideration on its merits.

Decision

First: Accept ZATCA's appeal against Decision No. (IFR-350-2020) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in Case No. (IW-3149-2020) in connection with Tax Assessment of 2015 – 2017, in form.

Second: On Merits:

Accept ZATCA's appeal, abolish the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, and remand the Case for consideration on its merits, for the Grounds stated herein.



Appeal

Appeal Committee

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

Decision No. (VA-2021-373)
Issued in Appeal No. (V-56994-2021)

Principle No. 88

Ignorance of the Law and lack of knowledge of the statutory periods mentioned therein shall not constitute a reason for plea.

Facts:

Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

- Dismiss the Case filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.), in form for the lapse of the statutory period under Article (3) of Tax Dispute and Violation Committee Procedures.

Since Appellant dissatisfied with this decision; it submitted a statement of appeal that included its objection to the Primary Department's decision in question, which ruled to dismiss the Case in form, while Appellant requested abolishment of the said decision due to its ignorance of the Law and its lack of knowledge of the statutory periods set for submitting objections. Appellant concluded by requesting that its appeal be accepted and the appealed decision be abolished.

On Sunday, 21/01/1443 AH, corresponding to 29/08/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the appeal submitted via video conference, based on Article (15.2) of Tax Dispute and Violation Committee Procedures, which stipulates: "A circuit may hear the case using modern technological means provided by the General Secretariat," wherein the Department reviewed the Decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah, as well as the Case file and memoranda and documents included therein.

The Department, after deliberation and having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Value Added Tax Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, has decided to close the transcript of the hearing, and to continue consideration of the Case and issuance of a decision thereafter.

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since the appeal was filed by a party having capacity and within the prescribed statutory period and met its statutory requirements in accordance with the provisions



of Article (40.2) of Tax Dispute and Violation Committee Procedures, has decided to accept the appeal 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 appealed decision has ruled to dismiss the Case in form for the lapse of the statutory period set for submitting objections; and since it was established that the appealed decision, with regard to the subject of dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Department 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 Department and, by extension, to dismiss the appeal and uphold the appealed decision as to conclusion it had in this regard, attributed to its Grounds.

Decision

First: Accept the Appeal filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.) in form for being filed within the prescribed statutory period.

Second: Dismiss the Appeal filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.) and uphold Decision No. (VJ-2021-949) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah.

Similar Decisions:

First Appellate Department for Income and Excise Tax Violations and Disputes

Appeal Decision No: VA-2021-374

Appeal Decision No: VD-2021-755



Appeal

Appeal Committee

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

Decision No. (VA-2021-384)
Issued in Appeal No. (V-57458-2021)

Principle No. 89

An objection or grievance is accepted in form if Appellant has exercised due diligence in communicating for the purpose of filing the grievance within the statutory period set for submitting objections or has proven the same in the correspondence submitted.

Facts:

On Tuesday, 07/02/1443 AH, corresponding to 14/09/2021 AD, the First Appellate Department for Value Added and Excise 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. Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

First: In Form:

Dismiss the Case filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.), in form for the lapse of the statutory period under Article (3) of Tax Dispute and Violation Committee Procedures.

Since Appellant dissatisfied with this decision; it submitted a statement of appeal that included its objection to the Primary Department's decision in question, which ruled to dismiss the Case in form, while Appellant requested abolishment of the said decision due to a technical malfunction in the website of the General Secretariat of Tax Committees. Appellant concluded by requesting that its appeal be accepted and the appealed decision be abolished.

On Tuesday, 07/02/1443 AH, corresponding to 14/09/2021 AD, the Department held its session to consider the appeal, wherein it reviewed Decision No. (VJ-2021-976) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah, as well as the Case file and memoranda and documents included therein.

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Value Added Tax Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, has decided to close the transcript of the hearing, and to continue consideration of the Case and issuance of a decision thereafter.

Having taken cognizance of Case file, documents included therein, memorandums and replies submitted by both parties, the Department found that the Case has become ripe for adjudication.



Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since the appeal was filed by a party having capacity and within the prescribed statutory period and met its statutory requirements in accordance with the provisions of Article (40.2) of Tax Dispute and Violation Committee Procedures, has decided to accept the appeal 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 appealed decision has ruled to dismiss the Case in form for the lapse of the statutory period set for submitting objections; and since Appellant objects to the Primary Department's decision on the Grounds of a technical malfunction in the official website of the General Secretariat of Tax Committees, which resulted in inability of Appellant to submit its objection to Appellee's notice; and since Appellant's has objected to the fine of the field inspection dated 05/11/2020 AD; and since Appellant has contacted the Committee regarding the technical malfunction on 01/12/2020 AD; and since it was established that Appellant contacted the Committee to file a grievance against Appellee's decision within the statutory period as per the correspondence submitted; and since Appellant has exercised due diligence in communicating and filing the grievance against the decision within the statutory period set for submitting objections; Therefore, the Department satisfies to accept the appeal and abolish the Committee's decision.

Decision

First: Accept the Appeal filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.) in form for being filed within the prescribed statutory period.

Second: Accept the Appeal filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.), abolish Decision No. (VJ-2021-976) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah, and remand the Case for consideration on its merits. **First Appellate Department for Value Added and Excise Tax Violations and Disputes**

Appeal Decision No: VA-2021-384

Appeal Decision No: VD-2021-351

Appeal Decision No: VA-2021-386

Appeal Decision No: VA-2021-387



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (VA-2021-365)
Issued in Appeal No. (V-2021-48313)

Principle No. 90

A case is established by the existence of the litigation element, and if such an element is absent or ceases to exist for any reason at any stage of the case; the Department shall rule of the resolution of the dispute.

Facts:

Praise be to Allah, and prayers and peace be upon our Prophet Muhammad, his Family, and all Companions.

On Sunday, 21/01/1443 AH, corresponding to 29/08/2021 AD, the First Appellate Department for Value Added and Excise 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. Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

First: In Form: Accept the Case in form.

Second: On Merits:

1. Obligating Defendant Mr., holder of National ID No., the Owner of (..... Institution, C.R. No.), to pay Plaintiff (General Authority of Zakat and Tax "GAZT") an amount of (SAR 685,351.70) (Six Hundred Eighty-Five Thousand Three Hundred Fifty-One Saudi Riyals and Seventy Halalas).
2. Dismiss all other requests.

Since Appellant dissatisfied with this decision; it submitted a statement of appeal that included its request to abolish the Primary Department's decision in question, which ruled to accept Appellee's Case and obligate Appellant to pay an amount of (SAR 685,351.70) for paying portions of the tax and benefiting from the "Cancellation of Fines and Exemption of Financial Penalties Initiative" for March 2021 AD, as it paid an amount of (SAR 350,000). Appellant concluded by requesting that its appeal be accepted and the appealed decision be abolished.

Having presented the statement of appeal to Appellee, it responded that Appellant had paid the amounts for the tax periods in question, and requested that the Case be dismissed.

On Sunday, 15/08/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the appeal submitted via video conference, based on Article (15.2) of Tax Dispute and Violation Committee Procedures,



which stipulates: “A circuit may hear the case using modern technological means provided by the General Secretariat.”

The Department, having taken cognizance of documents and memoranda included in the Case file, as well as the appealed decision, and after discussion and deliberation, has requested clarification from Appellant regarding the amount on which it claimed that the dispute is resolved and decided to postpone consideration of the Case to a later hearing.

On Sunday, 22/08/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the appeal submitted via video conference, based on Article (15.2) of Tax Dispute and Violation Committee Procedures, which stipulates: “A circuit may hear the case using modern technological means provided by the General Secretariat.”

The Department, having taken cognizance of documents and memoranda included in the Case file, as well as the appealed decision, and after discussion and deliberation, has decided to postpone consideration of the Case to Sunday, 21/01/1443 AH, corresponding to 29/08/2021 AD, at 04:00 PM, and inform parties to the Case of that date to appear at the hearing.

On Sunday, 29/08/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the appeal submitted via video conference, based on Article (15.2) of Tax Dispute and Violation Committee Procedures, which stipulates: “A circuit may hear the case using modern technological means provided by the General Secretariat.”

The Department, having taken cognizance of documents and memoranda included in the Case file, as well as the appealed decision, has called parties to the Case, wherein Mr., holder of National ID No., in his capacity as Appellant Attorney, under POA No.; and Mr., holder of National ID No., in his capacity as Appellee’s (Zakat, Tax and Customs Authority “ZATCA”) Representative, by virtue of Authorization No., dated 04/06/1442 AH, issued by Deputy Governor for Legal Affairs, a copy of which is attached to the case file. Accordingly, the Department decided to open the pleadings. Having asked Appellant’s Attorney regarding the resolution of the dispute, he responded as follows: “Yes, the amount was paid and all fines were settled, and Appellant adheres to the Grounds and pleas contained therein.” Having presented Appellant’s statement to Appellee’s Representative, he responded as follows: “Yes, Appellant has paid the amount, and all fines covered by the Initiative were cancelled, and there is no claim against Appellant.” Having asked parties to the Case whether they had further statements, they were satisfied with earlier submissions. Accordingly, the Department decided to close pleadings for deliberation and issuance of a decision.

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since this dispute falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (M/113) of 02/11/1438 AH; and since the case is established by the existence of the litigation element, and if such an element is absent or ceases to exist for any reason at any stage of the case; the Department shall rule of the resolution of the dispute; and since the Department found that Appellant has paid the amounts in question as stated in the transcript of the hearing held on 29/08/2021 AD; Therefore, the Department satisfies to decide to resolve the dispute.

Decision

- Establish resolution of the dispute between parties to the Case.



Appeal

Appeal Committee

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

Decision No. (VD-2021-276)
Issued in Appeal No. (V-49525-2021)

Principle No. 91

If the objection to the tax period in question is submitted to the ZATCA within the period prescribed by Law, and Taxpayer followed the regular process for submitting the same in accordance with the rules of administrative grievances and under and under procedures followed by ZATCA, and then filed the objection to the competent judicial authority (Adjudication Committees), Taxpayer shall have then met the formal conditions for filing a grievance against ZATCA's decisions.

Facts:

Praise be to Allah, and prayers and peace be upon our Prophet Muhammad, his Family, and all Companions.

On Sunday, 24/11/1442 AH, corresponding to 04/07/2021 AD, the First Appellate Department for Value Added and Excise 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 02/05/2021 AD, by Mr., holder of National ID No., in his capacity as Appellant's (..... Company, C.R. No.) Attorney, under POA No.; against Decision No. (VTR-2021-213) delivered by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh in Case filed by Appellant against Appellee. Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

- **Dismiss Plaintiff's (..... Company, C.R. No.) Case in form for the lapse of the statutory period.**

Since Appellant dissatisfied with this decision; it submitted a statement of appeal that included its objection to the Primary Department's decision in question, which ruled to dismiss the Case in form for the lapse of the statutory period, while Appellant requested abolishment of the said decision due to the fact that the Assessment was issued on 30/06/2020 AD, while it was objected before Appellee by submitting an objection revision request under No. dated 23/08/2020 AD. Appellant concluded by requesting that its appeal be accepted and the appealed decision be abolished.

On Sunday, 24/11/1442 AH, corresponding to 04/07/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the appeal submitted via video conference, based on Article (15.2) of Tax Dispute and Violation Committee Procedures, which stipulates:



“A circuit may hear the case using modern technological means provided by the General Secretariat,” wherein the Department reviewed the Decision of the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, as well as the Case file and memoranda and documents included therein.

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Value Added Tax Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, has decided to close the transcript of the hearing, and to continue consideration of the Case and issuance of a decision thereafter.

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since the appeal was filed by a party having capacity and within the prescribed statutory period and met its statutory requirements in accordance with the provisions of Article (40.2) of Tax Dispute and Violation Committee Procedures, has decided to accept the appeal 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; since Appellant objects to the Primary Department’s decision for the dismissal of the Case in form for the lapse of the statutory period set for submitting objections; and since the Final Assessment for the tax period of August 2018 was issued on 30/06/2020 AD, while Appellant filed its objection on 23/08/2020 AD; and since Appellant, as established from the Case file, had filed its objection to the tax period in question within the statutory period set forth in Article (2) of Tax Dispute and Violation Committee Procedures; and since Appellant’s objection was initially filed in accordance with the rules of administrative grievances and under procedures followed by Appellee, and then filed the said objection to the competent judicial authority (Adjudication Committees), which indicates that Appellant has met the formal conditions for filing a grievance against Appellee’s decisions; and since the Primary Department’s decision has ruled to dismiss the Case for failure to file the objection within prescribed period without considering the rejection notice of the objection request issued on 04/11/2020 AD, through which Appellant’s objection was accepted in form and dismissed on its merits; Therefore, the Department satisfies to accept the appeal and abolish the appealed decision.

Decision

First: Accept Appellant’s (..... Company, C.R. No.) appeal in form for being filed within period prescribed by Law.

Second: Accept Appellant’s (..... Company, C.R. No.) appeal, abolish Decision No. (VTR-2021-213) delivered by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, and remand the Case for consideration on its merits.

Similar Decisions:

First Appellate Department for Value Added and Excise Tax Violations and Disputes
Appeal Decision No: VA-2021-275



Appeal

Appeal Committee

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

Decision No. (VA-2021-367)
Issued in Appeal No. (V-53259-2021)

Principle No. 92

If the documents proving the case are practically only with the administration, then the case shall be subject to ruling if the plaintiff submits, in principle, what is based on his claim and support his entitlement what he is claiming. But if the documents are shared between the plaintiff and the administration side, or they are practically under his possession or he can obtain them from another party other than the defendant, hence, it is not sufficient for the case to be decided by the failure of the administration body to attend, the failure to answer the case, or the failure to submit what was requested of its documents.

Principle No. 93

Government Agency's Representative failure to respond to subject of the case does not mean its validity, and it is not correct to state that the decision to accept a case in form affects the validity of the appealed decision on its merits without examining legal and statutory Grounds of the case, nor discussing Plaintiff's requests, as well as studying and reviewing the submitted documents.

Facts:

Praise be to Allah, and prayers and peace be upon our Prophet Muhammad, his Family, and all Companions.

On Sunday, 21/01/1443 AH, corresponding to 29/08/2021 AD, the First Appellate Department for Value Added and Excise 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 03/06/2021 AD, by Zakat, Tax, and Customs Authority ("ZATCA") (Previously referred to as General Authority of Zakat and Tax "GAZT"); against Decision No. (VD-2020-711)

delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam in Case filed by ZATCA against Appellee (..... Company). Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

First: In Form:

- Accept the Case in form.

Second: On Merits:

Accept Plaintiff's (..... Company, C.R. No.) Case and abolish ZATCA's decision in question.



Since ZATCA was dissatisfied with this decision; it submitted a statement of appeal that included its objection to the Primary Department's decision in question, which ruled to accept Plaintiff's (..... Company) case and abolish ZATCA's decision, as ZATCA objects to the said decision for prejudicing the right to litigate at both degrees, ignoring the importance of considering the merits of the Case, depriving ZATCA of the right to defense and submission of a substantive response pursuant to the Primary Department's acceptance of the case in form, and violating the applicable legal provisions and established principles in administrative disputes regarding the procedures of default, the impact of which was set up for parties other than the party in a position of judicial authority. ZATCA concluded by requesting that its appeal be accepted and the appealed decision be abolished.

On Sunday, 21/01/1443 AH, corresponding to 29/08/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the appeal submitted via video conference, based on Article (15.2) of Tax Dispute and Violation Committee Procedures, which stipulates: "A circuit may hear the case using modern technological means provided by the General Secretariat," wherein the Department reviewed the Decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam, as well as the Case file and memoranda and documents included therein.

The Department, after deliberation and having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Value Added Tax Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, has decided to close the transcript of the hearing, and to continue consideration of the Case and issuance of a decision thereafter.

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since the appeal was filed by a party having capacity and within the prescribed statutory period and met its statutory requirements in accordance with the provisions of Article (40.2) of Tax Dispute and Violation Committee Procedures, has decided to accept the appeal 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 appealed decision has ruled to accept Plaintiff's (..... Company) and abolish ZATCA's decision; and since ZATCA objects to the said decision in question for prejudicing the right to litigate at both degrees and depriving ZATCA of the right to defense; and since the Primary Department's decision in question was based on ZATCA's refusal to respond to Taxpayer's case on its merits and its satisfaction with the response in the hearing held on 07/03/2021 AD; and since the Primary Department, as established from the facts of its decision, has decided in the first hearing that ZATCA's failure to respond to Taxpayer's case on its merits is considered a refusal to respond, which resulted in the abolishment of its decision; and since ZATCA's Representative had responded to Taxpayer's case on its merits in the hearing held on 07/03/2021 AD; hence, the Primary Department's decision to abolish ZATCA's decision is contrary to the principles established in the administrative judiciary; and since Article (15.5) of Implementing Regulations of the Law of Procedures Before the Board of Grievances stipulated: "In the application of Paragraph (2) of this Article, if the documents proving the case are practically only with the administration, then the case shall be subject to ruling if the plaintiff submits, in principle, what is based on his claim and support his entitlement what he is claiming. But if the documents are shared between the plaintiff and the administration side, or they are practically under his possession or he can obtain them from



another party other than the defendant, hence, it is not sufficient for the case to be decided by the failure of the administration body to attend, the failure to answer the case, or the failure to submit what was requested of its documents;” and by extrapolating legal provisions in the relevant judicial rules and regulations, the Department found that Government Agency’s Representative failure to respond to subject of the case does not mean its validity, and it is not correct to state that the decision to accept a case in form affects the validity of the appealed decision on its merits without examining legal and statutory Grounds of the case, nor discussing Plaintiff’s requests, as well as studying and reviewing the submitted documents; and since the procedure taken by the Primary Department cannot be considered a supporting administrative procedure; Therefore, the Department satisfies to accept the appeal and abolish the appealed decision.

Decision

First: Accept ZATCA’s appeal in form for being filed within the period prescribed by Law.

Second: Accept ZATCA’s appeal, abolish Decision No. (VD-2020-711) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam, and remand the Case for consideration on its merits.

Similar Decisions:

First Appellate Department for Value Added and Excise
Tax Violations and Disputes
Appeal Decision No: VA-2021-368



Appeal

Appeal Committee

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

Decision No. (VA-2021-350)
Issued in Appeal No. (V-53346-2021)

Principle No. 94

A case cannot be reheard for previous ruling therein “res judicata” in the event of a consolidation of parties, subject, and reason.

Facts:

Praise be to Allah, and prayers and peace be upon our Prophet Muhammad, his Family, and all Companions.

On Tuesday, 16/01/1443 AH, corresponding to 24/08/2021 AD, the First Appellate Department for Value Added and Excise 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 05/06/2021 AD, by Ms., holder of National ID No., in her own capacity; against Decision No. (VD-2021-787) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam in Case filed by Appellant against Appellee. Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

First: In Form:

Dismiss Plaintiff (Ms., holder of National ID No.) for res judicata.

Since Appellant dissatisfied with this decision; it submitted a statement of appeal that included its objection to the Primary Department’s decision in question, which ruled to dismiss the case for res judicata, as Appellant objects to the imposition of the fine of the field inspection due to its keeping of the invoices and tax records, and requests that the appeal be accepted and the appealed decision be abolished.

On Sunday, 16/01/1443 AH, corresponding to 24/08/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the appeal submitted via video conference, based on Article (15.2) of Tax Dispute and Violation Committee Procedures, which stipulates: “A circuit may hear the case using modern technological means provided by the General Secretariat,” wherein the Department reviewed the Decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam, as well as the Case file and memoranda and documents included therein.

The Department, after deliberation and having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Value Added Tax Law, its Implementing Regulations, and Tax Dispute and



Violation Committee Procedures, has decided to close the transcript of the hearing, and to continue consideration of the Case and issuance of a decision thereafter.

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH.

On Merits: The Department, having taken cognizance of documents included in the Case file and the Primary Department's decision in question, found that the said question has ruled to dismiss the case for res judicata; and since there were two (2) decisions had previously been delivered by the Primary Department for the same periods in question; Decision No. (VD-2021-775) and Decision No. (VD-2021-779), both dated 12/04/2021 AD; and since Appellant had filed its appeal against the Primary Department's decision in question; and since it is legally, jurisprudentially, and judicially established that it is not permissible to rehearing a case due to a previous ruling therein "res judicata" in the event of a consolidation of parties, subject, and reason; and since Article (76.1) of Law Of Civil Procedures stipulates: "A motion for lack of jurisdiction; type or value of the suit; dismissal of the suit for lack of capacity, interest or any other ground; or if the suit has been previously decided, shall be admissible at any stage of the hearing and shall be decided by the court on its own motion;" Therefore, the Department satisfies to dismiss the appeal for res judicata.

Decision

Dismiss Plaintiff (Ms.), holder of National ID No.) and uphold the Decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam.



Appeal

Appeal Committee

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

Decision No. (VR-2020-284)
Issued in Appeal No. (10319-2019-V)

Principle No. 95

The Administrative Authority's decision is presumed valid and sound, and whoever claims otherwise should prove the contrary by all means of evidence.

Facts:

All praise is due to Allah, prayers and peace be upon the last Prophet Mohammad, and upon his family and all his companions; now therefore:

On Sunday, 21/11/1441 AH, corresponding to 12/07/2020 AD, the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, formed under Royal Decree No. (65474) of 23/12/1439 AH, in accordance with Income Tax Law, promulgated under Royal Decree No. (M/1) of 15/01/1425 AH, as amended, has convened to consider the Case filed by against Defendant (General Authority of Zakat and Tax "GAZT"). As the case has met the prescribed legal requirements, it was filed with the General Secretariat of Tax Committees on 03/10/2019 AD, under No. (V-2019-10319).

Facts of this Case are summarized up as follows: Mr....., holder of National ID No., in his capacity as Plaintiff, has filed a statement of claim objecting to Defendant's decision for the imposition of a fine for late registration in the VAT system in the amount of (SAR 10,000), wherein Plaintiff stated: "Plaintiff requests abolishment of the fine for registration in the VAT system due to its ignorance of registration and that it did not receive a notification stating the necessity of registration."

Having presented the statement of claim to Defendant, it responded with a Reply stating as follows:

"First: The Decision is presumed valid and sound, and whoever claims otherwise should prove the contrary.

Second: Article (50.2) of Unified Agreement for VAT of the Cooperation Council for the Arab States of the Gulf stipulates: "The Mandatory Registration Threshold shall be SAR 375,000 (or its equivalent in the GCC State currencies). The Ministerial Committee has the right to amend The Mandatory Registration Threshold after it has been in force for three years," Article (79.9) of Implementing Regulations of Value Added Tax Law stipulates: "a Person whose value of annual Supplies exceeds the Mandatory Registration Threshold but does not exceed one million (SAR 1,000,000) 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," and Article (56) of the same Implementing Regulations stipulates: "All Persons must provide the Authority with any information requested by the Authority for the purposes of establishing whether that Person is complying fully with its Tax obligations." By inquiry into the supplies made by Plaintiff at the Ministry of Justice, it was found that he had made several supplies that



exceeded the Mandatory Registration Threshold on 29/07/2018 AD, while he did not apply for registration until 11/09/2019 AD. Accordingly, Defendant “ZATCA” found that Plaintiff was late in registering, even though he was one of the persons obligated to register in 2018.

Third: In view of the above, a fine for late registration was imposed based on Article (41) of Value Added Tax Law, which stipulates: “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 the foregoing, Defendant requests that the case be dismissed.

On Sunday, 21/06/2020 AD, the Department held its first session via video conference to hear the Case filed by against GAZT. Having called parties to the Case, Ms., holder of National ID No., in her capacity as GAZT’s Representative, by virtue of Authorization No. issued by GAZT. Neither Plaintiff nor his Representative appeared despite being duly served of the session date. Since the Department held its session via video conference, it decided to postpone the hearing of the Case to 12/07/2020 AD.

On Sunday, 12/07/2020 AD, the Department held its second session via video conference to hear the Case filed by against GAZT. Having called parties to the Case, Mr., holder of National ID No., in his capacity as GAZT’s Representative, by virtue of Authorization No. issued by GAZT. Neither Plaintiff nor his Representative appeared despite being duly served of the date of this session and the previous session via the email registered in the Case file, wherein Plaintiff requested in his statement of claim to cancel the late registration fine in the amount of (SAR 10,000) for the reasons detailed in the statement of claim, while Defendant “GAZT” requested to dismiss Plaintiff’s claim for the reasons detailed in its Reply. Since the Case is ripe for adjudication, the Department issued its decision as stated in the wording herein.

Grounds

Having perused Income Tax Law, promulgated under Royal Decree No. (M/1) of 15/01/1425 AH, as amended, its Implementing Regulations issued by Minister of Finance’s Decision No. (1535) of 11/06/1425 AH, as amended, Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH, as well as relevant laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant’s Decision regarding the imposition of a fine for late registration in the VAT system based on Value Added Tax Law and its Implementing Regulations; 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. (M/113) of 02/11/1438 AH; and since the consideration of such a Case conditional upon Plaintiff’s objection to the same within thirty (30) days from the date of notification of the decision; and since Plaintiff, as established from the Case documents, was informed of the decision on 03/10/2019 AD and filed his objection on 11/09/2019 AD, the Case is then met its formal conditions, which necessitates accepting thereof in form.

The Department, having taken cognizance of Case documents and the response of parties thereto after been granted a sufficient time to express and submit all statements and documents, found that Defendant had issued its decision against Plaintiff by imposing a late registration fine in the amount of (SAR 10,000), due to the Plaintiff’s delay in registering in the VAT system after the specified statutory date, based on Article (41) of Value Added Tax Law, which stipulates: “Any Person who has not applied for registration within the period specified in the Regulations shall be fined ten thousand (10,000) riyals;” and since Plaintiff claiming ignorance of the necessity of registering in the VAT system as an individual does not eliminate his violation of the provisions of registration for VAT purposes as per the statutory texts related to the provisions of registration; and since Plaintiff has exceeded the Mandatory Registration Threshold on 29/07/2018 AD and



applied for registration on 11/09/2019 AD. Accordingly, Defendant “GAZT” found that Plaintiff was late in registering; and since the Administrative Authority’s decision is presumed valid and sound, and whoever claims otherwise should prove the contrary by all means of evidence; accordingly, Plaintiff’s claim has no valid ground that requires the illegitimacy of the decision of imposition of the fine, as such decision came in compliance with the legal provisions.

Decision

First: In Form:

- Accept the Case in form.

Second: On Merits:

Dismiss Plaintiff’s (Mr., holder of National ID No.) Case to cancel the late registration fine in the amount of (SAR 10,000).

This Decision was delivered in presence of both parties. The Department set Saturday, September 19, 2020, as the date for receiving copy of decision. This decision shall be deemed final and enforceable in accordance with Article (42) of Tax Dispute and Violation Committee Procedures.



Appeal

Appeal Committee

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

Decision No. (VA-2021-346)
Issued in Appeal No. (V-54785-2021)

Principle No. 96

In the event that Plaintiff was informed of the hearing to consider its objection and failed to appear at that hearing on the date set in the notification of the hearing, the Case shall be dropped and considered null and void, and by extension, its appeal shall be dismissed in form and on merits.

Facts:

Praise be to Allah, and prayers and peace be upon our Prophet Muhammad, his Family, and all Companions.

On Tuesday, 16/01/1443 AH, corresponding to 24/08/2021 AD, the First Appellate Department for Value Added and Excise 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 15/06/2021 AD, by Mr., holder of National ID No., in his own capacity; against Decision No. (VTR-2021-278) delivered by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh in Case filed by Appellant against Appellee. Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

First: In Form:

- Drop Plaintiff's case.

Since Appellant dissatisfied with this decision; he submitted a statement of appeal that included his objection to the Primary Department's decision in question, which ruled to drop the Case and consider the same null and void, due to Appellant's failure to appear at the hearing despite being duly served of the session date, wherein Appellant requested reconsideration of the Case for failure to receive the notice of the session date and log-in link. Appellant concluded by requesting that its appeal be accepted and the appealed decision be abolished.

On Tuesday, 16/01/1443 AH, corresponding to 24/08/2021 AD, the Department held its session to consider the appeal, wherein it reviewed Decision No. (VJ-2021-278) delivered by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, as well as the Case file and memoranda and documents included therein.

The Department, after deliberation and having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Value Added Tax Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, has decided to close the transcript of the hearing, and to continue consideration of the Case and issuance of a decision thereafter.



Having taken cognizance of Case file, documents included therein, memorandums and replies submitted by both parties, the Department found that the Case has become ripe for adjudication.

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the appealed decision has ruled to drop the Case and consider the same null and void, due to Appellant's failure to appear at the hearing despite been duly served of the session date pursuant to Article (20) of Tax Dispute and Violation Committee Procedures; and since considering the case null and void does not constitute a decision with an effect on formal or substantive aspect of the subject of the dispute, therefore, the appealed decision does not fall within the jurisdiction of this Department, considering that the party against whom a decision was issued to drop the Case and consider the same null and void, may file a new case to be registered with the Primary Department; Therefore, this Department satisfies to dismiss the appeal in form.

Decision

Dismiss Mr., holder of National ID No., appeal in form.



Appeal

Appeal Committee

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

Decision No. (VA-2021-324)
Issued in Appeal No. (V-50822-2021)

Principle No. 97

If the Grounds on which the Primary Department's decision was based do not reflect the conclusion reached, the Appellate Department may abolish the appealed decision for these Grounds.

Facts:

On Saturday, 16/11/1442 AH, corresponding to 26/06/2021 AD, the First Appellate Department for Value Added and Excise 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 16/05/2021 AD, by Zakat, Tax, and Customs Authority ("ZATCA") (Formerly referred to as General Authority of Zakat and Tax "GAZT"); against Decision No. (VD-2020-694) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam in Case filed by Appellant "ZATCA" against Appellee. Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

First: In Form:

- Accept the Case in form.

Second: On Merits:

Accept Plaintiff's (..... Company, C.R. No.) Case and abolish Defendant's decision in question for premature issuance.

Since Appellant dissatisfied with this decision; it submitted a statement of appeal that included its objection to the Primary Department's decision in question, which ruled to accept Appellee's regarding the notices of the Final Assessment of the periods in question, as Appellant stated that the notice of the Final Assessment has no relation to the objection procedures with ZATCA (Appellant). In addition, the Final Assessment was issued in accordance with the provisions of the Law and its Regulations, and to cancel the Assessment, the causes for defect in the Final Assessment's decision must be clarified, not cancelled. As for the Primary Department's statement that the Case file was devoid of Defendant's (Appellant / "ZATCA") explanation of the reasons for amending the Tax Assessment whereby Taxpayer would be aware and be able to respond to the same; Defendant clarified this matter before this Department and it was recorded in the transcript of the hearing. Appellant concluded by requesting that its appeal be accepted and the appealed decision be abolished.



On Saturday, 16/11/1442 AH, corresponding to 26/06/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session via video conference to consider the appeal submitted, based on Article (15.2) of Tax Dispute and Violation Committee Procedures, which stipulates: “A circuit may hear the case using modern technological means provided by the General Secretariat,” wherein the Department reviewed the Decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam, as well as the Case file and memoranda and documents included therein.

The Department, after deliberation and having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Value Added Tax Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, has decided to close the transcript of the hearing, and to continue consideration of the Case and issuance of a decision thereafter.

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since the appeal was filed by a party having capacity and within the prescribed statutory period and met its statutory requirements in accordance with the provisions of Article (40.2) of Tax Dispute and Violation Committee Procedures, has decided to accept the appeal 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 appealed decision has ruled to accept Plaintiff's (..... Company) case and abolish Defendant's “ZATCA” decision in question; and since ZATCA objects to the appealed decision for accepting Plaintiff's case and abolish its decision regarding the Reassessment of the tax periods in question; and since the appealed decision has ruled to abolish ZATCA's decision, wherein its objection was based on the Grounds that it did not clarify the reasons for amending the Tax Assessment, which indicates that the appealed decision was issued prematurely; and since the reason for issuing the Final Assessment, as established in the facts of the Case and documents included therein, is shown by the Points Of Sale “POS” at the Saudi Central Bank, which indicates that Appellee (..... Company) is aware of the reasons and justifications for issuing the Assessment, for which Appellant objected to ZATCA's decision; and since the Grounds on which the Primary Department's decision was based do not reflect the conclusion reached; Therefore, the Department satisfies to accept the appeal and abolish the appealed decision.

Decision

First: Accept ZATCA's appeal in form for being filed within the period prescribed by Law.

Second: Accept ZATCA's appeal, abolish Decision No. (VD-2020-694) delivered in the First Department to Adjudicate Value Added Tax Violations and Disputes in Dammam, and remand the Case for consideration on its merits.



Appeal

Appeal Committee

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

Decision No. (VA-2021-373)
Issued in Appeal No. (V-56994-2021)

Principle No. 98

The appeal filed against the Primary Department's decision is accepted in form in the event that it is filed by a party having capacity within the prescribed statutory period and met its statutory requirements under the relevant Articles of Tax Dispute and Violation Committee Procedures.

Facts:

Praise be to Allah, and prayers and peace be upon our Prophet Muhammad, his Family, and all Companions.

On Sunday, 21/01/1443 AH, corresponding to 29/08/2021 AD, the First Appellate Department for Value Added and Excise 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 29/06/2021 AD, by Mr., holder of National ID No., in his capacity as the Owner of Institution, by virtue of Commercial Registration No.; against Decision No. (VJ-2021-949) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah in the Case filed by Appellant against by Zakat, Tax, and Customs Authority ("ZATCA") (Formerly referred to as General Authority of Zakat and Tax "GAZT"). Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

- Dismiss the Case filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.), in form for the lapse of the statutory period under Article (3) of Tax Dispute and Violation Committee Procedures.

Since Appellant dissatisfied with this decision; he submitted a statement of appeal that included his objection to the Primary Department's decision in question, which ruled to dismiss the Case in form, while Appellant requested abolishment of the said decision due to his ignorance of the Law and his lack of knowledge of the statutory periods set for submitting objections. Appellant concluded by requesting that his appeal be accepted and the appealed decision be abolished.

On Sunday, 21/01/1443 AH, corresponding to 29/08/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session via video conference to consider the appeal submitted, based on Article (15.2) of Tax Dispute and Violation Committee Procedures, which stipulates: "A circuit may hear the case using modern technological means provided by the General Secretariat," wherein the



Department reviewed the Decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah, as well as the Case file and memoranda and documents included therein.

The Department, after deliberation and having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, and pursuant to the provisions of Value Added Tax Law, its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, has decided to close the transcript of the hearing, and to continue consideration of the Case and issuance of a decision thereafter.

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since the appeal was filed by a party having capacity and within the prescribed statutory period and met its statutory requirements in accordance with the provisions of Article (40.2) of Tax Dispute and Violation Committee Procedures, has decided to accept the appeal 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 appealed decision has ruled to dismiss the Case in form for the lapse of the statutory period set for submitting objections; and since it was established that the appealed decision, with regard to the subject of dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Department 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 Department and, by extension, to dismiss the appeal and uphold the appealed decision as to conclusion it had in this regard, attributed to its Grounds.

Decision

First: Accept the Appeal filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.) in form for being filed within the prescribed statutory period.

Second: Dismiss the Appeal filed by Mr., holder of National ID No., in his capacity as the Owner of (..... Institution, C.R. No.) and uphold Decision No. (VJ-2021-949) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah.



Appeal

Appeal Committee

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

Decision No. (VA-2021-666)
Issued in Appeal No. (V-46108-2021)

Principle No. 99

Requests submitted by Taxpayer related to its original request that has been submitted before pleadings closure shall be accepted.

Facts:

First: In Form:

- Accept the Case in form.

Second: On Merits:

- Obliging Defendant (..... Company and its partner, C.R. No.) to pay Plaintiff Zakat, Tax, and Customs Authority (“ZATCA”) (Formerly referred to as General Authority of Zakat and Tax “GAZI”) an amount of (SAR 793,355.31).

Since parties to the Case were dissatisfied with that decision; Appellant submitted a statement of appeal that included his objection to the Primary Department’s decision in question, which ruled to accept Appellee’s “ZATCA” case by obligating Appellant to pay an amount representing the VAT and the fines resulting therefrom, wherein Appellant requests that its amendments to the Tax Returns be accepted and to be covered by the “Cancellation of Fines and Exemption of Financial Penalties Initiative”, since it had submitted the Tax Returns with amounts of sales and procurements by mistake, in addition to that it had been contacted by ZATCA after the issuance of the decision of payment, indicating the possibility of benefiting from the said Initiative to deduct fines after paying the basic tax amount. Appellant concluded by requesting that its appeal be accepted and the appealed decision be abolished.

Having presented the statement of appeal of Appellant (..... Company and its partner) to Appellee (ZATCA), it responded as follows: “Taxpayer did not pay the amounts in order to be able to benefit from the expired initiative. Therefore, ZATCA requests that the appeal be dismissed and the appeal decision be upheld.”

ZATCA, in its capacity as Plaintiff, also submitted a statement of appeal that included its objection to the Primary Department’s decision for dismissal of its original request regarding its right to raise the amount of the claim, wherein it stated that it had requested in its memorandum the continuation of its right to add the late payment fines due for future tax periods until the date of issuance of the Department’s final decision. ZATCA concluded by requesting that its appeal be accepted and the appealed decision be amended.

Grounds

Since the appeal was filed by a party having capacity and within the statutory period and fulfilled its statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee, which necessitates that the appeal 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 appealed decision has ruled to accept Plaintiff's (ZATCA) case and obligate Defendant (..... Company) to pay an amount representing the VAT and the fines resulting therefrom.

The Department also found that, with regard to the appeal filed by Appellant (..... Company), which includes its request to be covered by the "Cancellation of Fines and Exemption of Financial Penalties Initiative" and to cancel the associated fines; since it was established that the appealed decision, with regard to the subject of dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Department 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 Department and, by extension, to dismiss the appeal filed by (..... Company) and uphold the appealed decision as to conclusion it had in this regard, attributed to its Grounds.

With regard to the appeal filed by ZATCA which includes its objection to the appealed decision for dismissal of its original request regarding its right to raise the amount of the claim; since the appealed decision has ruled to oblige Defendant (..... Company) to pay an amount of (SAR 793,355.31) representing the VAT and the late payment fines resulting therefrom; and since ZATCA, as established from the Case file, has submitted supplementary memorandum to the Primary Department detailing the increase in the amount of the claim, which the said Department did not take into consideration or discuss the reasons for that action; and since ZATCA's request is connected to its original request that has been submitted before pleadings closure; Therefore, the Department satisfies to accept ZATCA's appeal and amend the appealed decision.

Decision

First: As for to the appeal filed by (..... Company and its partner):

1. Accept the appeal in form.
2. Dismiss the appeal and uphold Decision No. (VTR-2021-42) delivered by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh.

Second: As for to ZATCA's appeal:

1. Accept the appeal in form.
2. Accept ZATCA's appeal, amend Decision No. (VTR-2021-42) delivered by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, and oblige Defendant (..... Company and its partner, C.R. No.) to pay ZATCA an amount of (SAR 839,528.85).



Appeal

Appeal Committee

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

Decision No. (VA-2021-745)
Issued in Appeal No. (V-
49032-2021)

Principle No. 100

ZATCA shall clarify the reasons for amending the item in question with the supporting documents, whereby the party against whom any decision is issued can present its pleas, otherwise, it shall be presumed innocent until proven guilty under compelling evidence that can be relied upon to support that claim.

Facts:

Since facts of this Case have been stated in the decision in question, this Department refers to that decision for avoidance of repetition, as the decision ruled as follows:

First: In Form:

Accept the Case in form.

Second: On Merits:

- Dismiss Plaintiff's (..... Company and its partner, CR. No.) case regarding the abolishment of decision of Zakat, Tax, and Customs Authority ("ZATCA") (Formerly referred to as General Authority of Zakat and Tax "GAZT"), regarding the Reassessment of January 2018, the charge of a Value Added Tax of (SAR 509,801.25), and the imposition of a fine for error in Return of (SAR 10,223.12), and a fine for late payment of (SAR 71,907.31).

Since Appellant dissatisfied with this decision; it submitted a statement of appeal that included its objection to the Primary Department's decision in question for dismissal of its objection to Appellee's (ZATCA) decision regarding the Reassessment of January 2018 and the imposition of a fine for error in Return and a fine for late payment, wherein Appellant objects to ZATCA's decision on the Grounds that its Returns submitted are sound and valid. Appellant concluded by requesting that its appeal be accepted and the appealed decision be abolished.

Having presented Appellant's statement of appeal to ZATCA, it submitted a Rejoinder summarized as follows: "First: As for item (Basic-Rate Taxable Local Sales), ZATCA clarifies that it adheres to the Primary Department's decision, as Plaintiff "Appellant" did not submit any document or evidence that requires reconsideration of ZATCA's decision regarding the contested item. Second: As for item (Local Procurement), an amount of (SAR 608,022) was excluded due to the invoice submitted violating the conditions of tax invoices stated in Paragraph (C/5) of Article (53) of Implementing Regulations of Value Added Tax Law."

Grounds

The Department, having perused 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, and Tax Dispute and Violation Committee Procedures, promulgated under Royal Order No. (26040) of 21/04/1441 AH; and since the appeal was filed by a party having capacity within the prescribed



statutory period and met its statutory requirements in accordance with the provisions of Article (40.2) of Tax Dispute and Violation Committee Procedures, has decided to accept the appeal 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 appealed decision has ruled to dismiss Plaintiff's (..... Company and its partner) case filed against ZATCA; and since Appellant objects to appealed decision in question for dismissal of its objection to ZATCA's decision regarding the Final Assessment of January 2018 and the fines resulting therefrom.

The Department also found that, with regard to item (Basic-Rate Taxable Local Sales); since the dispute lies in ZATCA amending the item in question based on the documents submitted by the appellant during the examination period; and since ZATCA did not provide any evidence showing the mechanism on which ZATCA in calculating the revenue, nor it did submit a detailed memorandum explaining the reasons for amending the item in question along with supporting documents as requested on 15/09/2021 AD, and according to the foregoing Grounds; and since ZATCA's statements came in general regarding the same without attributing a clear specific act that can be charged against Appellant, which entails that Appellant is presumed innocent until proven guilty under compelling evidence that can be relied upon to support that claim; Therefore, the Department satisfies to accept the appeal filed by (..... Company and its partner) and abolish the appealed decision.

With regard to item (Basic-Rate Taxable Local Procurement); since the dispute lies in Appellant's requesting abolishment of ZATCA's due to the validity of its deduction of the item in question at the basic rate; and since it was established that the appealed decision, with regard to the subject of dispute, was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Department 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 Department and, by extension, to dismiss the appeal and uphold the appealed decision as to conclusion it had in this regard, attributed to its Grounds.

With regard to Appellant's objection to the fine for error in Return and the fine for late payment; since the imposition of these fines was due to the Final Reassessment of the tax period in question; and since this Department has accepted the appeal on the first item above and abolished ZATCA's decision; and since these fines resulted from the said item, the resulting occurrence shall take the same effect; Therefore, the Department satisfies to accept the appeal on these two items.

Decision

First: Accept the appeal filed by (..... Company and its partner, C.R.... No.) in form for being filed within period prescribed by Law.

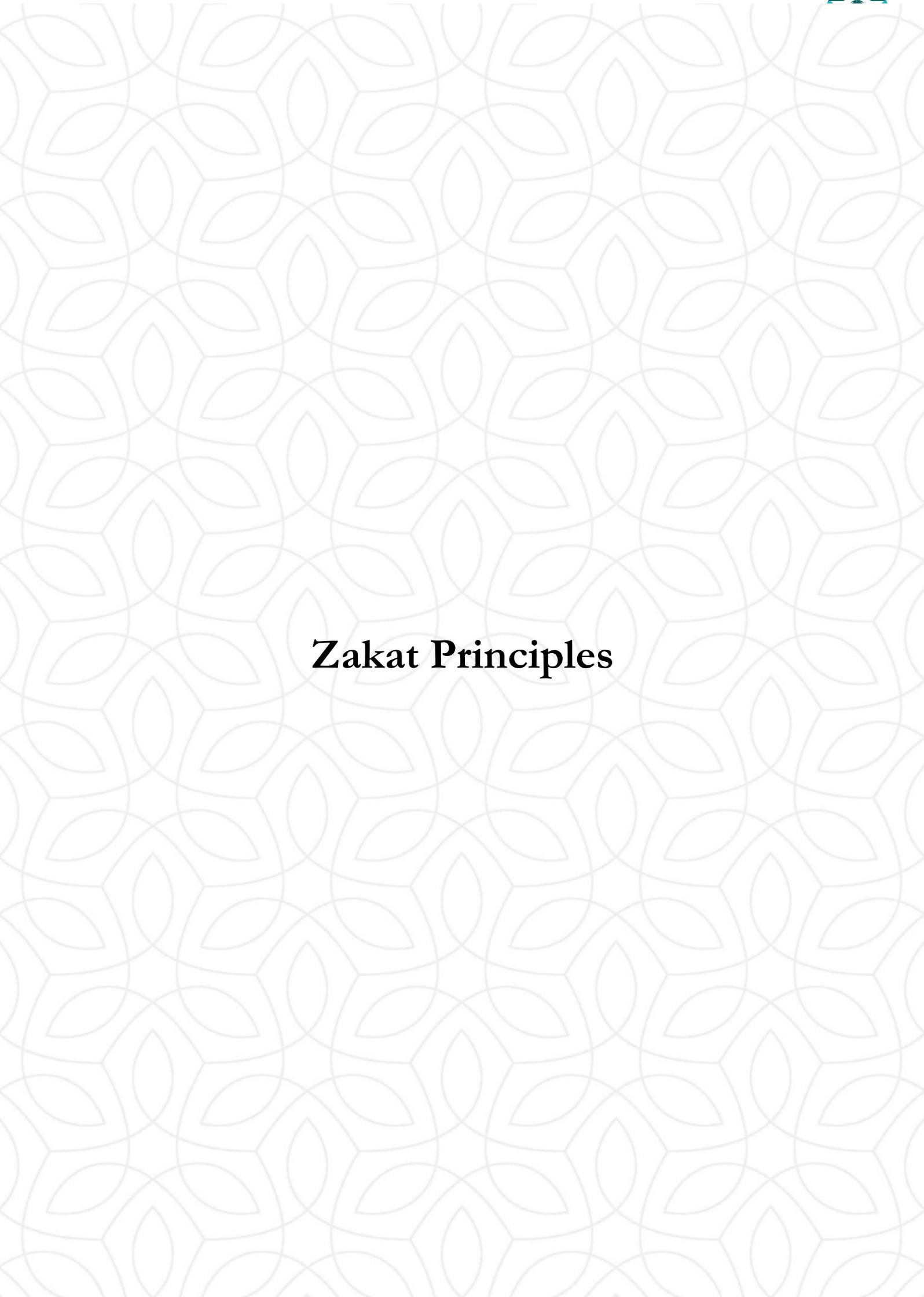
Second: Accept the appeal filed by (..... Company and its partner, C.R.... No.) regarding item (Basic-Rate Taxable Local Sales), and abolish Decision No. (VR-2021-128) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, and ZATCA's decision regarding item (Local Sales).

Third: Dismiss the appeal filed by (..... Company and its partner, C.R.... No.) regarding item (Basic-Rate Taxable Local Procurement), and uphold Decision No. (VR-2021-128) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh.

Fourth: Accept the appeal filed by (..... Company and its partner, C.R.... No.) regarding the fine for error in Return, abolish Decision No. (VR-2021-128) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, and amend ZATCA's decision in accordance with conclusion reached in item (Second).



Fifth: Accept the appeal filed by (..... Company and its partner, C.R.... No.) regarding the late payment fine, abolish Decision No. (VR-2021-128) delivered by the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, and amend ZATCA's decision in accordance with conclusion reached in item (Second).



Zakat Principles



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 101

Investing in long-term equity instruments requires that the calculation of Zakat on the share of Zakat Payer in the equity of those investee companies should be based on their financial statements.

Facts:

On Sunday 14/11/1441 AH, corresponding to 05/07/2020 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 15/10//1438 AH, corresponding to 09/07/2017 AD, by (..... Company) against Decision No. (14) of 1439 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Riyadh in Case No. (1474-2018-Z), filed by Appellant against General Authority of Zakat and Tax (“GAZT”). The appealed decision ruled as follows:

First:

Accept Zakat Payer’s (..... Company) objection to the Zakat Assessment of 2011 – 2013 in form.

Second: On Merits:

Accept Zakat Payer’s objection to item (Non-Deduction of Investment Loan), for the Grounds stated in the decision.

1. As for item (Calculation of Zakat on Foreign Companies):

First: Dismiss Zakat Payer’s objection to the calculation of Zakat on the share of Zakat Payer in its investment in Company), for the Grounds stated in the decision.

Second:

Resolve the dispute on the double calculation of Zakat on the profits of Company in the amount of (SAR 12,016,875) of 2012, for the Grounds stated in the decision.

- A. Reject deduction of deferred expenses from Zakat Base of Company of 2012 and 2013 for the Grounds stated in the decision.
 - B. Reject calculation of Zakat on the adjusted profit rather than on Zakat Base of 2012, for the Grounds stated in the decision.
2. Dismiss Zakat Payer’s objection to item (Deduction of Provision for Deficiency in Equity) for the Grounds stated in the decision.
 3. Accept Zakat Payer’s objection to item (Non-Recognition of Company’s Share in Losses of Investee Subsidiaries) for the Grounds stated in the decision.
 4. Dismiss Zakat Payer’s objection to item (Adjusted Deferred Losses) for the Grounds stated in the decision.



Since Zakat Payer (..... Company) dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

First: Zakat Payer's appeal is originally objects to the calculation of Zakat on its foreign investments in Company for years 2012 and 2013; and alternatively, in the event of failure to accept its request for non-calculation of Zakat for these investments, to the method of calculating the Zakat regarding the Zakat processing to items (Deferred Expenses) and (Adjusted Profit) mentioned in Paragraphs (Second/B and C) of Item No. (2) of the Primary Department's decision in question.

Second: Zakat Payer objects to the calculation of the adjusted deferred losses for years 2011, 2012, and 2013, due to the existence of contradiction in the Primary Department's decision for the non-inclusion of these losses in the wording of its decision, as the facts and Grounds of that decision have included GAZT's acceptance of Zakat Payer's objection, while the Primary Department's acknowledgment of the same was not reflected in the wording of its decision.

Third: Zakat Payer objects to the double calculation of Zakat on the profits of Company in an amount of (SAR 12,016,875), the first of which is within GAZT's Assessment on Zakat Payer (..... Company), and the other is within GAZT's Assessment on Zakat Payer for year 2012.

Fourth: Zakat Payer objects to the non-deduction of the provision for the deficiency in equity from the adjusted losses of 2011 and its inclusion in the wording of the appealed decision, despite the Primary Department indicating the resolution of the dispute in this regard.

Fifth: Zakat Payer objects to the non-recognition of Company's Share in losses of Investee Subsidiaries as regular expenses for the years 2011, 2012, and 2013, despite the fact that the Grounds of the appealed decision in items related to those losses have taken the same into consideration upon calculating the Zakat Base to deduct those losses from the Zakat due on Zakat Payer.

The Department, having presented Zakat Payer's statement of appeal to GAZT and reviewed GAZT's response to the memorandum included in the Case file, found that GAZT was satisfied with earlier submissions before the Primary Department upon considering Zakat Payer's objection regarding the contested items.

The Department, having taken cognizance of Zakat Payer's appeal and the facts and Grounds of the appealed decision; having taken into consideration the Grounds of Zakat Payer's statement of appeal in which it affirmed that its appeal regarding the contested items is also based on the same Grounds mentioned in its Objection Letter; and having considered the documents and papers included in the Case file; has decided that the Case has become ripe for adjudication on all items in question.

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 Case documents and Zakat Payer's statement of appeal, and having considered Zakat Payer's pleas, found out the following:

First: As for the calculation of Zakat on the foreign investee companies of 2012 and 2013, which includes Zakat Payer's objection to the calculation of Zakat on its foreign investments in Company of 2012 and 2013, wherein Zakat Payer requests that Zakat should not be calculated on these foreign investments for the years in question, on the Grounds that they were for the purpose of gaining their proceeds; hence, they should not be subject to Zakat, citing a number of Fatwas and Decisions to support its view. As such, these investments fall within the acquisition assets, since Zakat Payer has no intent for trading in those investments, but rather they



were acquired for the purpose of gaining proceeds. The Department, having taken cognizance of the Grounds on which Zakat Payer based its appeal that Zakat Payer deemed achieved for not considering those investments as funds on which the Zakat is due, found that; since Zakat Payer's claim as stated above cannot be accepted, even if those investments are intended to be acquired for the purpose of gaining proceeds, as investing in long-term equity instruments requires that the calculation of Zakat on the share of Zakat Payer in the equity of those investee companies should be based on their financial statements, which was the same basis that GAZT relied in its decision as stated in the Primary Department's decision; hence, there is no justification for Zakat Payer's request not to subject those investments to Zakat based on their financial statements. Therefore, the Department satisfies to dismiss Zakat Payer's appeal for the non-calculation of Zakat on those investments for the stated Grounds.

In addition, since the dispute, as mentioned, regarding the item in question, has become related to Zakat Payer's objection that the proper processing for the calculation of Zakat on those investments should take into consideration the deduction of deferred expenses of 2012 and 2013, as well as the calculation of Zakat based on the Net Zakat Base rather than the adjusted net profit, by taking the accumulated losses into consideration, and calculating the Zakat Base without purchasing acquisition assets from the profits of 2012; and since Zakat Payer requests that the Zakat should be calculated according to the Zakat Base, not the adjusted profit; and since the Department, with regard to the deferred expenses, found that Zakat Payer states in its statement of appeal that this item appeared in the financial statements under two titles, one of which is (Advance Expenses) and the other is (Long-Term Advance Payments), both titles are considered deferred expenses, and that neither GAZT nor the Primary Department had clarified the legal basis on which they relied for not deducting those deferred expenses from the Zakat Base, especially since Zakat Payer refers in its appeal that these expenses appear clearly in the audited financial statements of (..... Company for Distribution), and that the Primary Department did not request any additional documents from that Company to remove any ambiguity and clarify the nature of these expenses.

Moreover, GAZT's rejection of these expenses was based on the absence of the term "Deferred Expenses" in the financial statements, and the existence of synonymous titles for this term that take the same accounting processing was not taken into consideration, namely, "Advance Expenses" and "Long-Term Advance Payments"; and since the Department found that the dispute was over the existence of these expenses and not over their amount; and since the Primary Department verified the existence of these expenses in the financial statements; Therefore, the Department satisfies to accept Zakat Payer's appeal for deducting these expenses as per its Zakat Declaration.

As for Zakat Payer's request for Zakat calculation on Zakat Base rather than the adjusted profit of Company of 2012; Zakat Payer referred in its appeal to its right to reduce the adjusted profit for 2012 by the adjusted accumulated losses, based on a Fatwa and a Circular issued by GAZT in this regard. Zakat Payer also stated that the Primary Department did not refer in its decision to Zakat Payer's request to reduce the adjusted profit by the adjusted accumulated losses, and that its use of profits in purchasing acquisition assets during the year requires calculation of Zakat on the Zakat Base, not the adjusted profit, based on a Fatwa and a number of Appellate Decisions. The Department found that; since the established principle for calculating the Zakat Base and determining the Zakat due accordingly requires the presence of the funds on which Zakat is due at Zakat Payer's possession at the end of the Zakat Year; and since the calculation of the Net Zakat Base requires considering the accumulated losses and excluding the fixed assets regardless of their financing method to determine the estimated Zakat without being affected by whether the Net Zakat Base is less than the adjusted profit; Therefore, the Department satisfies to uphold Zakat Payer's view for the calculation of Zakat based on the Net Zakat Base without considering the amount of adjusted profit, which does not necessarily reflect the existence of funds on which Zakat is due from Zakat Payer at the end of the Zakat Year; and since the



aforementioned is not affected by GAZT's statement in its objection to support its view that the net profits of Zakat Payer that completed the Zakat Year must be subjected to Zakat and that these profits were at Zakat Payer's possession at the end of the fiscal year and have not been spent; and since such a conclusion as claimed by GAZT does not entail that the fund at Zakat Payer's disposal upon classifying the same as its profits as long as it has been established that Zakat Payer has invested it that fund for purchasing acquisition assets, and its absence does not change the continuation of the financial outcome as an accounting profit recorded in Zakat Payer's financial statements.

Second: As for item (Approval of Adjusted Deferred Losses), which includes Zakat Payer's objection to the Primary Department's decision regarding the same, wherein Zakat Payer claimed that there is a contradiction in the conclusion reached in the Primary Department's decision regarding the item in question, as the said decision has upheld Zakat Payer's claim for that item in Paragraph No. (4) of its wording, and accepted Zakat Payer's objection to deduct its share in subsidiaries' losses, in addition to GAZT's upholding Zakat Payer regarding the item in question. The Department has decided to accept Zakat Payer's objection by approving the deduction of the adjusted deferred losses due to the Primary Department affirmation that there is no disagreement on the principle of deducting the adjusted losses pursuant to the Amended Assessments, but rather to determining the amount of losses that will affect the calculation of the contested item, as the Primary Department has accepted deduction of those amounts by determining their value as shown in the details and reasons for its discussion of item (Approval of Zakat Payer's Share in Subsidiaries' Losses) as stated in the Grounds of its decision upon considering that item.

As for item (Deduction of Provision for Deficiency in Equity from Adjusted Losses of 2011), the Department found that; since the Primary Department has concluded, upon stating the Grounds on which its decision was based when considering the item in question, that GAZT would reduce the amount of Zakat Payer's share in subsidiaries' losses in the Zakat Assessment and the profit return by the same value of the provision, which indicates the lack effect of the error in registering the provision value is eliminated; and since the Primary Department, regarding the item in question, has decided to dismiss Zakat Payer's objection on the Grounds that GAZT would correct that error later; GAZT's acknowledgment upon presenting its view that it has responded to Zakat Payer's request to deduct an amount of (SAR 5,031,813) and that the dispute between GAZT and Zakat Payer has been resolved, had to be reflected on the amendment of the amount of the total adjusted losses in the manner in which the dispute was resolved by GAZT, as well as in the Primary Department's decision in accepting Zakat Payer's view regarding the same, as stated in the facts and Grounds of the said decision, for the purpose of removing of the contradiction with Grounds stated in its wording in that regard, and for achieving Primary Department's conviction and reasoning in the conclusion it reached in its decision; and since it is legally established that if the conclusion of the wording of a decision was inconsistent with the facts and Grounds of that decision for the resolution of a dispute over the matters under consideration as previously stated; and since the conclusion of the appealed decision was not mentioned in its wording alone, then the case shall be adjudicated whenever its current status, whether that conclusion was stated in the Grounds or the wording of that decision, since the ruling constitutes a single, indivisible wording; and since the matter was as stated and the Grounds of the appealed decision included GAZT's acceptance to resolve the matters that were under dispute by supporting Zakat Payer's view in this regard, and the resolution of the dispute with GAZT in certain matters of Zakat Payer with the Primary Department affirmation on the conclusion regarding that item; Therefore, the Department satisfies to deduct those losses mentioned in item (Deduction of Provision for Deficiency in Equity from Adjusted Losses of 2011), in the amount of (SAR 5,031,813) and, by extension, to accept Zakat Payer's appeal in approving the adjusted deferred losses, taking into consideration the impact of GAZT's approval of Item No. (3) mentioned in the facts and Grounds of the appealed decision, as well as the and the subsequent support of Zakat Payer's view by the appealed decision as stated in Item No. (4) of in its wording.



Decision

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

Second: On Merits:

- A. As for Zakat Payer's appeal regarding item (Calculation of Zakat on Foreign Companies):
1. Dismiss Zakat Payer's appeal regarding its request for the non-calculation of Zakat on its foreign investments in (..... Company for Distribution) as a prerequisite for deducting those investments from Zakat Base of 2012 and 2013, for the Grounds stated herein.
 2. Accept Zakat Payer's appeal regarding its request to deduct the deferred expenses from Zakat Base of Company of 2012 and 2013, for the Grounds stated herein.
 3. Accept Zakat Payer's appeal regarding its request to calculate Zakat on the Net Zakat Base and not on the adjusted profit of Company of 2012, for the Grounds stated herein.
- B. Accept Zakat Payer's appeal regarding its request to calculate its adjusted deferred losses of 2011, 2012, and 2013, after amending the same in accordance with the following:
1. The result of the resolution of the dispute with GAZT by supporting Zakat Payer's view as stated in the Grounds of Item No. (2) of the appealed decision regarding Zakat Payer's objection to the double calculation of Zakat on the profits of Company in an amount of (SAR 12,016,875), the first of which is within GAZT's Assessment on Zakat Payer (..... Company), and the other is within GAZT's Assessment on Zakat Payer for year 2012, for the Grounds stated herein.
 2. The result of the resolution of the dispute with GAZT by supporting Zakat Payer's view as stated in the Grounds of Item No. (3) of the appealed decision entitled (Deduction of Provision for Deficiency in Equity from Adjusted Losses of 2011), for the Grounds stated herein.
 3. The result of upholding Zakat Payer's view by appealed decision in Item No. (4) entitled (Non-Recognition of Company's Share in Losses of Investee Subsidiaries as Regular Expenses of 2011, 2012, and 2013), for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-97)
Issued in Appeal No. (Z-2018-
1495)

Principle No. 102

Debts obtained by enterprises for production and investment purposes shall be considered capital.

Principle No. 103

The balance of deferred expenses, in substantive terms, represents payables, the nature of which is not changed by including the same within non-current assets, but rather is periodically amortized, the expense of which is charged annually, which indicates that the balance has been taken into consideration upon calculating Zakat Base within the net income.

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 under Royal Decree No. (65474) of 23/12/1439 AH, has convened at its headquarters in Riyadh, to consider the appeal filed on 15/10/1438 AH, by Company (“Zakat Payer”), against Decision No. (07/21) of 1438 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in Objection No. (...) of 17/03/1436 AH, in the Case filed by Zakat Payer against of Zakat, Tax, and Customs Authority (“ZATCA”). The appealed decision ruled as follows:

First: In Form:

Accept Zakat Payer’s Objection No. (...) of 17/03/1436 AH 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 issued by Ministerial Decision No. (2082) of 01/06/1438 AH.

Second: On Merits:

1. Uphold ZATCA’s decision for the non-deduction of item (Notes Receivable “Payables” from Zakat Base of Zakat Payer of 2009 – 2012).
2. Uphold ZATCA’s decision for the addition of item (Requirement of Related Parties, Credit Finance Contracts, and Payables “Completed the Zakat Year” to Zakat Base of Zakat Payer of 2009 – 2012).
3. Uphold ZATCA’s decision for the amendment of the net profits of 2009 – 2012 with the unproven administrative oversight expenses.
4. Uphold ZATCA’s decision for the non-deduction of item (Accommodation Expenses from Zakat Base of Zakat Payer of 2009).
5. Uphold ZATCA’s decision for the non-deduction of item (Deferred Commissions from Zakat Base of Zakat Payer of 2009 – 2012).



Since Zakat Payer (..... Company) dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

Zakat Payer objects to the Primary Department's decision regarding the following items:

1. Item (Deduction of Notes Receivable from Zakat Base of 2009 – 2012), wherein the appealed decision has ruled to uphold ZATCA's decision for the non-deduction of value of the item in question from Zakat Base for years in dispute, as Zakat Payer asserts its right to deduct long-term notes receivable in connection with the item in question pursuant to Fatwa No. (23408) of 18/11/1426 AH, which stipulates that the amounts owed to Government Agencies, if their payment is delayed for any reason, shall not be subject to Zakat until they are received and completed the Zakat Year. Additionally, Zakat Payer asserts that it objects to the item in question due to ZATCA's insistence on including the finance contracts without deducting the balance of the notes receivable that represent long-term production instruments, which results in the double payment of Zakat. Accordingly, Zakat Payer contends that if the finance contracts were included in the Zakat Base, the notes receivable must be deducted in return. Furthermore, ZATCA's addition of equity while ignoring the deduction of the long-term assets (notes receivable) when addressing the item in question results in the imposition of a Zakat burden that is not commensurate with the size of Zakat Payer's activity.
2. Item (Requirement of Related Parties and Credit finance contracts "Completed the Zakat Year" of 2009, 2010, and 2012), wherein the appealed decision has ruled to uphold ZATCA's decision for addition of the balance of the item in question to Zakat Base, as Zakat Payer asserts its right to deduct that balance from Zakat Base for years in dispute, on the Grounds that the said balance is no longer in Zakat Payer's possession, pursuant to Fatwas No. (22665), (18494), and (3077) that support its claim, as the Zakat is due in the event that the funds remains in Zakat Payer's possession and has completed the Zakat Year, while the funds in this case is not in Zakat Payer's possession, based on its financial statements that show a cash balance less than the balance of the finance contracts.
3. Item (Administrative Oversight Expenses and Accommodation Expenses), wherein the appealed decision has ruled to uphold ZATCA's addressing of the item in question by not deducting the administrative oversight expenses that are not supported by documents, as well as not deducting the accommodation expenses, as Zakat Payer asserts its right to deduct expenses of the item in question on the Grounds that it had submitted the necessary documents, while the Primary Department dismissed Zakat Payer's objection for insufficiency of documents.
4. Item (Deferred Commissions), wherein the appealed decision has ruled to uphold ZATCA's for the non-deduction of expenses of the item in question, as Zakat Payer asserts its right to deduct these expenses on the Grounds that they represent actual expenses incurred by Zakat Payer that it had capitalized for the purpose of amortization, in application of generally accepted accounting standards. Additionally, Zakat Payer contends that the method followed by ZATCA is to deduct the balance of the deferred expenses from the Zakat Base, and in the event that ZATCA rejects that deduction, it means that the entire amount must be charged to the income and accepted as an expense in full, not just the portion that has been amortized.

Since the Department decided opening of pleadings, it has addressed ZATCA on 25/02/1442 AH, corresponding to 12/10/2020 AD, to submit its response to Zakat Payer's appeal within the specified period. The period elapsed without any response from ZATCA.



On 17/03/1442 AH, corresponding to 02/11/2020 AD, the Department has requested Zakat Payer to submit any additional submissions to its appeal against the decision in question within the specified period.

On 01/04/1442 AH, corresponding to 16/11/2020 AD, Zakat Payer submitted a Reply, a summary of which that it maintains its previously statements mentioned in its statement of appeal.

On 19/08/1442 AH, corresponding to 01/04/2021 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 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 (Deduction of Notes Receivable "Payables" from Zakat Base of Zakat Payer of 2009 – 2012), which includes its objection to the Primary Department's decision in upholding ZATCA's decision for the addition of the balance of the long-term notes receivable to the Zakat Base of Zakat Payer of 2009 – 2012, as the Primary Department contends that the notes receivable represent amounts due from Zakat Payer to third parties resulting from commercial transactions represented by sales on credit and that they are guaranteed and not due from insolvent or procrastinating parties.

The Department, having taken cognizance of submissions of parties to Appeal, found that; 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, as the appealed decision was consistent with the justifiable Grounds on which it was based and sufficient to carry its judiciary, as the Primary Department issuing the decision has examined the source of the dispute for each item and reached to the conclusion stated in its wording by deciding to uphold ZATCA's decision for the non-deduction of item (Notes Receivable "Payables" from Zakat Base of Zakat Payer of 2009 – 2012); 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 Department'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 (Requirement of Related Parties, Credit Finance Contracts, and Payables "Completed the Zakat Year" of 2009, 2010, and 2012), which includes its objection to the Primary Department's decision in upholding ZATCA's decision for the addition of requirement of related parties, credit finance contracts, and payables of 2009 – 2012, pursuant to Paragraph (5/First) of Article (4) of Implementing Regulations for the Collection of Zakat, as the Primary Department contends that the debts in question were obtained by enterprises for production and investment purposes; hence, they are considered capital.

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 Department was sound and valid, and that the Grounds on which its decision was based were sufficient to uphold this decision, as the Primary Department issuing the decision has examined the source of the dispute for each item and reached to the conclusion stated in its wording by deciding to uphold ZATCA's decision for the addition of item (Requirement of Related Parties, Credit finance contracts, and Payables "Completed the Zakat Year" of 2009, 2010, and 2012), which is not affected by pleas presented by Zakat Payer that have no effect on the



conclusion reached in this decision; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision regarding the item in question as to conclusions it had in this regard, attributed to its Grounds.

As for Zakat Payer's appeal regarding item (Administrative Oversight Expenses and Accommodation Expenses), which includes its objection to the Primary Department's decision in upholding ZATCA's decision for the addition of administrative oversight expenses and accommodation expenses of 2009 – 2012 for insufficiency of documents submitted.

The Department, found that; since it is legally established that that all regular and necessary expenses for realizing taxable income may be deducted if they are supported by documents; and since Zakat Payer has failed to submit the supporting documents as requested by ZATCA; and since there is no justifiable hardship or effort on Zakat Payer for lack of submission of those documents supporting its claim; and since the Department has reviewed the financial statements submitted by Zakat Payer in which it did not find a sufficient and clear description of the nature of these claimed expenses; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision regarding the item in question as to conclusions it had in this regard.

As for Zakat Payer's appeal regarding item (Deferred Commissions of 2009 – 2012), which includes its objection to the Primary Department's decision in upholding ZATCA's decision, as Zakat Payer claims that the balance of deferred expenses, in substantive terms, represents payables, the nature of which is not changed by including the same within non-current assets, but rather is periodically amortized, the expense of which is charged annually, which indicates that the balance has been taken into consideration upon calculating Zakat Base within the net income. Zakat Payer concluded by requesting acceptance of the deferred commission expense for the years in question, not just the portion that has been amortized.

The Department, found that; since there is no dispute over the validity of these commissions in terms of accounting; and since the dispute is not related to documents, as it lies in postponing the validity of expenses in terms of accounting due to Zakat Payer's application of the accrual basis of accounting, which imposes charging the fiscal years with the expenses due from Zakat Payer regardless of the timing of their payment; and since these deferred expenses are not considered Zakat funds, nor they are in exchange for Zakat funds, Therefore, the Department satisfies to decide that Zakat Payer is entitled to deduct these deferred expense from its Zakat Base and, by extension, to accept Zakat Payer's appeal and reverse the appealed decision as to conclusion it had in this regard.

Decision

First: Accept Zakat Payer's (..... Company, C.R. No.) appeal against Decision No. (07/21) of 1438 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Dismiss Zakat Payer's appeal on item (Deduction of Notes Receivable "Payables" from Zakat Base of Zakat Payer of 2009 – 2012); and uphold the Primary Department's Decision as to conclusions it had in this regard, for the Grounds stated herein.
2. Dismiss Zakat Payer's appeal on item (Requirement of Related Parties, Credit Finance Contracts, and Payables "Completed the Zakat Year" to Zakat Base of Zakat Payer of 2009 – 2012); and uphold the Primary Department's Decision as to conclusions it had in this regard, for the Grounds stated herein.
3. Dismiss Zakat Payer's appeal on item (Administrative Oversight Expenses and Accommodation Expenses); and uphold the Primary Department's Decision as to conclusions it had in this regard, for the Grounds stated herein.
4. Accept Zakat Payer's appeal on item (Deferred Commissions of 2009 – 2012); and reverse the Primary Department's Decision for the Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-119)
Issued in Appeal No. (Z-2018-
1503)

Principle No. 104

The investments shall be considered trading assets, in the event of presence of physical signs of sale that can be realized or the presence of strong evidence of the intention to sell.

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 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 25/03/1439 AH, by Company ("Zakat Payer"); against Decision No. (1439/03/02) of 1439 AH delivered by the Third Primary Committee for Zakat and Tax Objections in Riyadh in Objection No. (24/03/1438), filed by Zakat Payer against General Authority of Zakat and Tax ("GAZT"). The appealed decision ruled as follows:

First: Accept Zakat Payer's objection in form for the Grounds stated in the decision.

Second: On Merits:

1. Establish resolution of dispute on item (Zakat Provision of 2013), by GAZT accepting Zakat Payer's view.
2. Dismiss Zakat Payer's objection to item (Non-Deduction of Related Parties from Zakat Base of 2011), for the Grounds stated in the decision.
3. Dismiss Zakat Payer's objection to item (Non-Deduction of Land Investments from Zakat Base of 2011 – 2013), for the Grounds stated in the decision.
4. Dismiss Zakat Payer's objection to item (Non-Deduction of Long-Term Real Estate Investments from Zakat Base of 2011 and 2012), for the Grounds stated in the decision.
5. Dismiss Zakat Payer's objection to item (Non-Deduction of Construction Under Implementation from Zakat Base of 2011 – 2013), for the Grounds stated in the decision.
6. Establish resolution of dispute on item (Waqf of "...." of 2013), by GAZT accepting Zakat Payer's view.

Since Zakat Payer (..... Company) dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

1. Item (Related Parties of 2011 in the amount of "SAR 122,000,000"): Zakat Payer objects to the Primary Department's decision in upholding GAZT's decision for addition of the amount in question to its Zakat Base, on the Grounds that it has completed the



Zakat Year, wherein Zakat Payer claims that the said amount represents the remaining dues of Endowments “Awqaf” of (.....), which is a part of the price of Plot No. (.....) located in the city of Jeddah, Layout No. (.....) purchased for Zakat Payer, while these dues are in fact connected with a Related Party (..... Company for Awqaf) that is basically excluded from paying Zakat as of 2011, the same year in which the related parties were added to Zakat Base.

In addition, the Grand Mufti has issued a Fatwa regarding the Zakat Transaction of (..... Company for Awqaf), which stated that the Zakat shall not be due on the Charity Endowment Yields if it is for a public charitable purpose and is spent on public charitable causes, even if the Endowment is invested and generates profits, whether it is invested through a company or otherwise.

Moreover, GAZT’s decision is inconsistent with Legal Fatwas that have been issued by Jurists, both in the past and present, regarding the “Zakat-on-Debt”, since the Zakat is due on Zakat Payer’s funds that are within the creditor’s possession, as calculating Zakat on debtor’s “Zakat Payer” funds means double charge of Zakat; hence, the processing of Zakat for trade payables requires deducting its equivalent of real estates that have been sold, whereby the Zakat is not doubled. Zakat Payer concluded by requesting not to add the related parties’ amount of 2011 to the Zakat Base or to deduct the equivalent amount of real estate in order for the processing of Zakat to be valid.

2. Item (Land Investments of 2011 – 2013, of “SAR 187,108,928”, “SAR 299,791,036”, and “SAR 391,070,295” Respectively): Zakat Payer objects to the Primary Department’s decision in upholding GAZT’s decision for the non-deduction of those amounts from Zakat Base on the Grounds that the main activity of Zakat Payer, as stated in its Articles of Association and notes to the financial statements, is to purchase lands and construct buildings thereon by selling and leasing the same for Zakat Payer’s interests, and the observations it had on the financial statements, as well as the clarification of the external auditor that indicated the existence of an account activity of buying, selling, and transferring to and from the account of constructions under implementation, while the fact is that the Idle Lands remained registered in Zakat Payer’s books for more than a year from 2011 to 2013.

Additionally, such an account activity was also related to lands under construction and implementation that were kept as an investment for more than three (3) years in Zakat Payer’s possession, while they remained registered in its books for more than a year; hence, this negates the appealed decision that supported GAZT’s view by deducing the existence of the activity on these lands for the purpose of consideration of the same as trading assets. Moreover, it should be noted that relying on the Articles of Association of Zakat Payer does not necessarily means that the condition for payment of Zakat is met, since the trading assets means those specified for sale and purchase with the intention of gaining profit when owned by way of compensating.

Also, it is common practice in the field of Zakat Payer’s activity that there is a period for the land to remain in possession after acquisition and to carry out construction and development works until reaching its final condition as an investment property for the purpose of gaining its proceeds and profits for a year or more. This is shown by the accounting statements of Zakat Payer by considering that these land investments are classified as non-current assets, not current assets, which indicates the absence of intention of Zakat Payer to consider those investments as trading assets.

Furthermore, it is necessary to consider these lands fall within deductible investments from Zakat Base, as the investment activity does not necessarily have to be trade resulting from the sale of the investment, but rather there may be an opportunity to keep such investment for the purpose of leasing, whereby the Zakat due becomes



“Zakat on Revenue-Yielding Property” without subjecting the investment to Zakat. It should also be noted that the Implementing Regulations for the Collection of Zakat stipulated that the investments shall be deducted from Zakat Base whether they are within or outside the Kingdom. Accordingly, the real estate investment must be deducted same as any other investment.

3. Item (Long-Term Real Estate Investments of 2011 and 2012, of “SAR 70,514,944”, and “SAR 87,464,819” Respectively): Zakat Payer objects to the Primary Department’s decision in upholding GAZT’s decision for addition of those investments to Zakat Base, as Zakat Payer contends that the account activity of buying, selling, and transferring to and from the account of constructions under implementation, which it noted after reviewing the financial statements and the observations of the external auditor, had led to consider the amounts of those investments as Zakat funds that must be added to Zakat Base, while the fact is that these real estates represent buildings that were purchased and demolished due to their age and unsuitability for accommodation, then they were converted to constructions under implementation, and invested to become new real estate.

Additionally, a part of that account activity was related to purchasing real estate investments that remained registered in Zakat Payer’s books for more than a year after converting the real estates into fixed assets, i.e., the said account activity was also related to lands under construction and implementation that were kept as an investment for more than three (3) years in Zakat Payer’s possession, while they remained registered in its books for more than a year; hence, this negates the appealed decision that supported GAZT’s view by deducing the existence of the activity on these lands for the purpose of consideration of the same as trading assets.

Moreover, it should be noted that relying on the Articles of Association of Zakat Payer does not necessarily means that the condition for payment of Zakat is met, since the trading assets means those specified for sale and purchase with the intention of gaining profit when owned by way of compensating. Also, it is common practice in the field of Zakat Payer’s activity that there is a period for the land to remain in possession after acquisition and to carry out construction and development works until reaching its final condition as an investment property for the purpose of gaining its proceeds and profits for a year or more. This is shown by the accounting statements of Zakat Payer by considering that these land investments are classified as non-current assets, not current assets, which indicates the absence of intention of Zakat Payer to consider those investments as trading assets.

Furthermore, it is necessary to consider these lands fall within deductible investments from Zakat Base, as the investment activity does not necessarily have to be trade resulting from the sale of the investment, but rather there may be an opportunity to keep such investment for the purpose of leasing, whereby the Zakat due becomes “Zakat on Revenue-Yielding Property” without subjecting the investment to Zakat. It should also be noted that the Implementing Regulations for the Collection of Zakat stipulated that the investments shall be deducted from Zakat Base whether they are within or outside the Kingdom. Accordingly, the real estate investment must be deducted same as any other investment.

4. Item (Construction Under Implementation of 2011 – 2013, of “SAR 68,193,954”, “SAR 81,991,506”, and “SAR 154,037,879” Respectively): Zakat Payer objects to the Primary Department’s decision in upholding GAZT’s decision for the non-deduction of those amounts from Zakat Base for years in question on the Grounds that those constructions under implementation constitute trading assets, while the fact is that the item in question is related to long-term investment financed from equity and long-term loans that were added to Zakat Base, since those constructions are considered



acquisition assets due to its retention with Zakat Payer and registration in its books for more than a year; hence they cannot be classified as trading assets, as they have been classified as non-current assets.

In addition, it is necessary to deduct the equivalent amount of accounts payable financing the capital works and constructions under implementation upon calculating their due Zakat for the purpose of avoiding the double charge of Zakat.

The Department has requested GAZT to submit its response to Zakat Payer's statement of appeal regarding the items in question. On 02/12/1441 AH, GAZT submitted its response as requested, in which it stated that it adheres to its view presented before the Objection Committee upon considering Zakat Payer's objection and requests that the appealed decision be upheld, which affirmed the validity and soundness of GAZT's decision, considering that the claims raised by Zakat Payer do not affect the validity of the conclusion reached by the Objection Committee issuing the appealed decision. GAZT concluded by requesting that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

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.

The Department, having taken cognizance of Case documents and Zakat Payer's statement of appeal, and having considered Zakat Payer's pleas on the previously stated items, has decided to rule on the Case as follows:

1. Item (Related Parties of 2011 in the amount of "SAR 122,000,000"):

The Department, having taken cognizance of Zakat Payer's appeal, found that the amount to be deducted represents a part of the price of a land purchased for Zakat Payer Party (..... Company for Awqaf); and since the Department did not find any requirement for correction or further response regarding the conclusion reached in the appealed decision, as the Objection Committee issuing the decision has examined Zakat Payer's objection that was consistent with its appeal; and since the aforementioned is not affected by Zakat Payer's claim that the amount due from a charitable organization that is exempt from paying Zakat on its funds based on the Fatwa issued in this regard, since the amount due does not go beyond being considered funds on which Zakat is due, but rather a debt owed by Zakat Payer responsible to that charitable organization, especially since the acquisition of that land was part of the trading activity for which the Zakat Payer was incorporated and the profit from its operations therein was realized; Therefore, the Department satisfies to uphold the appealed decision as to conclusion it had in this regard and dismiss Zakat Payer's appeal.

2. Item (Land Investments of 2011 – 2013, of "SAR 187,108,928", "SAR 299,791,036", and "SAR 391,070,295" Respectively):
3. Item (Long-Term Real Estate Investments of 2011 and 2012, of "SAR 70,514,944", and "SAR 87,464,819" Respectively)
4. Item (Construction Under Implementation of 2011 – 2013, of "SAR 68,193,954", "SAR 81,991,506", and "SAR 154,037,879" Respectively):

With regard to the above items, the Department, having taken cognizance of Zakat Payer's appeal, found that the dispute lies in Zakat Payer's objection to GAZT's decision for the addition of the amounts of those items to its Zakat Base for the years subject of dispute, in light of Zakat Payer's claims that the processing of Zakat for those amounts requires considering the same as acquisition



assets, as Zakat Payer cannot trade in the assets in their current condition, which is supported by their retention with Zakat Payer and registration in its books for more than a year, and that the common practice in the field of Zakat Payer's activity is that the preparation of such investments takes a long period of time exceeding one year, which is supported by the classification of those lands and real estate acquired for investment purposes contained in Zakat Payer's financial statements as non-current assets, which negates the consideration of the same as acquisition assets, but rather they are predominantly described as acquisition assets, while GAZT contends that the Articles of Association of Zakat Payer show that its activity is based on selling and leasing real estate investment, in addition to the existence of an activity proven by notes to the financial statements and the observation of the external auditors regarding the same; which renders those real estate investments as funds subject to Zakat, as they are trading assets that cannot be described as acquisition assets; and since the adjudication of dispute between Zakat Payer and GAZT, as stated in their statements of appeal regarding those contested items, requires consideration of the common practice when investing in those real estate on which Zakat Payer's activity is based; and since preparing those investments after their acquisition requires taking a period of time as products ready for sale or use by leasing or otherwise; and since considering those investments as trading assets requires the presence of physical signs of sale that can be realized or the presence of strong evidence of the intention to sell; and since the Department did not find evidence of the presence of those signs; and since claiming the existence of an activity on some accounts of those items, as long as that activity was not related to sales operations that would be evidence of the transformation of those investments into trading assets without considering the same as acquisition assets; and since the conclusion is not affected by stating that the purpose of the sale was included in the purposes of Company "Zakat Payer" as stated in its Articles of Association; since the purpose of the sale does not necessarily mean its achievement in every investment immediately and the intention to sell the same immediately after its previous condition when acquired; and since such matter also requires accounting treatment of those investments by registering the same as inventory with Zakat Payer, which was not the case with those investments related to the items in question between parties to Appeal; Therefore, the Department satisfies to accept Zakat Payer's appeal on the items in question, by deciding not to add the same to Zakat Base in each of years in question, and reverse the appealed decision as to conclusion it had in this regard.

Decision

First: Accept Zakat Payer's (..... Company. C.R. No.) appeal against Decision No. (1439/03/02) of 1439 AH delivered by the Third Primary Committee for Zakat and Tax Objections in Riyadh, in form.

Second: On Merits:

1. Dismiss Zakat Payer's appeal on item (Related Parties of 2011 in the amount of "SAR 122,000,000") and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Accept Zakat Payer's appeal on item (Land Investments of 2011 – 2013, of "SAR 187,108,928", "SAR 299,791,036", and "SAR 391,070,295" Respectively), by deciding not to add the same to Zakat Base in each of years in question, 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 (Long-Term Real Estate Investments of 2011 and 2012, of "SAR 70,514,944", and "SAR 87,464,819" Respectively), by deciding not to add the same to Zakat Base in each of years in question, 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 (Construction Under Implementation of 2011 – 2013, of "SAR 68,193,954", "SAR 81,991,506", and "SAR 154,037,879" Respectively), by deciding not



to add the same to Zakat Base in each of years in question, 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-2020-85)
Issued in Appeal No. (Z-1513-
2018)

Principle No. 105

The housing allowance provided to partners is not considered an expense necessary for generating Zakat Payer's revenues, but rather a benefit or privilege granted to the partners. Therefore, it shall be treated as a profit distribution and shall not be considered a deductible expense.

Principle No. 106

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.

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 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 19/10/1438 AH, corresponding to 13/07/2017 AD, by (..... Company "Certified Public Accountants and Auditors") ("Zakat Payer") against Decision No. (23) of 1438 AH delivered by the Second Primary Committee for Zakat and Tax Objections in Jeddah in Case No. (4791/22/1435), filed by Zakat Payer against General Authority of Zakat and Tax ("GAZT"). The appealed decision ruled as follows:

First: Accept Zakat Payer's (..... Company "Certified Public Accountants and Auditors") objections to Zakat Assessment of 2009 – 2011, in form.

Second: On Merits:

1. Uphold GAZT's decision regarding the processing of item (Annual Bonuses in Excess of 5% of Net Profit), for the Grounds stated in the decision.
2. Uphold GAZT's decision regarding item (Addition of Social Insurance Differences and Personnel Housing Allowance to Zakat Base), for the Grounds stated in the decision and the amounts included therein.
3. Uphold GAZT's decision regarding item (Addition of Rent Expenses of Partners' Private Housing and Medical Insurance to Zakat Base), for the Grounds stated in the decision.
4. Uphold GAZT's decision regarding item (Addition of Expenses of Travel Tickets and Accommodation to Zakat Base), for the Grounds stated in the decision.
5. Uphold GAZT's decision regarding item (Addition of Expenses of Gifts, Tips, Donations, and Administrative Expenses to Zakat Base), for the Grounds stated in the decision.



6. Uphold GAZT's decision for accepting medical insurance expenses for personnel and their families as a deductible expense from its Zakat Base, for the Grounds stated in the decision.
7. Uphold GAZT's decision regarding item (Addition of Zakat Paid in 2009 and 2010 to Zakat Base), for the Grounds stated in the decision.
8. Resolution of the dispute between parties to Case over item (Fixed Asset Sale Profit), for the Grounds stated in the decision.
9. Uphold GAZT's decision regarding item (Addition of Revolving Adjusted Current Account Balance to Zakat Base of Zakat Payer), for the Grounds stated in the decision.
10. Resolution of the dispute between parties to Case over item (Investments), for the Grounds stated in the decision.

Since Zakat Payer's (..... Company "Certified Public Accountants and Auditors") dissatisfied with this decision, it submitted a statement of appeal summarized as follows:

1. **Item (Annual Bonuses in Excess of 5% of Net Profit of 2009, 2010, and 2011):**

Zakat Payer objects to the Objection Committee's decision for upholding GAZT's decision for the non-deduction of these bonus amounts for years in question and its adjustment of the net profit by not excluding the amounts paid for those bonuses, despite the fact that they were disbursed pursuant to the Work Regulations of Zakat Payer approved by the Ministry of Labor, as Zakat Payer contends that the difference in amounts from one year to another is based on the fact that these bonuses depend on the results of performance appraisal of personnel undertaking the Office's "Zakat Payer" auditing-based tasks; hence, such a difference is due to personnel effort and performance appraisal. Accordingly, GAZT's procedure of not excluding these bonus amounts and its adjustment of the net profit without considering the same as expenses that had been incurred by Zakat Payer does not conform to the correct procedure that requires consideration of these bonus amounts as a deductible expense.

2. **Item (Social Insurance Differences and Personnel Housing Allowance to Zakat Base of 2009 – 2011):**

Zakat Payer objects to the Objection Committee's decision for upholding GAZT's decision for the non-calculation of the full difference amount of social insurance, salaries, and housing allowance for personnel for years 2009 – 2011, as stated in Zakat Payer's Declaration, not on the amount on which GAZT made its Assessment, as Zakat Payer contends that the difference that was not calculated within those amounts is due to the existence of wages for temporary personnel during their probationary period, for the purpose of later on-boarding in full-time positions, after their competence to work for Zakat Payer is proven, which is consistent with the approved Work Regulations for the probationary period; hence, there is no reason hindering the exclusion of the difference between the wages subject to GOSI subscription represented by the basic salary and the housing allowance that has been added thereto as basic wages, and amounts added to those wages and salaries that represent amounts due to temporary personnel.

3. **Item (Rent Expenses of Partners' Private Housing and Medical Insurance of 2009 – 2011):**

Zakat Payer objects to GAZT's decision, claiming that the housing rents represent actual expenses incurred by Zakat Payer that were paid for its partners working at the Office "Zakat Payer" and their private medical insurance; hence, there is no reason hindering the exclusion of those expenses incurred by Zakat Payer for the purpose of carrying out its business and activity. In addition, stating that the rented properties were for transactions between non-independent parties does not change its consideration as an expense.

4. **Item (Unapproved Expenses of Travel Tickets and Accommodation of 2009 – 2011):**

Zakat Payer objects to GAZT's decision, claiming that these expenses represent amounts for tickets that were paid to travel agencies within the Kingdom, in addition to accommodation expenses for assignments that are necessary to be carried out for the Office "Zakat Payer," which are undertaken by its partners and personnel through reviewing clients' accounts in



different regions of the Kingdom, which renders the same as actual expenses related to Zakat Payer's activity; hence, they must be deducted from the overall net profit, since they represent expenses necessary to generate revenues for Zakat Payer. They also represent amounts of ticket to the families of Zakat Payer's partners and personnel, which are considered deductible expenses, as they represent financial obligations on Zakat Payer when contracting with personnel; hence, they are related to revenue-generating. Accordingly, GAZT's procedure of not deducting these expenses from Zakat Base is not sound, especially since Zakat Payer has provided GAZT with an analytical statement of those expenses for travel and accommodation, the names of the beneficiaries, and the amounts paid per beneficiary.

5. Item (Addition of Expenses of Gifts, Gratuities, Donations, and Administrative Expenses):

Zakat Payer objects to GAZT's decision for non-approval of expenses for gratuities and donations in the amount of (SAR 204,767), and the amount of (SAR 153,693) of 2009 and 2010, respectively, expenses for gifts and gratuities in the amount of (SAR 204,167), and administrative expenses in the amount of (SAR 485,995) of 2011, as Zakat Payer contends that these expenses represent expenses for business lunches and for "Iftar" personnel during the month of Ramadan, and expenses for coffee and tea provided to personnel during work, in addition to incentive gifts. As for donations, they were paid for assistance and to various associations and entities. Moreover, Zakat Payer had previously submitted a detailed statement of the donations and gratuities paid; hence, there is no reason hindering the exclusion of those expenses from Zakat Base for years in question.

6. Item (Zakat Provision of 2009 and 2010):

Zakat Payer objects to GAZT's decision for the addition of an amount of (SAR 101,586) and an amount of (SAR 39,804) representing the Zakat differences of 2009 and 2010, which resulted in amendment of the net profit subject to Zakat Base accordingly, as Zakat Payer asserts that it had submitted the financial statements and the expenses charged during the discussion of accounts of 2009 and 2010, and that those amounts were not charged to the expenses of the years in question; hence the net income contained in the Zakat Base does not include the Zakat provision, since Zakat is calculated by adding the net income prior to deducting its provision; thus, Zakat differences that GAZT has deduced, and by which it adjusted the net profit, were not based on the data shown in Zakat Payer's accounts, in light of GAZT's failure to provide any proof of the exclusion of the amounts of those provisions based on GAZT's explanation regarding Zakat Payer's approach in processing these provisions and including the same in the Zakat Base, and the method in which Zakat Payer's has processed these provisions.

7. Item (Adjusted Partners' Current Account Balance with Partners' Private Rent of 2011):

Zakat Payer objects to the Objection Committee's decision for upholding GAZT's decision for the addition of the balance of partners' current account of 2011 to Zakat Base despite the fact that it did not complete the Zakat Year, as Zakat Payer contends that the rule for the calculation of Zakat on partners' current account is by adding the lower balance at the beginning or end of the Zakat period to Zakat Base. In addition, since these balances were recorded during 2011, as clarified in the partners' accounts previously submitted to GAZT, their addition to Zakat Base is not valid due to the non-completion of Zakat Year. Even assuming that GAZT adjusted the balance of that account, the lower balance at the beginning of the Zakat period was excluded from Zakat Base, while the balance at the end of the Zakat period was added to the same, which is higher than the balance at the beginning of the Zakat period, amounting to (SAR 985,586).

In addition to its requests, the Appellant has emphasized that the Department should order ZATCA to implement the primary decision regarding Zakat Payer's objection to the approval of amounts related to medical insurance for the families of partners and employees for the period from 2009 to 2011. Furthermore, Zakat Payer has requested that the Department order



ZATCA to amend the assessment by adding salaries of Riyadh branch and deducting them from Zakat base, as stated in the decision issued by the Primary Objections Committee. Since Zakat Payer's pleas, objections, and requests regarding the appeal under consideration were summarized as previously stated, the Department has requested GAZT to respond to the objections contained in Zakat Payer's statement of appeal regarding the items raised therein. The Department, having taken cognizance of the GAZT Rejoinder dated 01/11//1441 AH, regarding Zakat Payer's appeal, found that GAZT stated that it adheres to its view presented regarding those contested items during the consideration of Zakat Payer's objection before the Objection Committee, as well as to the validity and soundness of its procedure regarding the said items, as Objection Committee's decision came in compliance with the Law. Accordingly, GAZT adheres to the conclusion reached in the appealed decision, taking into consideration that claims raised by Zakat Payer are consistent with the earlier submissions before the Objection Committee, which GAZT responded to at that time. Based on the foregoing, GAZT requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld as to conclusion it had in the contested items.

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 concluded that the subject of appeal has become ripe for adjudication as per the documents included in Case file, requests, defenses, and pleas raised by parties thereto that were sufficient to establish its satisfaction to adjudicate the subject of dispute, has decided to rule on the Appeal regarding the contested items as follows:

1. Item (Annual Bonuses in Excess of 5% of Net Profit of 2009, 2010, and 2011):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question and GAZT's Reply thereto based on its sufficiency with arguments presented during the hearing and pleadings before the Objection Committee, found that; since these bonuses paid by Zakat Payer to its personnel, which exceeded the amount accepted by GAZT as the maximum deductible expense, do not constitute a dispute over considering the same as an expense. Accordingly, this dispute shall not be considered a dispute related to documents submitted that prove the reality of amounts disbursed as bonuses; and since GAZT's determination of a limit for bonuses to be considered a deductible expense at the rate (5%) is not based on valid Grounds due to the invalidity of deducting the amounts exceeding that limit when calculating the Zakat Base, as long as the dispute is not over the expense itself; hence, exceeding that limit to nearly (24%), as assessed by the Objection Committee, does not constitute a requirement for not excluding that expense from Zakat Base within that limit, especially when considering the nature of the bonuses related to the effort and work of personnel involved in auditing and reviewing accounts as part of Zakat Payer's activities and businesses; Therefore, the Department satisfies to accept Zakat Payer's appeal on the item in question by considering the same as a deductible expense as per the information contained in Zakat Payer's Declaration.

2. Item (Social Insurance Differences and Personnel Housing Allowance to Zakat Base of 2009 – 2011):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question and GAZT's Reply thereto based on its sufficiency with arguments presented during the hearing and pleadings before the Objection Committee, found that; since Zakat Payer did not object to the entire item in question, but rather its objection was to the lack of exclusion of amounts of temporary employment contracts that were under probationary period and were



not covered by the subscription amounts paid to GOSI, considering their status as temporary personnel under probationary period and their incompetence to work for Zakat Payer except after proving otherwise upon completion of their probationary period; and since Zakat Payer's failure to register its temporary personnel with GOSI does not constitute a sufficient ground to claim that these expenses were not incurred by Zakat Payer and were paid to temporary personnel during their probationary period, especially since registering with GOSI is considered a presumption that may be supported by evidence or other signs establishing the validity of those expenses as wages of temporary personnel paid during their probationary period; and since Zakat Payer has provided evidence that proves the Department's satisfaction of the existence of these expenses; Therefore, the Department satisfies to accept Zakat Payer's appeal on the item in question by considering these expenses related to wages of temporary personnel as a deductible expense for the years in dispute.

3. Item (Rent Expenses of Partners' Private Housing and Medical Insurance of 2009 – 2011):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question and GAZT's Reply thereto based on its sufficiency with arguments presented during the hearing and pleadings before the Objection Committee, found that; since Zakat Payer regarding the item in question, claimed that these expenses were incurred by Zakat Payer and necessary for its partners to carry out their tasks, same as any other expenses, while GAZT objects to the same, stating that the rental value paid by Zakat Payer is for the purpose of distributing the profit and does not charged to the year profit, especially since the said value is intended for the housing of some of Zakat Payer's partners, and that Zakat Payer registering the same as rent and charging to the debtor current account of partners, results in non-addition of that value to the Zakat Base regarding Partner (Mr.). GAZT added that these real estates rented from the partners are owned by them; hence, this situation constitutes non-independent transactions and lacks objectivity in determining the fair rent for the same. Accordingly, these rents represent additional income for partners, which must be recognized in the relevant Zakat Declaration; thus, it cannot be considered a deductible expense; and since it is established in corporate matters that the amounts paid by the company to its partners is considered a distribution of profit, and the amounts that can be deducted as expenses in exchange for advance payments are limited to the amounts that are acceptable within their limits to be deducted as expenses when paid to the partner who assumes management, are considered a wage related to its capacity as a manager, not a partner, since such a wage can be paid in the event that the company delegates the task of its management to third parties, or if the wage is among expenses or costs paid by the company for providing supplies, delivering services, or carrying out field business for the benefit of the company's project, then such expenses, when paid to the partner in order for the company to carry out its business, are not considered a distribution of profit, considering that they were paid as expenses required by the company's work due to its need for the same in carrying out its activity, otherwise, such a wage cannot be considered a profit distributed to the partner under whatever name it may be; and since Zakat Payer paying the rental allowance to its partner results in invalidity of calculation of the same as an expense, but rather it represents a benefit or privilege provided to the partner if that allowance has no relation to the company practicing its (professional) activity represented by reviewing and auditing the financial statements of its clients, cannot accordingly be considered a deductible expense from Zakat Base of Zakat Payer, i.e., that it does not constitute a necessary expense to generate revenues for Zakat Payer, considering the nature of the professional work carried out by the partners licensed to practice that activity, since the nature of Zakat Payer's business requires each partner to review the accounts and files of the clients in preparation for expressing Zakat Payer's opinion on those statements; and since it is established by the nature of partners' professional work that their collective efforts rely on individual contributions of each partner, which are ultimately represented under Zakat Payer's



name; and since the deductible expenses are defined as those tied to the professional work the core of Zakat Payer's activity in performing audits and reviews of clients' financial statements; and since the housing allowance paid to partners does not meet this criterion as a deductible expense when provided to a partner for its lack of connection to generating Zakat Payer's revenues, an example of which would be when a partner travels to review the files and accounts of a client outside Zakat Payer's location, as such expenses are directly connected to generating Zakat Payer's revenues, and not the housing allowance provided to the partner which is, in essence, a benefit offered by Zakat Payer to that partner, since the amount paid in this manner cannot be considered part of the wage given to the partner for contributing to management and operation of Zakat Payer to enable the working partners to carry out their professional accounting duties, which justify existence of Zakat Payer's activity, as the basis for granting and allocating this allowance to the partners is not tied to their direct participation in the management of Zakat Payer's activity, which is centered around the professional activities carried out by all partners; and since these professional activities generate fees from Zakat Payer's clients, which constitute its main revenue, according to which, its profits are determined after deducting the expenses directly associated with generating these revenues and distributing the profit among partners as per their mutual agreement, the housing allowance provided to partners is not considered an expense necessary for generating Zakat Payer's revenues, but rather a benefit or privilege granted to the partners. Therefore, it shall be treated as a profit distribution and shall not be excluded from Zakat Base on the Grounds of being a deductible expense, as previously explained; and since the Department's conclusion that the housing allowances granted by Zakat Payer to its partners shall not be considered 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 partner must be deducted from Zakat Base, same as personnel salaries and allowances, considering the amounts received by their peers, as the Fatwa indicates that treating such allowances as wages and salaries, similar to amounts given to personnel, is contingent on partner's involvement in managing and running Zakat Payer's business; hence, applying the Fatwa to every amount given to partners by Zakat Payer, without being related to partner's role in managing Zakat Payer's business and excluding the same from their professional work as a partner, would be a misapplication, as it would be incorrectly to compare the amounts given to the partner as if it were equivalent to personnel wages, since the amounts received by the partner for their professional work are considered a share of profit, considering that there is no employment relationship between the partner and Zakat Payer, as the basis for entitlement to such allowances and wages is also contingent upon the existence of an employment relationship between an employee and an employer, a relationship that does not exist between Zakat Payer and the partners when carrying out their professional duties within Zakat Payer's framework, for which they receive fees for their professional work, whereby the resulting profit is then distributed among the partners as per their mutual agreement; and since the validity of the aforementioned conclusion is not affected by the discussion of the Objection Committee of the soundness of GAZT's approach in not deducting the rental amounts on the Grounds that they were either not objectively justified in their value or were paid to related parties, since it is sufficient that these amounts, in their true nature, are considered a distribution of profit from Zakat Payer to partners, as previously explained; and since it was established in the Appellate Court that a decision may be upheld in its conclusion with amendment of its Grounds; and since the aforementioned was concluded that it is sufficient to consider these allowances as a profit distribution to the partners, rather than as wages comparable to those received by Zakat Payer's personnel, since the partner is not is not an employee when carrying out their professional work in the Office "Zakat Payer"; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision as to conclusion it had in this regard.



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 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 Objection 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.

5. Item (Addition of Expenses of Gifts, Gratuities, Donations, and Administrative Expenses):

The Department, having taken cognizance of Zakat Payer's appeal regarding the details of the item in question, found that: With regard to the expenses of gifts, gratuities, and donations, since Zakat Payer has failed to provide evidence supporting its claim to consider those expenses as deductible from Zakat Base, but rather were merely labeled in the item in question by Zakat Payer for the purpose of deduction of the same from its Zakat Base; Therefore, the Department satisfies to dismiss Zakat Payer's appeal regarding the deduction of these expenses from its Zakat Base, to consider the same as distribution of profit and as funds that were disbursed by Zakat Payer in the manner claimed, and by extension, to consider these expenses as distributed profit that reduces the balance of retained profits at the end of the year, representing the opening balance for the following year for the purposes of calculating Zakat in each of the years in dispute.

With regard to the administrative expenses, since the dispute between Zakat Payer and GAZT is related to documents, as the Objection Committee has upheld GAZT's decision to reject these expenses due to Zakat Payer's failure to submit documents supporting its claim regarding



the same; and since the Department has requested Zakat Payer to provide a clear breakdown of these expenses for each year in dispute, along with supporting documents to verify their relevance to Zakat Payer's activity and the specific year in which they were incurred; and since Zakat Payer has only submitted a statement listing these expenses and some documents that, in its view, support its claim; and since the Department did not find sufficient evidence to confirm that these expenses meet the deduction condition of expenses, especially since some of these expenses were clearly stated to have been incurred by one of the partners; and since such a statement does not conclusively establish that these are traceable expenses directly related to Zakat Payer's activity, as they did not take the usual course of approval within Zakat Payer itself and not just one of the partners; Therefore, the Department satisfies to consider these expenses as distribution of profit and as funds that were disbursed by Zakat Payer as in the manner claimed, and by extension, to consider these expenses as distributed profit reducing the balance of retained profits at the end of the year, which in turn represents the opening balance for the following year for the purposes of calculating Zakat in each of the years in dispute.

6. Item (Zakat Provision of 2009 and 2010):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question, found that: since GAZT has decided to calculate Zakat on expenses for years in dispute without verifying the same as per the various financial statements submitted by Zakat Payer for the years in question, merely referring to the established principle that Zakat is not considered an unjustly deductible expense is not sufficient alone to refute Zakat Payer's claim based on its Zakat Declaration; and since GAZT has failed to provide evidence that supports its conclusion for Zakat Payer's mistake in deducting the Zakat provision as an expense for the years in dispute; and since the matter was as stated, the primary stance remains valid, which is to accept Zakat Payer's submission on this matter due to the lack of evidence disproving the same and insufficiency of GAZT's conclusions to refute that stance; Therefore, the Department satisfies to accept Zakat Payer's appeal on the item in question and dismiss the adjusting of the profit as claimed by GAZT and stated in the appealed decision by adding the same to Zakat Base.

7. Item (Adjusted Partners' Current Account Balance with Partners' Private Rent of 2011):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question, found that: since the established rule when conducting the Zakat processing for partners' current account is based on adding the account balance at the beginning or the end of Zakat period, whichever is less, to Zakat Base; and since GAZT has failed to add the lower balance of that account without stating a reason for its renunciation of that established principle when calculating the Zakat Base for partners' current account; and since the said amount on which the Assessment was made to that account has not been confirmed whether it had completed the Zakat Year; Therefore, the Department satisfies to accept Zakat Payer's appeal on the item in question, dismiss the appealed decision as to conclusion it had in this regard, and calculate the balance of that account at the beginning of Zakat period, as shown by the financial statements submitted by Zakat Payer in connection with that account.

As for Zakat Payer's appeal regarding its request for ZATCA to confirm what was concluded in the primary decision, which favored Zakat Payer in some items or particulars, the Department has decided to disregard it as it is not a subject of dispute. Rather, the matter is related to ZATCA's implementation of what was included in the primary decision regarding it, which is a matter that falls outside the jurisdiction of the Department due to the absence of a dispute therein, as previously stated.

Decision



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

Second: On Merits:

1. Accept Zakat Payer's appeal on item (Annual Bonuses in Excess of 5% of Net Profit of 2009, 2010, and 2011) by approving the same as a deductible expense as stated in Zakat Payer's Declaration, 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 (Social Insurance Differences and Personnel Housing Allowance to Zakat Base of 2009 – 2011) and reverse the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Dismiss Zakat Payer's appeal on item (Rent Expenses of Partners' Private Housing and Medical Insurance of 2009 – 2011) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Accept Zakat Payer's appeal on item (Unapproved Expenses of Travel Tickets and Accommodation of 2009 – 2011) 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 (Addition of Expenses of Gifts, Gratuities, Donations, and Administrative Expenses) by considering the same as a distributed profit reducing the balance of retained profits at the end of the year, which in turn represents the opening balance for the following year for the purposes of calculating Zakat in each of the years in dispute, for the Grounds stated herein.
6. Accept Zakat Payer's appeal on item (Zakat Provision of 2009 and 2010) and reverse the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
7. Accept Zakat Payer's appeal on item (Adjusted Partners' Current Account Balance with Partners' Private Rent of 2011) 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-2020-38)
Issued in Appeal No. (Z-2018-1514)

Principle No. 107

Investment in funds with bank is represented in trading by a party assuming management of the same by using the subscribed capital to in those funds through trading in goods, buying and selling securities, or speculating in buying and selling currencies. Accordingly, the capital allocated for investment shall be considered as trading assets that cannot be 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 Wednesday, 17/11/1441 AH, corresponding to 08/07/2020 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 11/08/1438 AH, corresponding to 07/05/2017 AD, by (..... Company) (“Zakat Payer”) against Decision No. (14) of 1438 AH delivered by the Primary Committee for Zakat and Tax Objections in Dammam in Case No. (Z-2018-1514), filed by Zakat Payer against General Authority of Zakat and Tax (“GAZT”). The appealed decision ruled as follows:

First: Accept Zakat Payer’s (..... Company) objection to GAZT’s Zakat Assessment of 2008 – 2012, in form.

Second: On Merits:

1. Uphold GAZT’s decision regarding item (Non-Deduction of Projects Under Implementation and Payments on Land Account from Zakat Base of 2009 – 2012).
2. Uphold GAZT’s decision regarding item (Non-Deduction of Investments in Funds with Banks of 2009).
3. Uphold GAZT’s decision regarding item (Non-Deduction of Land Contributions with Third Parties from Zakat Base of 2009).

Since Zakat Payer (..... Company) dissatisfied with this decision, it submitted a statement of appeal summarized as follows:

As for item (Projects Under Implementation and Payments on Land Account of 2009 – 2012), Zakat Payer objects to the Objection Committee’s decision on the Grounds that the item in question does not involve lands and projects being considered as trading assets during the planning and development phases, as the residential units within these projects cannot be sold until their construction is completed and services are delivered. In addition, this matter is supported by Fatwas issued by the General Presidency for Scientific Research and Ifta (“ALIFTA”), indicating that Zakat should only be calculated and paid once these projects are fully completed and offered for sale, which Zakat Payer has already done. As for the items (Investments with Banks of 2009) and (Land Contributions with Third Parties of 2009), Zakat Payer maintains its statements and



pleas presented before the Objection Committee upon considering Zakat Payer's objection to Zakat Assessment.

The Department received a Rejoinder from GAZT, in which it responded to Zakat Payer's appeal, stating that it adheres to the validity and soundness of its procedures in addressing the contested items, and requests to uphold the Objection Committee's decision for the Grounds stated therein, which upheld support of the validity of GAZT's Assessment. GAZT added that claims raised by Zakat Payer 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 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.

1. As for item (Projects Under Implementation and Payments on Land Account):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question, found that: since the Department did not find that Zakat Payer intended to offer those lands for sale during the years subject of Assessment; and since Zakat Payer has disclosed in its financial statements the residential units prepared for sale within the current assets at the same time that it has disclosed the projects under implementation, contributions to lands with third parties, and payments on account of purchasing lands within the non-current assets, which indicates that Zakat Payer differentiates between assets intended for sale and those that are not; Consequently, these projects under development cannot be considered as assets held for trading purposes except in their final state, upon completion of development work; Therefore, the Department satisfies to accept Zakat Payer's appeal by excluding the amounts of the item in question from Zakat Base for failure to materialize the description of trading assets for the years subject of dispute with GAZT.

2. As for the item (Investments with Banks):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question, found that: since investment in these funds is represented in trading by a party assuming management of the same by using the subscribed capital to in those funds through trading in goods, buying and selling securities, or speculating in buying and selling currencies, etc., Zakat Payer, by subscribing in that fund and trading in that manner, is aware of the core activity of those funds; hence, the intention of holding these investments for acquisition is not applicable. Accordingly, subscription in these funds is essentially a form of trading and involves frequent buying and selling of the invested capital according to the fund's objectives. As a result, the capital allocated for investment shall be considered as trading assets that cannot be excluded from Zakat Base, especially since Zakat Payer did not present any evidence to contradict the apparent and known nature of investment in these funds; Therefore, the Department satisfies to dismiss Zakat Payer's appeal on the item in question by ruling validity of GAZT's procedure in adding the same to Zakat Base.

3. As for item (Land Contributions with Third Parties of "SAR 5,000,000" of 2009):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question, found that: since Zakat Payer requested to abolish the Objection Committee's decision, which upheld GAZT's decision in adding land contributions with third parties in the amount of (SAR 5,000,000) of 2009 to Zakat Base, considering the same real estate investments for the purpose of trade, which must be subject to Zakat, as Zakat Payer claimed that those contributions are considered deductible items, since Zakat Payer enters into those contributions with third parties for the purpose of building on its share of the land of the contribution, and that it may sometimes



resort to selling those contributions in the event of a re-evaluation of investment feasibility; and since the purpose of the Company “Zakat Payer” is to purchase land for constructing buildings thereon and entering into investments by selling or renting buildings for the benefit of the Company “Zakat Payer;” managing and operating residential and commercial buildings; establishing exhibitions and commercial complexes for the purpose of selling or renting the same to third parties; investing in hotel services, entertainment and general contracting for buildings; constructing residential complexes and entering into investments by selling or renting complexes for the benefit of the Company “Zakat Payer”; and establishing, managing, maintaining, and developing real estate. Accordingly, investing in lands for constructing buildings is among Zakat Payer’s activities, as well as investing in land by selling or renting the same; and since it is widely known and commonly practiced in real estate contributions that such contributions represent a shared ownership interest for the shareholder. Such share may be transferred or waived to third parties, either for compensation or as an endowment, after informing shareholder to transfer the ownership to the designated individual “the Transferee;” and since it is also customary for such contributions to include an agreement authorizing shareholder to sell his/her share whenever he/she is deemed beneficial or profitable to execute the sale of all or part of that share, even if the development phase has not been completed; and since there is no partitioned, allocated share for shareholder; rather, he/she has only the right of first refusal when the share is sold at the value at which the land cluster intended for purchase is sold and allocated to the shareholder. This entails that Zakat Payer’s intention to invest in purchasing these lands for establishing its projects is not the primary apparent intention, but rather is overshadowed by the main purpose of the contribution, which is generally trading. Therefore, the Department satisfies to dismiss Zakat Payer’s appeal by subjecting the amount of the item in question to Zakat and adding the value of these contributions with third parties to Zakat Base.

Decision

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

Second: On Merits:

1. Accept Zakat Payer’s appeal on item (Deduction of Projects Under Implementation and Payments on Land Account from Zakat Base of 2009 – 2012) and reverse the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Dismiss Zakat Payer’s appeal on item (Deduction of Investments in Funds with Banks from Zakat Base of 2009) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Dismiss Zakat Payer’s appeal on item (Deduction of Land Contributions with Third Parties of “SAR 5,000,000” of 2009) 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-2020-115)
Issued in Appeal No. (Z-1519-2018)

Principle No. 108

The borrower shall pay Zakat on funds in his/her possession that has not spent all or part of the same, and the Zakat shall be due on the amount remained in his/her possession upon the completion 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 Wednesday, 25/03/1442 AH, corresponding to 11/11/2020 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 04/03/1438 AH, by (..... Company) ("Zakat Payer"), against Decision No. (29) of 1437 AH delivered by the Primary Committee for Zakat and Tax Objections in Dammam in Case No. (8), filed by Zakat Payer against General Authority of Zakat and Tax ("GAZT"). The appealed decision ruled as follows:

First: Accept Zakat Payer's (..... Company) objection to GAZT's Zakat Assessment of 2007 – 2009, in form.

Second: On Merits:

1. Uphold GAZT's decision regarding item (Addition of "SAR 41,536,047" for Fixed Asset Finance of 2009).
2. Establish resolution of dispute on item (Lands of 2007 – 2009).
3. Accept the calculation of the accepted expenses of social insurance by (11%) of the total salaries of Saudis and (2%) of the total salaries of non-Saudis, and refund the excess, if any, to the result of the year.
4. Uphold GAZT's decision regarding item (Addition of Loans of "SAR 5,907,952" to Zakat Base of 2009).
5. Uphold GAZT's decision regarding item (Deduction of Investment of "SAR 250,000" from Zakat Base of 2009).

Since Zakat Payer (..... Company) dissatisfied with this decision, it submitted a statement of appeal on 04/03/1438 AH, followed by a supplementary memorandum dated 05/03/1442. Since the Department decided to open pleadings for the appeal filed, Zakat Payer stated in its latter memorandum that it satisfies with previous statements and pleas contains in its first memorandum regarding the contested items, except for item (Advance Payments from Customers of "SAR 61,382,110" of 2009), wherein Zakat Payer clarified that these amounts are deducted from the payments made to the contractor for site preparation and material provision to proceed in exchange for bank guarantees. These amounts are



deducted as a proportion of the ongoing interim invoices over project implementation period. However, due to unforeseen circumstances beyond Zakat Payer's control, Jazan projects were suspended due to the outbreak of war and the inability to continue implementing projects, nor to reduce the advance payments, despite the fact that there is a debit balance of 2009 for the same parties from whom these advance payments were received. Accordingly, GAZT should make a reconciliation between the debit balance and the outstanding advance payments for the same creditor, as stipulated in GAZT's guideline for the construction sector. Zakat Payer concluded by requesting amendment to the Final Zakat Assessment for years in question.

The Department, having requested GAZT regarding its response to Zakat Payer's appeal, it submitted a Rejoinder on 20/03/1442 AH, corresponding to 06/11/2020 AD, in which it stated that claims raised by Zakat Payer are consistent with the earlier submissions, which GAZT responded to at that time, and that its decision came in compliance with relevant legal provisions and applicable instructions and decisions supporting the validity and soundness of its procedure. GAZT added that it requests to uphold the conclusion reached by Objection Committee in its decision for lack of effect of Zakat Payer's appeal on the same. Moreover, GAZT requests the Department not to accept any new requests from Zakat Payer upon considering the appeal in question based on Article (186) of 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 reviewed case documents and statement of appeal submitted by Taxpayer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with capacity and within the period prescribed by law.

On merits, having perused the case file and documents contained therein, contents of statement of appeal and ZATCA's response thereto, since the aforementioned attached memorandum included Zakat Payer's objection to customer payments item in the amount of SAR (61,382,110) of 2009. Having considered the primary decision, the Department found that Zakat Payer Company had previously objected to that item, which was considered when the primary committee addressed the dispute thereon regarding another assessment that included that item, and a primary decision was issued thereon other than this decision, which is subject of Zakat Payer's appeal. Since Zakat Payer did not deny the item when he objected thereto within another assessment by virtue of which a primary decision was issued containing a decision on the fate of that item according to what was stated in facts of the primary decision under consideration, this entails not discussing Zakat Payer's appeal regarding that item because settlement of the dispute therein is not related to the decision that Zakat Payer appeals on items that its wording concluded, which did not include the item raised by Zakat Payer (Customer Payments in the Amount of SAR (61,382,110) of 2009), and that Zakat Payer has the right to appeal in accordance with what is legally stipulated regarding this item, was included in the other primary decision when considering its dispute and determining his fate within conclusion of its wording. Moreover, this applies to Zakat Payer's objection to the increased social insurance of 2009, which included a further primary decision to decide on the fate of its connection to zakat base for that year. Accordingly, the Department decided not to consider the dispute, while maintaining the right of Zakat Payer Company to appeal outcome of that decision in light of what is legally stipulated for considering the appeal against the primary decision, which contained deciding on the objected item in that



other primary decision, in terms of details that this decision will address regarding discussing items that were subject to Zakat Payer's appeal against the decision under consideration, as follows:

1. (Item of Financing from Partners to Purchase Assets in the Amount of SAR (41,536,047)): Since it turned out that summary of Zakat Payer's appeal included his claim not to add partners' current account amounting to SAR (41,536,047) of 2007 to zakat base. Having considered conclusion of the primary decision and ZATCA's point of view on that item, the Department found that that the Committee upheld ZATCA in its assumption that the disputed amount of SAR (41,536,047) was used entirely to finance fixed assets, on the fact that the cash flow statement showed that fixed assets were purchased in the amount of SAR (46,879,985). However, Zakat Payer confirmed that the amount financed by partners' current account amounted to SAR (17,392,000), which represents the value of lands added in 2007, and remainder of the amount added to the current account during the year was intended to finance the Company's business. Having examined nature of the dispute between Zakat Payer and ZATCA as previously presented, and having considered that ZATCA has not provided evidence of a direct relationship between the amount of the increase in the disputed current account and increase in fixed assets, it is not correct to infer from the cash flow statement that the amount of fixed assets added during the year was from the current account, as cash flow statement does not provide a necessary link between sources and uses of financing. Zakat Payer can add assets from multiple sources, including cash available to him, whether from sale of other assets or from his revenues during the year, from bank financing or from partners' financing and others. Accordingly, it cannot be assumed that the increase in the current account was to finance fixed assets without that direct link between the increase in the current account and the asset that was financed. Therefore, the Department concluded to accept appeal of Zakat Payer Company and to overturn the primary decision on that item, by deciding not to calculate the amount of SAR (41,536,047), included in analysis of the Primary Committee when considering this objection within Zakat Payer's zakat base because a year has not passed thereon, and due to the lack of proof that it financed items deducted from the base.
2. (Item of Increased Social Insurance of 2009 in the amount of SAR (409,257) and SAR (387,825) of 2008): Having considered Zakat Payer's appeal on this item and contents of the primary decision subject to appeal, the Department found that the Primary Decision No. 11 of 1435 AH was previously issued, as this decision decided on differences charged with the increase, related to social insurance of 2009, and the assessment was made based on outcome of the decision. Since Zakat Payer argues that the decision was appealed, the Department therefore decided to limit the appeal of Zakat Payer Company to the item of differences charged with the increase for social insurance of 2008, because it is the dispute arisen regarding the primary decision under consideration No. 29 of 1437 AH. Given that Zakat Payer Company objects to the amount of those differences in social insurance which ZATCA added on the Company's base in protest of conclusion of the primary decision regarding the Committee's upholding of ZATCA's procedure to calculate those differences and repay them to Zakat Payer's base. Since the Company alleges that the social insurance certificate was submitted and shows the amount of contributions and fines already paid out of the Company's liability. Therefore, ZATCA's position that the increase appeared after ZATCA calculated the amounts of wages and salaries based on percentages deducted from them with regard to the salaries and wages of Saudis and foreigners is not correct, and added the excess amounts to Zakat Payer's base to adjust the result of year. Since the primary decision was based on the fact that the insurance certificate was not included in the case file, since ZATCA should have stated its position on Zakat Payer's claim that he had submitted the relevant certificate, and since facts of the decision did not show that ZATCA denied Zakat Payer's claim. It is established that what Zakat Payer submitted in his declaration is what matters, and there was no ground that required departing from the established principle in the light of facts of the verification of Zakat Payer Company's claim when considering the dispute claim. Upon



considering the appeal, there was no evidence to confirm ZATCA's denial of the existence of insurance certificates proving disbursement of those amounts stated in Zakat Payer's declaration. Therefore, the Department concluded to accept Zakat Payer's appeal, and to overturn the primary decision, and decided to take into account what was included in Zakat Payer's declaration, considering wage and salary expenses as deductible in that year without charging any additional amounts for 2008, contrary to what was ruled by the primary decision.

3. (Item of Customer Payments - that Completed a Full Year - in the Amount of SAR (62,383,110) of 2009): Having considered the appeal of Zakat Payer Company entrusted regarding this item, and having perused the primary decision subject to appeal, the Department found that facts of the primary decision stated that this item was subject of Zakat Payer's objection to another primary decision no. 11 of 1435 AH. Since the appeal submitted by Zakat Payer Company was not related to the primary decision under consideration, as it had already been decided in the other aforementioned primary decision. Therefore, the Department decided not to examine its subject in the appeal of this decision under consideration, which concerns Primary Decision No. (29) of 1437 AH issued by the Primary Committee in Dammam
4. (Item of Short-Term Loans - that Completed a Full Year - in the Amount of SAR (5,907,953) of 2009): Zakat Payer Company objects to ZATCA's approach, upheld by the Committee, which is to approve inclusion of short-term loans' balance in zakat base in that year, While the fact of the matter is that the amounts of these loans have come out of the Company's liability and were no longer owned by it and have been disbursed in full. Since it is established that Fatwa was based on the fact that the borrower pays zakat on the money if he had it and did not spend it entirely or part thereof, and here zakat is due when a year has passed thereon on its amount at the end of the year, which is not the case with the Company's loan. Having reviewed the short-term loan movement, the Department found that the Committee had investigated and tracked movement of that account and payments therein, and what the closing balance of the account showed is the same amount that was subject to assessment, which means that Zakat Payer's appeal is groundless, and that what he mentioned of principles and general rules for dealing with zakat in the case of loans does not correspond to the reality of loan therewith, as it was found that the balance existed at the end of the year despite his claim that he had spent loan money in full and that it no longer existed with him. Therefore, the Department concluded to dismiss Zakat Payer's appeal and uphold the primary decision in the item under consideration.
5. (Investment Item of 2009): Zakat Payer Company objects that the investment amount paid to the investee company is calculated only according to the ratio of Zakat Payer's ownership in the original capital and the amount of investment credited to the partners' current account is not deducted, because otherwise dealing with such investments would result in paying zakat on the same money twice if the amount of investee company and of the Appellant Company investing in that company is assessed. However, ZATCA considers that what must be deducted is the share of Zakat Payer in legal capital of the companies in which (...) company was invested, and therefore the partner's current account was excluded from the investment balance at the end of the year as a loan. Therefore, zakat of the loan amount is owed to the lender and the borrower due to difference in the two liabilities, so there is no double zakat. Having considered ZATCA's dealing with the amount of such investment, the Department found that ZATCA limited to deducting Zakat Payer's share in the capital of investee Company, and did not deduct the amount credited to partners' current account balance, considering that it does not represent an investment paid by Zakat Payer but rather a loan by him to the investee Company. 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, if it is also known that 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 long as it has not been proven that there is 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

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

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item of Financing from Partners for the Purchase of Assets in the amount of SAR (41,536,047), overturn the primary decision in this regard, and decide not to calculate this amount within zakat base of Zakat Payer Company, according to reasons and Grounds set forth in this decision.
2. A Dismiss Zakat Payer's appeal regarding the item of Social Insurance with an Increase of 2009, according to reasons and Grounds set forth in this decision.
- B. Accept Zakat Payer's appeal regarding the item of Social Insurance with an Increase of 2008 in the amount of SAR (387,825), and overturn the primary decision in this regard, and decide to take into account what was included Zakat Payer's declaration regarding consideration of wages and salaries expenses as deductible in that year without any additional charges of 2008.
3. Dismiss Zakat Payer's appeal regarding the item of Customers Payments in - That Completed a Full Year - in the amount of SAR (62,383,110) of 2009, according to reasons and Grounds set forth in this decision.
4. Dismiss Zakat Payer's appeal regarding the item of Short-Term Loans - That Completed a Full Year - in the amount of SAR (5,907,953) of 2009, and uphold the primary decision in this regard, according to reasons and Grounds set forth in this decision.
5. Accept Zakat Payer's appeal regarding Investment Item of 2009, overturn the primary decision in this regard, and decide to deduct investment amount included in his financial statements from his zakat base, according to reasons and Grounds set forth in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-137)
Issued in Appeal No. (Z-2018-
1539)

Principle No. 109

Government subsidies shall be deemed income because they are received in cash and increase the total assets (cash) that are subject to zakat and owned by Zakat Payer.

Principle No. 110

When added to reserves in accordance with accounting standards, value of (estimated) government grants are subject to zakat as a part of Zakat Payer equity.

Facts:

First: Accept Zakat Payer 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.

Since this decision was not accepted by (... Company), it submitted an appeal brief that included the following, in summary:

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 Al-Theraa Al-Makin Industrial 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 reviewed case documents and statement of appeal submitted by Taxpayer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with capacity and within the period prescribed by law.

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 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 as demanded by ZATCA and confirmed by the primary decision reached in this regard.

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 Al-Theraa Al-Makin Industrial 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 the appeal in form filed by Zakat Payer/... Company, TIN No. (...), against Decision No. (1/2) of 1439 AH issued by the Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the 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 the 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 in Riyadh

Decision No. (IAR-2020-138)
Issued in Appeal No. (Z-2018-1540)

Principle No. 111

The essence of a Murabaha transaction necessitates the existence of cash owned by the investor with the bank or its equivalent represented by a debt balance owed by the beneficiary. Accordingly, this is considered zakatable wealth, and the due zakat must be paid.

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, established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, based on Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to consider the appeal filed on 01/08/1439 AH, by (...) Company, against Decision No. (1/4) dated 1439 AH of the First Primary Committee for Zakat and Tax Objections in Jeddah, issued in response to the objection registered on 16/02/1438 AH, filed by the Appellant against ZATCA. Therefore, 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. ZATCA's decision to deduct realized investment gains amounting to SAR (2,379,991) from Zakat Payer's zakat base for 2014 AD is upheld.
2. ZATCA's decision not to deduct deferred agricultural expenses from the Zakat Payer's zakat base for 2014 and 2015 AD is upheld.
3. ZATCA's decision not to deduct the item of investments in Islamic Murabaha transactions (short-term investments) from Zakat Payer's zakat base for 2014 and 2015 AD is upheld.

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

Since the aforementioned decision was not accepted by (...) Company, it presented a statement of appeal to the Department, summarized as follows:

1. (Deferred Agricultural Expenses (Biological Assets) for 2014 and 2015 AD) Item: 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 (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. (Deferred Agricultural Expenses (Biological Assets) for 2014 and 2015 AD) Item: 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 the zakat base for the two years in question 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 (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 the appeal in form 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 the item of deferred agricultural expenses (biological assets) for the years 2014 and 2015 AD, confirm deduction of such deferred costs as deductible agricultural expenses from the 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 the item of 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 in Riyadh

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

Principle No. 112

The credit current account of the deceased partner is subject to zakat if a full year passes while it is held by the company and falls within its zakat base

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Monday, 02/03/1442 AH, corresponding to 19/10/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, The Department convened its session to consider the Appeal filed on 24/04/1439 AH corresponding to 11/01/2018 AD, by Company, & Partners, as well as the appeal filed by ZATCA against Decision No. (6) of 1439 AH of the First Primary Committee for Zakat and Tax Objections in Riyadh issued in Case No. (38/13) filed by both parties to the appeal concerning the decision under consideration, which ruled as follows:

First: Dismiss the objection submitted by (...) company & Partners in form to the zakat assessment for the years 2008 to 2011 AD.

Second: On Merits:

1. Dismiss Zakat Payer's objection and uphold ZATCA's decision to include partners' current accounts in the zakat base.
2. Accept Zakat Payer's objection regarding the full deduction of investments.
3. Dismiss Zakat Payer's objection and uphold ZATCA's decision to exclude investment revenues from the zakat base.
4. Dismiss Zakat Payer's objection and uphold ZATCA's decision to exclude capital gains on land from the zakat base.
5. Accept Zakat Payer's objection to the inclusion of credit balances that have completed a full year.
6. Confirm settlement of the dispute between both parties with ZATCA's approval to Zakat Payer's position on the following:
 1. Administrative fees for 2008 AD.
 2. Entertainment expenses for 2008 AD.
 3. Non-settlement of payment receipts for 2010 and 2011 AD.

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



Regarding the appeal of (...) Company & Partners

First: Regarding the fiscal year ending on 31/12/2008:

- A. Zakat Payer Company challenges dismissal of its objection regarding the addition of SAR (11,600,500), related to the partners' current account, to its zakat base, claiming that this amount belonged to one of the deceased partners (...) and that, in ZATCA's view, the amount was in the company's possession during that year and was not distributed. The distribution to the partners occurred after a full year had passed. However, the partner's death occurred in May of that year, and thus a full year had not elapsed regarding ownership of those funds, given that the full year is interrupted by death. Consequently, the balance on which a full year has passed only pertains to the other partners in the company.
- B. The Company objects to the failure to deduct capital gains resulting from the sale of land in Al-Kharj amounting to SAR (5,470,902). The Committee refused to deduct these gains from the net book profit on the Grounds that they pertain to non-depreciable assets. However, the Company believes that the assessment should be amended by deducting the gains from the sale based on the net book profit.
- C. The Company objects to the failure to deduct investment income 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 these profits were generated during the year by the investee company (... Ltd.). In fact, the zakat declaration of the investee company confirms that it paid the required zakat, which necessitates amending the assessment by deducting those investments.

Second: Regarding the fiscal year ending on 31/12/2009:

- A. Zakat Payer Company objects to the failure to deduct investment income amounting to SAR (8,650,878), arguing that the Committee that the decision did not address the Company's request to deduct this income from the zakat base.
- B. The Company objects to the addition of SAR (1,245,850), related to finance lease contracts, on the Grounds that the Committee that delivered the decision did not discuss the objection to this item when adding its amount to the Company's zakat calculation.

Third: The Company, regarding the fiscal year ending on 31/03/2011 AD, objects to the Committee's failure to discuss ZATCA's approach to calculating the partners' current account amounting to SAR (12,822,798), without deducting the amount of SAR (3,450,444) from the calculated total, despite the Company's objection to the amount without the requested deduction.

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

- A. ZATCA objects to the Committee's support for Zakat Payer's deduction of the full value of investments for the years 2009 to 2011 AD, which represent the 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 must be added to the zakat base for both the lender and the borrower, in accordance with the relevant Fatwa on this matter as claimed by ZATCA.
- B. ZATCA objects to failure of the Committee that delivered the decision to add credit balances that have completed a full year, which pertain to related parties or affiliated entities, as well as the balances of external creditors. It argues that these balances represent elements that must be added to Zakat Payer's zakat base when calculating the assessment.



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 statements of appeal submitted by Zakat Payer and 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 for the merits of case, the Department, upon determination that the case was ready for consideration, decided to rule on both appeals filed by Zakat Payer and GAZT regarding the items in question as follows:

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

- A. The appeal concerning the partners' current account, related to Zakat Payer Company's objection to the addition of SAR (11,600,500) to its zakat base, was reviewed by the Department. The Company argued that the addition of this amount to its zakat base was incorrect given that it belonged to a deceased partner (...), and that the cycle for this amount was interrupted by the partner's death, thus it should not be included in Zakat Payer Company's zakat base for the fiscal year ending on 31/12/2008 AD. The Department, upon reviewing the attached death certificate for the deceased partner, found that the date of death was 24/04/2007 AD. The Company's appeal was based on the premise of not including the deceased partner's balance for the disputed year ending on 31/12/2008 AD. However, the facts indicate that this balance had been exclusively allocated to the remaining partners after the death of the deceased partner, and the year 2008 AD 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 supported by the facts, as it is established that a full year had passed for the balance of the deceased partner's account after calculating the beginning of the new cycle the date of the partner's death. Consequently, the Department upholds ZATCA's action to include the partners' current account balance in Zakat Payer Company's zakat base for the fiscal year ending on 31/12/2008 AD and dismisses the Zakat Payer Company's appeal in this regard.
- B. The Department, regarding the appeal pertaining to the capital gains from the sale of land in Al-Kharj amounting to SAR (5,470,902), examined Zakat Payer's appeal, which argued that it is necessary to deduct depreciation on the land after the sale to reduce the capital gains resulting from the sale, thereby decreasing the zakat liability. However, the Department noted that the treatment sought by Zakat Payer to calculate its zakat base, by deducting depreciation amounts on the land upon disposal and realization of capital gains from the sale, does not align with the zakat treatment, which requires considering the original capital and its profits as realized income from the sale. Therefore, the Department concluded to dismiss Zakat Payer's appeal regarding this item as it lacks a valid basis, and consequently, it will not affect the outcome reached in the primary decision regarding this matter.
- C. The primary decision, regarding the appeal related to the investment income item for 2008 AD amounting to SAR (1,418,879), ruled against the deduction of these revenues from Zakat Payer Company's zakat base, citing that the dividend distributions for the year from (...) Company did not clearly indicate that these amounts had been Zakat-compliant at the investee company. However, the investee company submits its zakat declarations to ZATCA and referring to these financial statements to verify the payment of the obligatory zakat is a readily verifiable matter to determine the accuracy of the company's claims in its zakat declarations. Since ZATCA failed to prove that zakat was not paid on the amounts distributed as profits by the investee company, the Department decided to accept Zakat Payer's declaration and deduct of such revenues from Zakat Payer's zakat base for the disputed year.



Second: Regarding the Company's appeal for the fiscal year ending on 31/12/2009 AD, specifically concerning the two contested items, the Company objected to the failure to deduct investment income amounting to SAR (8,650,878), arguing that the Committee that delivered the decision did not address the Company's request to deduct this income from the zakat base. The second objection from the Company was against the addition of SAR (1,245,850) related to finance lease contracts, to its zakat base. The Department noted 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 these objections when considering the Company's overall objections to the assessment conducted by ZATCA. Given these circumstances, 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 the Company and ZATCA of the hearing scheduled to consider these objections.

Third: Regarding the Company's appeal for the fiscal year ending on 31/03/2011 AD, specifically concerning the committee's failure to address ZATCA's inclusion of a partner's current account balance of SAR (12,822,798) without deducting SAR (3,450,444) Riyals from that amount, despite the Company's objection to this amount without the requested deduction, the Department found that Zakat Payer clearly objected to this item, however, the Committee that delivered the decision did not discuss the contested item to clarify the validity of ZATCA's action in calculating Zakat Payer's zakat base upon assessment in the relevant year. Given the aforementioned, 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 hearing scheduled to consider the dispute related to this item.

As for ZATCA's appeal regarding its objection to the Committee's endorsement of Zakat Payer's deduction of the full value of investments for the years 2009 to 2011 AD, ZATCA claims that these investments essentially represent funding amounts provided by Zakat Payer Company to other investee companies. Therefore, it argues that the balances of these investments should be treated as a creditor-debtor relationship, necessitating the calculation of the loan amount for both the lending and borrowing companies, given their separate legal identities. The Department, upon reviewing ZATCA's appeal and treatment of the Committee that delivered the decision of the investment balances, which represent current accounts that should be classified as equity interests in the investee companies, the balance of these investments would be included in the zakat base of the investee company based on the current account amount. This zakat treatment ensures that the same funds are not subjected to zakat twice. Therefore, the Department concluded to uphold the primary decision regarding the contested item, dismiss ZATCA's appeal, which requested that the balances of these investments funded by the partners' current accounts be treated as debts between a lender and a borrower, and uphold the primary decision on this matter.

As for ZATCA's appeal regarding credit balances which completed full year, the dispute regarding this item was based on verifying the creditor balances that completed full year for each year, taking into account the relevant opening and closing balances. The Department, upon reviewing ZATCA's perspective as presented in its statement of appeal, found that it contested the findings of the committee that delivered the decision, which verified Zakat Payer's declarations through the Company's ledger and concluded that these balances completed a full year. ZATCA failed to 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. ZATCA's arguments in the appeal regarding this item lacked a clear basis that would substantiate its claims regarding the necessity of treating the amounts owed to related parties and affiliated entities in the manner it suggested. Therefore, the Department concluded to dismiss ZATCA's appeal regarding this item due to its lack of a sound foundation, necessitating its dismissal and ensuring that the outcome of the primary decision remains unaffected by ZATCA's appeal.

Decision

First: Accept both appeals in form filed by Zakat Payer/ (...) and ZATCA against Decision No. (6) of 1439 AH issued by the First Primary Committee for Zakat and Tax Objections in Riyadh.

Second: Regarding the appeal filed by Zakat Payer Company:

1. Regarding the contested items for the fiscal year ending on 31/12/2008 AD:
 - A. Dismiss the appeal filed by Zakat Payer Company regarding the partners' current account, in relation to the Company's objection to adding the partners' current account to its zakat base in the amount of SAR (11,600,500) and uphold the primary decision reached on this matter, in accordance with the Grounds and merits mentioned herein.
 - B. Dismiss Zakat Payer's appeal regarding the item of capital gains resulting from the sale of land in Al-Kharj amounting to SAR (5,470,902) and uphold the primary decision reached on this matter, in accordance with the Grounds and merits mentioned herein.
 - C. Accept Zakat Payer's appeal regarding investment revenue item for the year 2008 AD amounting to SAR (1,418,879) as stated in Zakat Payer's declaration and overturn the primary decision reached on this matter, in accordance with the Grounds and merits mentioned herein.
2. Regarding Zakat Payer Company's appeal for the fiscal year ending on 31/12/2009 AD:
 - A. Reconsider and refer Zakat Payer's appeal, regarding the non-deduction of investment revenues amounting to SAR (8,650,878), to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for a final decision, in accordance with the Grounds and merits mentioned herein.
 - B. Reconsider and refer Zakat Payer's appeal, regarding the addition of SAR (1,245,850), related to capital lease contracts, to its zakat base, to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for a final decision, in accordance with the Grounds and merits mentioned herein.
3. Regarding Zakat Payer Company's appeal for the fiscal year ending on 31/03/2011 AD:
 - A. Reconsider and refer Zakat Payer's appeal, regarding the failure of the committee that delivered the decision to address the objection to ZATCA's approach in calculating the partners' 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, in accordance with the Grounds and merits mentioned herein.

Third: Regarding the appeal filed by ZATCA:

- A. Dismiss ZATCA's appeal regarding the committee's approval of Zakat payer's full deduction of investment values for the years 2009 to 2011 AD and uphold the primary decision reached on this matter, in accordance with the Grounds and merits mentioned herein.
- B. Dismiss ZATCA's appeal regarding the credit balances that completed a full year and uphold the primary decision reached on this matter, in accordance with the Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-127)
Issued in Appeal No. (Z-2018-1543)

Principle No. 113

If third-party insurance is included among the receivables and credit balances in Zakat Payer's financial statements, then it is considered under Zakat Payer's control and is subject to zakat.

Principle No. 114

Liabilities, creditors, and any amounts listed under receivables and credit balances in Zakat Payer's accounts represent funds in the company's possession that are subject to zakat

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Monday, 15/04/1442 AH, corresponding to 30/11/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to consider the appeal presented on 15/06/1438 AH by (...) Company Against decision No. (8) of 1438 AH of the Second Primary Committee for Zakat and Tax Objections issued in objection No. (37/32) filed by the Appellant against ZATCA. The primary decision ruled as follows:

First: Dismiss the objection submitted by Zakat Payer/ (...) Company regarding zakat assessment ending on 29/04/1431 AH, based on the merits stated in the decision.

Second: On Merits:

1. Dismiss Zakat Payer's objection regarding the item of funds paid to (...) Company and (...) Bank based on the merits stated in the decision.
2. Dismiss Zakat Payer's objection regarding the current account item, based on the merits stated in the decision.
3. Dismiss Zakat Payer's objection regarding third-party insurance, based on the merits stated in the decision.
4. Dismiss Zakat Payer's objection regarding contractors and suppliers item, based on the merits stated in the decision.
5. Dismiss Zakat Payer's objection regarding creditors for real estate purchases item, based on the merits stated in the decision.
6. Dismiss Zakat Payer's objection regarding shareholders item, based on the merits stated in the decision.
7. Dismiss Zakat Payer's objection regarding ZATCA's claim for zakat amount for the period 1424 to 1430 AH, based on the merits stated in the decision.



8. Dismiss Zakat Payer's objection regarding imports item, based on the merits stated in the decision.

Since Zakat Payer (..... Company) dissatisfied with this decision; it submitted a statement of appeal summarized as follows:

1. (Investments in ... Company) Item: The Company objects to the non-deduction of SAR (359) million, which represents amounts paid by the company for the shares of certain property and land owners included in the establishment of the project of (...) Company. The company argues that from its inception until 30/12/1437H, the owners of these lands and properties had not completed their legal title deeds. Consequently, the funds recorded within the capital of (...) Company were withdrawn from (...) Company's liability and cannot be used by it. These funds are subject to zakat within the zakat base of (...) Company, so they should not be included in the zakat base for (...) Company, as this would result in zakat being imposed on the same funds twice, which would effectively double the zakat liability. Therefore, these funds should not be included in the zakat base of the Appellant Company.
2. (Funds Paid to ... Bank) Item: The company objects to the addition of SAR (350) million to its zakat base, arguing that these amounts represent investments covered by an agreement with the bank to invest in a commodity trading fund in Saudi Riyals. These are long-term investments aimed at generating profits and returns for the company by being held for an extended period. Therefore, they should be considered as an investment that is deducted from the zakat base, as decisions and instructions stipulate that long-term investments in joint-stock companies are deducted from the zakat base if they have been recorded in the company's books for one year or more and because there is no intention of trading or sale.
3. (Third-Party Insurance) Item: The company objects to the addition of these amounts, as they represent funds paid by tenants as against damages to the company's properties, which are refundable upon termination of the tenancy.
4. (Contractors & Suppliers) Item: The company objects to the addition of the amounts under this item, arguing that they are amounts owed to creditors, including contractors and suppliers, as they represent debts of the company on which zakat is not due.
5. (Creditors for Real Estate Purchases) Item: The company objects to the addition of the amounts under this item, arguing that there is no basis for subjecting them to zakat, as they represent liabilities of the company on which zakat is not due.
6. (Shareholders) Item: The company's objection pertains to the addition of the amounts under this item, as they represent the remaining rights of the owners of the sold shares and the surplus from the subscription. These amounts do not constitute ownership by the company; rather, they are rights belonging to others and are not subject to zakat by the company.
7. (Imports) Item: The company objects to the addition of these amounts, as they pertain to the purchase of goods from abroad to meet the company's construction and building requirements, since their costs are cheaper than sourcing them from the local market due to the company's substantial needs. Therefore, these amounts do not represent the company's activities, which are not based on commercial trading or importing goods for resale. Consequently, the company requests that these amounts be deducted from its zakat base.

The Department received ZATCA's Reply to the Company's statement of appeal dated 29/03/1442 AH, which included a request to uphold the primary decision, confirming ZATCA's approach and the actions taken in compliance with the regulations. ZATCA insists on its adherence to its viewpoint expressed during the consideration of the objection before the Primary Committee, especially since the Zakat Payer Company failed to present any new arguments that warranted a response. The Reply concluded by



requesting that the decision be upheld and the Company's appeal regarding the contested items be dismissed.

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 reviewed case documents and statement of appeal submitted by Taxpayer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with 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:

1. Regarding the funds paid to (...) Company and (...) Bank:
 - A. (Investment in ... Company): The Department, after considering the Grounds for Zakat Payer's appeal, found that it is based on the claim that zakat is not due on those funds as they are allegedly no longer owned by the company. Furthermore, the funds in question are zakat-eligible within (...) Company, as they are included in its capital. It is noted, upon reviewing ZATCA's position, the decision's outcome, and the reasons behind Zakat Payer's objection to that outcome, that the determination of whether these funds, advanced as an investment, according to Zakat Payer's claim, are included in the zakat base depends on the nature of these funds and whether zakat is applicable, regardless of how Zakat Payer categorizes thereof. Given that these funds were earmarked to ensure the completion of the subscription for shares related to properties and lands for which ownership certificates have not been issued to their owners. Zakat Payer failed to prove that ownership of these amounts was transferred to the participating company, (...) Company. Instead, these amounts are held in reserve until the conditions for transferring ownership of the shares representing the properties of the owners in Company (...) are fulfilled. Given this situation, the Department views these reserved amounts as property owned by Zakat Payer Company. Consequently, the zakat on these amounts will be due from their owner, Zakat Payer company. The Company did not present evidence indicating that it could not utilize the funds paid as a guarantee to complete the subscription process. Additionally, there is no provision restricting the company from using or benefiting from these funds to argue that zakat is not due because the company does not have stable ownership over them when considering zakat liability. Therefore, the Department concluded to dismiss Zakat Payer's appeal and uphold the primary decision, as the appeal lacked a valid basis supported by facts to warrant overturning the decision regarding the contested item.
 - B. (Investment of Funds in ... Bank Fund): The appeal filed by Zakat Payer Company, as previously outlined, is based on the argument that the investment of SAR (350) million in the commodity trading fund at ... Bank is tied to an agreement with the bank, which represents a long-term investment aimed at generating profits and returns. Consequently, the Company believes that this amount should be deducted from its zakat base, contrary to the primary decision. The fundamental principle regarding the consideration of the funds paid for investment, when examining the deduction of these amounts, is based on determining the nature of the investment agreement, regardless of how Zakat Payer categorizes them. Given that the investment is based on the intention to engage in commodity trading, it implies that the essence of the investment manifests as trading in goods through buying and selling. In this context, the amount paid, which Zakat Payer



considers an investment, remain included in Zakat Payer's zakat base, as Zakat Payer's claim to deduct the same from its base is not supported by the actual nature of investing money in a fund that engages in commodity trading. Furthermore, the assertion that the investment is long-term according to the agreement does not alter the inherent nature of the investment, which is linked to the buying and selling of goods for profit, regardless of whether the trading is conducted directly by Zakat Payer or through an investment manager acting on its behalf and allocation of the funds paid on behalf of Zakat Payer for trading in commodities. Given these considerations, it follows that the appeal is not based on a valid reason. Consequently, the decision is made to dismiss the appeal and uphold the primary decision.

2. (Third-Party Insurance) Item: Having carefully considered Zakat Payer's appeal regarding this item, ZATCA's response to the appeal as outlined in the Appellant's statement, and the primary decision, it is evident that the appeal hinges on the Appellant Company's request to exclude the amounts held as securities with third parties from its zakat base, as previously explained in its submitted reasons. The company reaffirms its position against considering this item when calculating its zakat assessment. However, ZATCA believes that including this amount in the zakat base is the correct procedure, as these security amounts are essentially funds under the company's control and thus fall within its zakat base upon the completion of the full year. It is clear, upon reviewing the primary decision, that this amount was included in Zakat Payer's accounts receivable as shown in the specific explanation of this item in its financial statements. Therefore, the Department decided to dismiss Zakat Payer's appeal and uphold the primary decision reached on this matter, as there is no basis for reconsideration or further commentary on the outcome of that decision.
3. (Contractors & Suppliers) Item: Having carefully considered Zakat Payer's appeal regarding this item, ZATCA's response to the appeal as outlined in the Appellant's statement, and the primary decision, it is evident that the appeal hinges on the Appellant Company's request to exclude the amount of this item from its zakat base. The company claims that these amounts are owed to creditors, including contractors and suppliers, and thus represent debts for which zakat is not due. Upon further examination of the primary decision's outcome, it has been confirmed that this amount appears in the accounts payable of Zakat Payer, as indicated in the note provided in the financial statements related to this item. Therefore, the Department decided to dismiss Zakat Payer's appeal and uphold the primary decision reached on this matter, as there is no basis for reconsideration or further commentary on the outcome of that decision.
4. (Creditors for Real Estate Purchases) Item: Having carefully considered Zakat Payer's appeal regarding this item, ZATCA's response to the appeal as outlined in the Appellant's statement, and the primary decision, it is evident that the appeal hinges on the Appellant Company's request to exclude the amount of this item from its zakat base, arguing that it is not subject to zakat as it represents liabilities of the company. Therefore, it should not be subject to zakat. Upon further examination of the primary decision's outcome, it has been confirmed that this amount appears in the payables and credit balances of Zakat Payer, as indicated in the note of this item provided in its financial statements. Therefore, the Department decided to dismiss Zakat Payer's appeal and uphold the primary decision reached on this matter, as there is no basis for reconsideration or further commentary on the outcome of that decision.
5. (Shareholders) Item: Having carefully considered Zakat Payer's appeal regarding this item, ZATCA's response to the appeal as outlined in the Appellant's statement, and the primary decision, it is evident that the appeal hinges on the Appellant Company's request to exclude the amount of this item from its zakat base, arguing that it represents the remaining rights of shareholders from sold shares and excess subscription, and thus does not constitute the company's property but rather represents rights of others, and therefore, should not be subject to zakat on the company. Upon further examination of the primary decision's outcome, it has



been confirmed that this amount appears in the payables and credit balances of Zakat Payer, as indicated in the note of this item provided in its financial statements. Therefore, the Department decided to dismiss Zakat Payer's appeal and uphold the primary decision reached on this matter, as there is no basis for reconsideration or further commentary on the outcome of that decision.

6. (Imports) Item: Having carefully considered Zakat Payer's appeal regarding this item, ZATCA's response to the appeal as outlined in the Appellant's statement, and the primary decision, it is evident that the appeal hinges on the Appellant Company's request to exclude the amount of this item from its zakat base, arguing that this amount pertains to the purchase of goods from abroad to meet its needs related to construction, as the costs are cheaper than sourcing locally due to the company's significant requirements. Therefore, these purchases do not represent the company's core activity, which is not based on commercial trading and reselling imported goods. Consequently, the company seeks to exclude this amount from its zakat base. However, ZATCA maintains that there were no foreign purchases as per the company's submitted declaration, and the company failed to provide any supporting documents for the amount nor clarify the nature of these imports. The primary decision stated that the dispute between both parties was document-based and that Zakat Payer failed to submit supporting evidence for its position. The Department, upon reviewing the reason for the appeal regarding this item, found that the dispute between both parties was not entirely document-based, as Zakat Payer had clarified during the primary objection committee hearings the nature of these imports and their relevance to securing the company's operational needs in construction. Furthermore, ZATCA failed to provide evidence that the company engaged in the sale of the imported goods, and considering the nature of the company's business, it can be inferred that the company was not directly involved in the resale of these materials, especially since there was no evidence to contradict this. As a result, the Department decided to accept Zakat Payer's appeal regarding this item and overturn the primary decision, ruling that the import amount should not be subject to zakat.

Decision

First: Accept the appeal in form filed by Zakat Payer/(...) Company against Decision No. (8) of 1438 AH issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. Dismiss Zakat Payer's appeal regarding the funds paid to (...) Company and (...) Bank and uphold the primary decision on this matter, in accordance with Grounds and merits mentioned herein.
2. Dismiss Zakat Payer's appeal regarding the item of third-party insurance and uphold the primary decision on this matter, in accordance with Grounds and merits mentioned herein.
3. Dismiss Zakat Payer's appeal regarding the item of contractors and suppliers and uphold the primary decision on this matter, in accordance with Grounds and merits mentioned herein.
4. Dismiss Zakat Payer's appeal regarding the item of creditors for real estate purchases and uphold the primary decision on this matter, in accordance with Grounds and merits mentioned herein.
5. Dismiss Zakat Payer's appeal regarding the item of shareholders and uphold the primary decision on this matter, in accordance with Grounds and merits mentioned herein.
6. Accept Zakat Payer's appeal regarding the item of imports and overturn 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. (IAR-2020-99)
Issued in Appeal No. (Z-2018-
1566)

Principle No. 115

The provision balance related to late payment fines associated with execution, as shown in Zakat Payer's statement of financial position, is added to the zakat base. The profit is not adjusted for these late payment fine expenses.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Monday, 22/04/1442 AH, corresponding to 07/12/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, For consideration of the appeal submitted on 18/08/1438 AH by/ (...) Company for Trading and Contracting against decision No. (15) of 1438 AH of the Second Primary Committee for Zakat and Tax Objections in Riyadh issued in objection No. (37/37) filed by the Appellant against ZATCA. The primary decision ruled as follows:

First: Accept the objection submitted by ... Company for Trading and Contracting in form regarding the amended zakat assessment for 2012 AD.

Second: On Merits:

1. Accept Zakat Payer's objection regarding (Provision for Late Payment Fines) item, based on the merits stated in the decision.
2. Confirm settlement of the dispute with regard to Item (Loans, Promissory Notes, and Current Advances), based on the merits stated in the decision.
3. Confirm settlement of the dispute with regard to Item (Trade Creditors, Suppliers, and Subcontractors), based on the merits stated in the decision.
4. Dismiss Zakat Payer's objection regarding investments item, based on the merits stated in the decision.

Since this decision was not accepted by (... Company, for Trading and Contracting), the company submitted a statement of appeal, summarized as follows:

1. The company objects to the addition of the amount of that provision SAR (84,673,558) to the adjusted net profit regarding (Provision for Late Payment Fines) item: Given that these fines are stipulated in the contracts with clients and do not impact expenses in subsequent years. Furthermore, the revenue account has been adjusted and subjected to zakat after deducting any withholdings from the interim invoices. Therefore, adding the provision for fines to the zakat base, along with reducing the provision in



subsequent years and adjusting the revenue account, would result in double payment of zakat, contrary to the decision reached regarding this item.

2. (Investments) Item: Zakat Payer Company contests the exclusion of SAR (201,196,335) related to investments in joint ventures, arguing that such ventures are not registered with ZATCA. In fact, the company included its profits from the returns of these investments in its declarations to demonstrate good faith until the completion of the joint venture. Therefore, these profits should be deducted to avoid double payment of zakat.
3. (Investments Approved by ZATCA) Item: Zakat Payer Company contests the failure to deduct the full amount of these investments and the exclusion of SAR (26,544,315), as ZATCA added this difference to the company's zakat base, which is part of the investments that should be deducted from the base.

The Department requested ZATCA to respond to the points raised in the Appellant's memorandum regarding the contested items. On 11/04/1442 AH, the Department received ZATCA's Reply addressing the reasons for Zakat Payer Company's appeal concerning the contested items in the zakat assessment. The Reply reaffirmed ZATCA's position regarding its viewpoint on the appeal concerning the provision for fines during consideration of the dispute before the Primary Committee. It also emphasized that these amounts are reserved and remain the company's liability, and as provisions, they are not considered deductible actual expenses. ZATCA, regarding investments item, stated that these investments are, in fact, consortium projects not registered with it, and no relevant financial statements or data were submitted. Therefore, deduction was not allowed from the zakat base. It was noted that there are companies wholly owned by the holding company, and consolidated financial statements should have been submitted to account for the company accordingly, in accordance with the applicable rules and regulations in this regard. Moreover, ZATCA, regarding the investments approved by ZATCA for subsidiary and associated companies, reiterated that the objection to this item constitutes a new request that should not be accepted for consideration in light of the provisions established by Law of Civil Procedures which the committees' procedures are based on. 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 reviewed case documents and statement of appeal submitted by Taxpayer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with 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: (Provision for Late Payment Fines) Item: 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, 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.

Second: (Investments) Item: The primary decision regarding these investments addressed Zakat Payer's objection concerning the combination of investments in joint ventures and investments in existing companies in which Zakat Payer holds an equity interest. Therefore, ZATCA request to dismiss Zakat Payer's appeal regarding the investments approved by ZATCA in subsidiary and associated companies is considered a new request not based on accurate Grounds, given that the Primary Committee recognized the dispute and examined the matter along with other investments. Given this context, concerning the investments deducted in companies registered with ZATCA (associated and subsidiary companies) listed in Zakat Payer's appeal under item (2.3 Investments Approved by ZATCA for Subsidiary and Associated Companies), which constitutes part of Zakat Payer's objection in the primary decision under item (4. Investments), ZATCA did not clarify the reason for deducting an amount less than what was reported in Zakat Payer's declaration. Therefore, the Department did not find any justification to deviate from Zakat Payer's original declaration, as ZATCA did not support its position with credible evidence or conclusive presumption to affirm the correctness of its stance on not allowing the deduction for those investments in the companies involved, except for the amount the Zakat Payer faced when contesting the declaration regarding an amount of SAR (98,075,555). Accordingly, the Department concluded to accept Zakat Payer's appeal for the deduction of these investments amounting to SAR (124,619,870) from its zakat base and overturn the decision reached in this regard.

It was not evident to the Department, regarding the investment in joint ventures, after reviewing the Zakat Payer's appeal and the primary decision regarding this item, as well as ZATCA's response to Zakat Payer's appeal, which emphasizes that these ventures are not registered with ZATCA and that no relevant accounts or data were submitted, that ZATCA, prior to rejecting the deduction for these investments, had requested information from Zakat Payer regarding such ventures, including whether the amounts reported in the financial statements represent Zakat Payer's share in the assets and liabilities or its equity interest of those ventures in order to verify payment of zakat on any zakatable funds resulting from an examination of this situation. Since this verification did not occur, and considering that the zakat collection regulations at the time Zakat Payer submitted its declaration did not accurately indicate a request for information for such ventures, similar to Tax Law provisions, ZATCA does not have the right to reject the deduction of these amounts from Zakat Payer's zakat base solely on the Grounds that they are not registered with ZATCA. Moreover, regarding ZATCA's assertion in its response that there are companies wholly owned by the holding company and that consolidated financial statements should be submitted to account for Zakat Payer accordingly, this claim is unrelated to the dispute concerning investments in consortium projects. ZATCA could have required Zakat Payer to provide whatever it deemed necessary for accounting purposes based on consolidated financial statements when wholly owned companies by the holding company exist, as it claims in its response regarding the item under consideration, which was not related to these unregistered joint ventures. Therefore, the Department concluded to accept Zakat Payer's appeal regarding its request to deduct the investments in joint ventures from its zakat base, as reflected in its declaration, amounting to SAR (201,196,335) and overturn the primary decision in this regard.

Decision

First: Accept in form the Appeal filed by the Taxpayer/ (...) Company for Trading and Contracting, CR No. (...), TIN No. (...), against Decision No. (15) of 1438 AH issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.



Second: On Merits:

1. Amend the Primary Committee's decision regarding the provision allocated for late payment fines to be 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, in accordance with Grounds and merits mentioned herein.
 - A. Accept Zakat Payer's appeal regarding its request to deduct investments in subsidiary and associate companies, amounting to SAR (124,619,870) from its zakat base and overturn the decision delivered on this matter, in accordance with Grounds and merits mentioned herein.
 - B. Accept Zakat Payer's appeal regarding the deduction of investments in joint ventures from its zakat base as stated in its declaration, amounting to SAR (201,196,335) and overturn the primary decision in 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-2020-100)
Issued in Appeal No. (Z-2018-
1567)

Principle No. 116

Unbilled revenues, in essence, 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. Consequently, they are valued financial rights, thereby falling within the company's zakat base as debts owed by its clients.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Monday, 22/04/1442 AH, corresponding to 07/12/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, for consideration of the appeal submitted on 17/12/1439 AH by/ (...) Company for Trading and Contracting against Decision No. (30) of 1439 AH of the First Primary Committee for Zakat and Tax Objections in Riyadh issued in Case No. (36/38) filed by the Appellant against ZATCA. The primary decision ruled as follows:

First: Accept the objection submitted by (...) Company for Trading and Contracting in form regarding zakat assessment for 2013 AD.

Second: On Merits:

1. Dismiss Zakat Payer's objection and uphold ZATCA's decision not to reduce the adjusted net profit by unbilled revenues.
2. Dismiss Zakat Payer's objection 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 Zakat Payer's objection and uphold ZATCA's decision not to deduct investments amounting to SAR (18,125,149) from the zakat base based on the specified investment calculation method.

Since the aforementioned decision was not accepted by (...) Company for Trading and Contracting, it presented a statement of appeal to the Department, summarized as follows:

1. (Unbilled Revenues) Item: 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 the 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 the zakat base, as ruled by the primary decision, is unjustified.

2. (Late Payment Fine Item amounting to SAR (119,961,285)): The Company objects to adding this amount to the 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 treatment, as it risks subjecting the amount to double payment of zakat.
2. (Advance Payments Item amounting to SAR (125,980,496)): The Company objects to adding this amount to the 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.
2. (Investments Item 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 the 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 the 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. ZATCA, regarding provisions, 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 the 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 the 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), the Zakat Payer failed to provide the required documentation to allow for their deduction from the 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 reviewed case documents and statement of appeal submitted by Taxpayer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with capacity and within the period prescribed by law.

As for the merits of case, 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: (Unbilled Revenues) Item: 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 the 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 the 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 the 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 treatment 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: (Late Payment Fine Item 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, 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: (Advance Payments Item 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 the non-deduction of the investment difference of SAR (18,125,149).

Decision

First: Accept in form the Appeal filed by the Taxpayer/ (...) Company for Trading and Contracting, CR No. (...), TIN No. (...), against Decision No. (30) of 1439 AH issued by the First Primary Committee for Zakat and Tax Objections 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)
Issued in Appeal No. (Z-2018-
1568)

Principle No. 117

There must be credible evidence of Zakat Payer's intent to sell projects under development in their condition at the time of execution, or evidence of actual sales transactions involving the projects in that state, in order to be considered assets subject to zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Wednesday, 01/05/1442 AH, corresponding to 16/12/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to consider the appeal filed on 07/08/1438 AH, by (...) Company, against Decision No. (12) dated 1438 AH of the Primary Committee for Zakat and Tax Objections in Dammam, issued in Case No. (7) of 1437 AH, filed by the Appellant against ZATCA. Therefore, the primary decision ruled as follows:

First: Accept Zakat Payer's (..... Company) objection to GAZT's Zakat Assessment of 2011– 2013, in form.

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 of not deducting land contributions for the years 2011 to 2013 AD.
3. Uphold ZATCA's decision of not deducting dividend distributions of joint-stock companies for the years 2011 to 2013 AD.
4. Uphold ZATCA's decision of not deducting projects under development from the zakat base for 2013 AD.

Since this decision was not accepted by (... Company), it submitted a statement of appeal, summarized as follows:

1. (Non-deduction of Investments in Joint-Stock Companies for the Years 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. (Non-deduction of Land Contributions for the Years 2011 to 2013 AD) Item: 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. (Non-deduction of Dividends of Joint-Stock Companies for the Years 2011 to 2013 AD) Item: 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. (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, which 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.

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 reviewed case documents and statement of appeal submitted by Taxpayer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with capacity and within the period prescribed by law.

As for the merits of case, 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. (Non-deduction of Investments in Joint-Stock Companies for the Years 2011 to 2013 AD) Item: 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. (Non-deduction of Land Contributions for the Years 2011 to 2013 AD) Item: 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 primary focus in addressing 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. (Non-deduction of Dividends of Joint-Stock Companies for the Years 2011 to 2013 AD) Item: 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. (Non-deduction of Projects Under Development for 2013 AD) Item: 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 ... 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: Accept the appeal in form filed by Zakat Payer/(...) Company, CR No. (...), against Decision No. (12) of 1438 AH issued by the Primary Committee for Zakat and Tax Objections in Dammam.

Second: On Merits:

Accept Zakat Payer's appeal regarding non-deduction of investments in joint-stock companies for the years 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.

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.

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.

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

Appeal Decision No: IAR-2020-133



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes

Decision No. (IR-2020-9)
Issued in Appeal No. (Z-2018-
1704)

Appeal

Appeal Committee Decision No. (IR-2020-9)

First Appellate Department for Income Tax Violations and Disputes issued in Appeal No. (Z-2018-1704)

Principle No. 118

The determining factor for zakat on debt is the creditor's ability to collect the debt amount upon demand from the debtor.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Wednesday, 01/05/1442 AH, corresponding to 16/12/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, convened at its headquarters in Riyadh, for consideration of the appeal submitted on 04/07/1436 AH by/ (...) Company, CR No. (...), against ZATCA regarding the decision of the First Primary Committee for Zakat and Tax Objections in Jeddah, Decision No. (17/5) of 1436 AH, issued in Case No. (Z-2018-1704), wherein the primary decision ruled as follows:

First: Accept Zakat Payer's objection presented to ZATCA, registered under No. (260) on 18/06/1434 AH, in form.

Second: On Merits: Uphold ZATCA's decision to exclude receivables item (trade receivables) from the zakat base for 2011 AD.

Since this decision was not accepted by the Defendant/ (...) Company, it submitted a statement of appeal, summarized as follows:

The First Primary Zakat and Tax Objection Committee in Jeddah upheld, in its appealed decision, ZATCA's position regarding the non-deduction of receivables that were overdue from a governmental entity, specifically (General Authority of Civil Aviation (GACA)). Zakat Payer Company challenges this decision based on the following substantive reasons:

On 20/02/2007 AD, ... signed a concession agreement for the construction, transfer of ownership, and operation of (...) terminal complex, granting the right to manage and operate the complex for a period of twenty (20) years and collect all revenues generated from operations on its own behalf, in exchange for bearing the construction, development, operating expenses, and other risks. (...) Company, registered under Commercial Register No. (...), in accordance with provisions of the agreement, was established on 13 Rabi' al-Thani 1428 AH, corresponding to 01/04/2007 AD. (...) Company transferred the



concession agreement for the construction, transfer of ownership, and operation of (...) terminal complex to this subsidiary, including all its rights and obligations. (...) Company undertook the construction of (...) terminal complex, assuming all costs and risks involved in accordance with the specified standards. GACA officially received the complex as evidenced by documented handover procedures, and it became its property, remaining under the management of the company until the concession period ends. The company operated (...) terminal complex and issued invoices for its receivables from third parties, in accordance with the concession agreement for the construction, transfer of ownership, and operation of (...) terminal complex. The company followed up on the collection of these receivables, as the concession agreement entitled the company to collect a terminal fee of SAR (15) per entry or exit. The number of arrivals was calculated through the company's automated systems and cross-checked with data from GACA before issuing the monthly invoices, which included terminal fees for all arrivals, were issued in accordance with the agreement, as of October 2007.

GACA fully settled the invoices issued for the period from October 2007 AD to October 2010 AD for passengers arriving through all terminals. However, ZATCA completely ceased payments from the invoices for the months of November 2010 AD to June 2012 AD, claiming that the company was not entitled to the terminal fees for arrivals, contradicting the concession agreement and the previous practice, where payments were made for the period from October 2007 to October 2010 AD. In such cases, payments for (...) terminal complex should have been regularly maintained, at least until the newly introduced viewpoint by ZATCA's officials regarding the entitlement to these fees was resolved.

Zakat Payer Company objected to ZATCA's non-deduction of the outstanding government debt due from GACA and other government entities, which had been delayed in collection for more than a year without their consent. This objection was based on Fatwa No. 23408, dated 18/11/1426H, issued by the Council of Senior Scholars. Therefore, Zakat Payer Company requests the acceptance of the deduction of the delayed debt owed by government entities (GACA and others), amounting to SAR (185,451,499), from the zakat base for 2011, in accordance with the aforementioned fatwa, supported by Fatwa No. (20452), and the regulatory directives issued by the Ministry of Finance to ZATCA's management, which affirm the acceptance and implementation of such deductions.

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 provisions of the Income Tax Law and its Implementing Regulations. 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, having reviewed documents included in Case file and statement of appeal as presented by the Appellant, the Department held a session to hear from the parties involved in the case on 10/06/1441 AH, corresponding to 04/02/2020 AD, during which it asked the Appellant's attorney whether he wished to add anything to the memorandum of appeal submitted in opposition to the decision and he responded by submitting a memorandum of appeal that outlines the reasons for contesting the decision. On the other hand, The Department asked ZATCA's representative for their response to Zakat Payer Company's memorandum of appeal, they stated that, based on Fatwa No. (23408) and Fatwa No. (20452), they believe that the debts in question should not be deducted as they are considered privileged debts, regardless of the delay in collection. Therefore, zakat is obligatory, in accordance with Fatwas No. (3077/2) dated 08/11/1426 AH, No. (19643) dated 23/05/1418 AH, and No. (20977) dated 04/06/1420 AH. All of these fatwas concluded that a Muslim, whether a debtor or a creditor, is obligated to pay



zakat on their wealth if it reaches the Nisab threshold and a full year has passed, whether the wealth is in hand or in the form of debts owed by others.

As evident from the preceding discussion, the crux of the dispute between both parties lies in ZATCA's stance regarding the non-deduction of the government debt owed by GACA, considering it a debt owed by a governmental entity—a solvent entity—and therefore collectible, and thus not deductible from the zakat base. On the other hand, Zakat Payer Company believes that ZATCA's handling of the disputed debt is incorrect and asserts that the exclusion of this debt amount from the zakat base for the disputed year is valid, as previously explained.

Having heard the arguments of both parties and reviewed the correspondence exchanged between the Appellant (creditor) and GACA (debtor), it is evident that the debt owed to the company by the third party (GACA) is a debt owed by a solvent entity, yet it remains uncollectible. Thus, the reason for not receiving these amounts is not due to Zakat Payer's will but rather due to reasons attributable to the debtor (GACA). Since the debt amount was not in the possession of Zakat Payer nor under its control, it follows that its inclusion in Zakat Payer Company's zakat base is incorrect. ZATCA's argument that this debt is owed by a solvent government entity does not alter this conclusion, as the critical factor is the creditor's ability to collect the debt after demanding it from the debtor. In this case, the collection was impossible for reasons beyond Zakat Payer's control. Therefore, the Department concluded that the Appellant's arguments impact the outcome of the contested decision, leading to the ruling that the receivables item (trade receivables) should be excluded from Zakat Payer's zakat base for 2011 AD and ZATCA's treatment of this item by including it in Zakat Payer's zakat base is not upheld.

Decision

First: In Form: Accept the appeal filed by/ (...) Company, CR No. (...),

Second: On Merits: Accept Zakat Payer's/ (...) Company, CR No. (...), appeal regarding the item (Non-Deduction of Trade Receivables from the Zakat Base for 2011 AD) and cancel the decision of the First Primary Zakat and Tax Objection Committee in Jeddah No. (17/5 for 1436 AH) dated 06/05/1436 AH delivered in this regard.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-15)
Issued in Appeal No. (Z-2020-
16528)

Principle No. 119

In accounting terms, allocations refer to a future obligation that the company has not settled during the fiscal year in which the obligation arose. These allocations are added to the zakat base as they represent amounts that Zakat Payer still holds. The obligation on Zakat Payer implies that the money remains in its possession, and there is no distinction in this regard between amounts allocated for zakat or for other purposes.

Facts:

First: In from:

Accept the objection submitted by the Zakat Payer/ (...) Company

Second: On Merits:

1. Dismiss the objection submitted by Zakat Payer regarding the increased social insurance.
2. Dismiss the objection submitted by Zakat Payer regarding entertainment expenses for 2013 AD.
3. Dismiss the objection submitted by Zakat Payer regarding unrealized losses on investments for the years 2014 and 2015 AD.
4. Confirm settlement of the dispute with regard to non-deduction of the overpaid tax for the years 2013 and 2014 AD.
5. Dismiss the objection submitted by Zakat Payer regarding the addition of related party balances for 2015 AD.
6. Dismiss the objection submitted by Zakat Payer regarding the addition of shareholders' share of surplus for the years 2014 and 2015 AD.
7. Dismiss the objection submitted by Zakat Payer regarding addition of the revolving balance from zakat provision.
8. Dismiss the objection submitted by Zakat Payer regarding the statutory deposit with SAMA.
9. Dismiss the objection submitted by Zakat Payer regarding the solvency margin.
10. Dismiss the objection submitted by Zakat Payer regarding non-deduction of the surplus transferred to shareholders from the zakat base for the years 2013 and 2014 AD.
11. Confirm settlement of the dispute with regard to non-deduction of intangible assets for 2015 AD.

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

Zakat Payer challenges the Committee's contested decision, claiming that, regarding (Non-Deduction of Social Insurance Expenses) item, differences in social insurance payments should be deducted from the adjusted profit and arguing that social insurances certificate is insufficient as it often does not reflect the actual amount due, as it relates to payments made during the year rather than the year for which the obligation is due. Zakat Payer insists, regarding (Non-Deduction of Entertainment Expenses for 2013 AD), that entertainment expenses for 2013 AD should be



deducted from the adjusted profit, as they qualify as buffet and hospitality expenses, which are deductible according to Article (12) of the Income Tax Law and Article (9) of the relevant Implementing Regulations that outline the conditions for deducting expenses, all of which are applicable to this item. Zakat Payer contends, regarding (Non-Deduction of Unrealized Losses on Investments for 2014-2015 AD), that unrealized losses on marketable investments for the years 2014 and 2015 AD should be deducted. These losses are considered valid for tax purposes due to their real nature resulting from decreased values based on reported prices and are also deductible for zakat purposes under paragraph (H) of Article (4) of the Zakat regulations. Zakat Payer claims, regarding (Addition of Related Party Balances for 2015 AD), that the balance related to parties involved should not be added to the zakat base, as it represents the remaining value of goodwill and is a non-circulating amount in the business. Regarding (Addition of Shareholders' Share of Surplus for 2014-2015 AD), Zakat Payer argues against adding the shareholders' share of surplus for the years 2014 and 2015 AD to the zakat base, asserting that it represents the opening balance and is not subject to zakat as it pertains to policyholders, not shareholders, and is a reserved balance that cannot be disbursed. Concerning (Addition of the Revolving Balance from Zakat Provision for 2013-2015 AD), Zakat Payer insists that the revolving balance of zakat provision should not be added to the zakat base, as the provision itself is not an expense that is deductible from the zakat base and asserts that any amount utilized from this provision should also not be deducted, as it does not qualify as deductible expenses. Regarding (Non-Deduction of Statutory Deposit from the Zakat Base), Zakat Payer claims that the statutory deposit should be deducted from the zakat base, as these amounts are held by SAMA and are not accessible to the company, referencing Fatwa No. (12756), which states that held funds are not subject to zakat. Regarding (Non-Deduction of Solvency Margin from the Zakat Base), Zakat Payer argues that the solvency margin should be deducted from the zakat base, as it is considered held funds that cannot be accessed according to SAMA regulations, referencing Fatwa No. (12756), which states that held funds are not subject to zakat. Moreover, Zakat Payer, concerning (Non-Deduction of Surplus Transferred to Shareholders for 2013-2014 AD), contends that the surplus transferred to shareholders for the years 2014 and 2015 AD should be deducted from the zakat base, as it represents the policyholders' share of the distributed surplus and is a charge against profit that benefits the shareholders. Based on these points, Zakat Payer requests overturning the Committee's contested decision for the afore-mentioned Grounds.

Grounds

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

As for the merits of case, Zakat Payer's appeal regarding (Overcharged Insurances) is based on the argument that the social insurance certificate should not be relied upon as it pertains to payments made during the year, rather than the year for which the obligation is due. Having carefully considered the subject matter of the dispute, given that Zakat Payer's appeal is based on the assertion that the amount charged to the accounts represents the liability for the year and is not related to payments made during the year, given that Zakat Payer failed to provide either the Primary Committee or this Department with any documentation to substantiate this alleged difference, given that such a difference, if it were to exist, would appear within the credit balances in the financial position statement and would be settled at the beginning of the following year, and given that the dispute is documentation-based in its nature, 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.



Zakat Payer's appeal regarding the item (Entertainment Expenses for 2013 AD) is based on the argument that such expenses should be deducted, as they are necessary for conducting the income-generating activity. Having carefully considered the subject matter of the dispute, given that Zakat Payer claimed that the disputed expenses were for buffets and hospitality, since Zakat Payer failed to provide the Primary Committee or this Department with any evidence to support its position regarding such expenses, and since the Department did not observe any requirement for correction or further comment based on the evidence provided, 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.

Zakat Payer's appeal regarding the item (Unrealized Losses on Investments for the Years 2014 and 2015 AD) is based on the argument that such losses should be deducted as they represent real losses resulting from a decline in value as per the announced price. Having carefully considered the subject matter of the dispute, given that there is no disagreement regarding the occurrence of the losses in principle, nor in their accounting treatment, given that the decline in market value constitutes a significant loss that reduces the zakatable wealth, and that it should be assessed at its market value at the time zakat becomes due, and notwithstanding the reference to the Implementing Regulations for Zakat Collection, as they were issued following the years in question and thus only apply from their effective date onward and cannot retroactively affect events that occurred prior to that date, in accordance with the principle of non-retroactivity of laws, this Department concludes to accept Zakat Payer's appeal regarding the zakat aspect of this item. As for the tax aspect, given that such unrealized losses are recognized in the income statement, there is no legal provision that prohibits the deduction of these unrealized losses, and given that there is no documentary dispute regarding Zakat Payer's incurrence of these losses, the Department concludes to accept Zakat Payer's appeal regarding the tax aspect of this item and overturn the primary decision delivered in this regard.

Zakat Payer's appeal regarding the item (Addition of Related Party Balances for 2015 AD) is based on the argument that this balance should be added, as it represents a reserved amount not circulated in the business activity and reflects the remaining value of the goodwill due. Having carefully considered the subject matter of the dispute and given that there is no disagreement that the disputed amount is linked to the goodwill deducted from the base, it is therefore necessary to add the financing associated with the goodwill to the base, regardless of whether a full year has elapsed. 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.

Zakat Payer's appeal regarding the item (Addition of Shareholders' Share of Surplus for 2014 - 2015 AD) is based on the argument that this share should not be added to the base, as it represents the opening balance and is not subject to zakat because it pertains to policyholders, not shareholders. Having carefully considered the subject of the dispute and considering that there is no disagreement that these funds remained in Zakat Payer's possession when zakat became due, as they constitute a debt owed by Zakat Payer and completed a full year while being under its responsibility, they should be added to its zakat base. Zakat Payer's argument that these amounts pertain to policyholders and cannot be disposed of does not negate the fact that no evidence was presented to the Department proving that these funds are separated from Zakat Payer's other assets, thereby removing the same from its control. Therefore, the Department concluded to dismiss the appeal and uphold the primary decision regarding this item.

Zakat Payer's appeal regarding the item (Addition of the Revolving Balance from Zakat Provision) is based on the argument that the component of the zakat provision should not be added to the base to avoid double payment of zakat and because it is not considered a deductible expense. Having carefully considered the subject of the dispute and since provisions, by their accounting



nature, represent a future obligation that the company failed to fulfill during the fiscal year in which the obligation arose, they should be added to the base as they represent amounts still held by Zakat Payer. The obligation on Zakat Payer indicates that the funds remain in its possession and there is no distinction in this matter between amounts allocated for zakat or other purposes. Since the Department did not observe any requirement for correction or further comment based on the evidence provided, it 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.

Zakat Payer's appeal regarding the item (Statutory Deposit with SAMA) is based on the argument that this deposit should be deducted from the base, as it represents funds that are reserved, non-disposable, and therefore not subject to zakat. 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 suggests, is not appropriate. Consequently, the Department concluded to accept Zakat Payer's appeal, dismiss the primary decision delivered in this regard, and deduct the relevant statutory deposit amount.

Zakat Payer's appeal regarding the item (Solvency Margin) is based on the argument that this item should be deducted from the base, as it is considered reserved money that cannot be disposed of and is not subject to zakat. Having carefully considered the subject of the dispute and considering that the solvency margin is a legal requirement to maintain financial investments to meet the company's future obligations, it is to be treated for zakat purposes according to the nature of its components, whether they are investments in equity of other companies intended for trading or retention, or debt instruments. Zakat Payer acknowledged that the components of the solvency margin consist of deposits with local banks and government bonds, which are subject to zakat based on their nature. Since the Department did not observe any requirement for correction or further comment based on the evidence presented, it 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.

Zakat Payer's appeal regarding the item (Non-Deduction of the Surplus Transferred to Shareholders from the Zakat Base for the Years 2013 and 2014 AD) is based on the argument that this item should be deducted, as it represents the share of policyholders from the distributed surplus. Having carefully considered the subject matter of the dispute, the Department noted that Zakat Payer failed to provide evidence to support its claim by assessing the disputed amounts to



their corresponding entries in the financial statements, rendering the appeal ungrounded in a manner that can be discussed in light of the findings of the Primary Committee. Since the Department did not observe any requirement for correction or further comment based on the evidence provided, it 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.

Decision

First: Accept the appeal filed by Zakat Payer/ (...) Company, CR (...), TIN (...), in form against Decision No. (15) issued in Objection No. (38/66) of 1439 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, concerning the zakat assessment for the years 2013 to 2015 AD.

Second: On Merits:

1. Dismiss Zakat Payer's appeal concerning (Overcharged Insurances) item and uphold the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.
2. Dismiss Zakat Payer's appeal concerning (Entertainment Expenses) item and uphold the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.
3. Accept Zakat Payer's appeal concerning (Unrealized Losses on Investments for 2014-2015 AD) item and overturn the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.
4. Dismiss Zakat Payer's appeal concerning (Addition of Related Party Balances for 2015 AD) item and uphold the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.
5. Dismiss Zakat Payer's appeal concerning (Addition of Shareholders' Share of Surplus for 2014-2015 AD) item and uphold the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.
6. Dismiss Zakat Payer's appeal concerning (Addition of the Revolving Balance from Zakat Provision) item and uphold the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.
7. Accept Zakat Payer's appeal concerning (Statutory Deposit with SAMA) item and overturn the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.
8. Dismiss Zakat Payer's appeal concerning (Solvency Margin) item and uphold the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.
9. Dismiss Zakat Payer's appeal concerning (Non-Deduction of the Surplus Transferred to Shareholders from the Zakat Base for the Years 2013 and 2014 AD) item and uphold the decision delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh, in accordance with Grounds and merits mentioned herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes

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

Principle No. 120

The partners' coverage of the losses does not negate the fact that these losses existed at the beginning of the year, thus necessitating their deduction as they represent the lower balance.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no 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 05/03/1439 AH, corresponding to 22/12/2020 AD by/ (...) Company against decision of the Second Committee for Zakat and Tax Objections in Riyadh, Decision No. (25) of 1438 AH, issued regarding Objection No. (10/38) concerning zakat assessment for the years 1990 to 2012 AD, filed by the Appellant against ZATCA. The primary decision included the following rulings:

In form:

Accept the objection submitted by Zakat Payer/ (...) Company in form for the years 1990 to 2012 AD.

Second/ On merits:

1. Dismiss Zakat Payer's objection regarding carried forward losses item, based on the merits stated in the decision.
2. Confirm settlement of the dispute with regard to partners' contribution to covering the losses for 1991 AD, based on the merits stated in the decision.
3. Dismiss Zakat Payer's objection regarding write-offs of amounts from related parties item, based on the merits stated in the decision.
4. Accept Zakat Payer's objection regarding the current account difference item, based on the merits stated in the decision.

Since the aforementioned decision was not accepted by Zakat Payer (... Co.), it presented a statement of appeal to the Department, summarized as follows:

Zakat Payer is appealing the primary committee's decision on three items: Regarding item (difference in carried forward losses), and specifically regarding the carried forward losses for the period from 1990 to 1995, and 1997 to 2012 under this item, Zakat Payer bases its appeal on the argument that ZATCA did not rely on a specific and consistent method in deducting the balance of carried forward losses. And Zakat Payer requests that the balance of carried forward losses be deducted based on the Company's audited financial statements, not on Zakat assessment issued by ZATCA. Zakat Payer, regarding carried forward losses for 1996 AD, asserts that ZATCA failed to deduct the carried forward losses, as they were covered by the new partners. The Company also questions ZATCA's decision



to add an increase of SAR (7,655,577) to the partners' account without offsetting the balance of the carried forward losses that were covered by the aforementioned increase. Zakat Payer, regarding carried forward losses for 1993 AD, objects to ZATCA's decision to deduct the closing balance of carried forward losses amounting to SAR (9,806,245) instead of the opening balance amounting to SAR (10,548,080) and requests correction to this action. Zakat Payer, regarding (Write-Offs of Amounts from Related Parties for 1998 to 2005 AD) item, asserts its right not to include these amounts in the zakat base, as these amounts are uncollectible and therefore not subject to zakat. Zakat Payer, regarding (Partners' Current Account Difference for 1994 and 2002 AD) item, bases its appeal on the fact that the audited financial statements do not show an opening balance for the partners' current account. Moreover, Zakat Payer argues that the closing balance of partners' current accounts was formed during the year and had not been held for a full year. Therefore, Zakat Payer requests that the balance of the partners' current account not be added to the zakat base.

The Department decided to open the pleadings, therefore, ZATCA submitted a reply memorandum dated 30/05/1441 AH corresponding to 26/01/2020 AD, in response to Zakat Payer's appeal regarding the appealed items, by affirming its position previously presented to the Primary Committee. ZATCA also reaffirms that Zakat Payer's appeal is not new to what had been previously submitted before the Primary Committee and addressed by ZATCA. Accordingly, ZATCA insists on accuracy and correctness of its procedures and requests to dismiss Zakat Payer's appeal and uphold the primary decision. On Thursday, 26/08/1442 AH, corresponding to 08/04/2021 AD, the Department decided to hold a 10-day electronic pleading hearing. However, the period elapsed date set without either party to the appeal submitting any additional arguments.

On Thursday, 24/09/1442 AH, corresponding to 06/05/2021 AD, after the Department reviewed the appeal and examined the Case file, and considering the matter of writing off amounts from related parties, the Department requested Zakat Payer to prove that these related parties had included these amounts in its Zakatable income. Zakat Payer is required to submit the documents through the electronic portal within a period of 30 days from this date. On 22/10/1442 AH, Zakat Payer responded with a memorandum stating, in summary, that the Company was unable to obtain the required documents from the Department.

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 Tuesday 05/11/1442 AH corresponding to 15/06/2021 AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds

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

As for the merits of case and concerning Zakat Payer's appeal regarding (Carried Forward Losses) item, it has been found that the crux of the appeal lies in the Appellant's request to deduct the carried forward losses for the years 1990 to 1995, and 1997 to 2012 AD, as reflected in the financial statements, rather than losses amended by ZATCA. Zakat Payer argues that, when calculating the zakat base, the full amount of the loss should be deducted without reduction, as it represents funds that the company no longer possesses. Zakat Payer further argues that ZATCA did not rely on a specific and consistent method in deducting the balance of carried forward losses. ZATCA, on the other hand, states that the carried forward losses were processed in accordance with Circular No.



(92/1) dated 19/07/1418 AH, which stipulates that "The carried forward losses that may be deducted are the losses of the previous year or years, as amended by ZATCA's assessments, after adding back the provisions or reserves that had reduced the losses when they were formed, in order to prevent tax duplication). Upon careful consideration of the appeal and regarding the deduction of losses for the year 1990 and the years 1997 to 2012 AD based on zakat assessments rather than the financial statements, given Zakat Payer's assertion of ZATCA's inconsistency in handling carried-over losses, considering Zakat Payer's appeal indicates that ZATCA's amendments were related to board members' compensation and expenses that may be considered distribution expenses, given that Zakat Payer's appeal was presented to ZATCA, which failed to provide reasons for the amendments beyond those mentioned by Zakat Payer, and considering that the amendments mentioned by the Zakat Payer do not represent an acceleration or deferral of an expense, and that their non-acceptance as an expense does not mean a failure to reduce retained earnings or increase losses, it is therefore decided to uphold Zakat Payer's appeal and to approve the carried forward losses as declared by Zakat Payer. Regarding the non-deduction of carried-over losses for the years 1991-1992 AD, the Committee's decision applied to all the years under dispute without considering the specific reasons for Zakat Payer's objection to each year individually or to a group of years as stated in Zakat Payer's objection. These reasons are not identical for all the disputed years. Since the Department failed to find any evidence contradicting Zakat Payer's statements, it decided to accept Zakat Payer's appeal. The appeal, regarding 1996 AD, centers on Zakat Payer's objection to the Committee's endorsement of ZATCA's action in not deducting the opening balance of losses for 1996 AD. Zakat Payer argues that the partners covered the losses during the year and that there was no closing balance of losses, and therefore requests deduction of the opening balance. However, ZATCA contends that there are no carried forward losses in the financial statements due to their coverage by the new partners. The Department, upon reviewing the subject of the appeal, notes that the partners' coverage of the losses does not negate the existence of those losses at the beginning of the year, which necessitates their deduction as they represent the lower balance. Therefore, the Department decided to accept Zakat Payer's appeal. As for the deduction of the carried forward losses for 1993 AD, which was based on the closing balance despite being greater than the opening balance, the Committee did not address Zakat Payer's objection regarding ZATCA's failure to deduct the carried forward losses for 1993 AD based on the lower balance, which is the opening balance. The Committee's decision encompassed all years of objection without considering Zakat Payer's reasons, which do not represent a uniform cause for all the years in dispute. Since there was no evidence contradicting Zakat Payer's claims, the Department concluded to accept Zakat Payer's appeal. Consequently, the Department accepts Zakat Payer's appeal for all years in dispute and overturns the primary decision delivered in this regard.

Regarding the item of (Write-Offs of Amounts from Related Parties for the Years 1998, 2005, and 2010 AD), the subject of the appeal lies in Zakat Payer's request not to include this item in the zakat base, arguing that these amounts are uncollectible and therefore not subject to zakat. However, ZATCA contends that the item is recorded as an expense under the "other expenses" category and is described as a waiver of an amount owed from a related party. The Company did not clarify the nature of this transaction or the legal Grounds that led to the decision to waive this amount. The Department, upon reviewing the subject of the dispute, noted that the write-off of amounts from related parties results in those parties recording the written-off amounts as revenue corresponding to the debts that have been waived. The Department requested Zakat Payer provide evidence that those parties have recorded these amounts as part of their zakat-relevant revenue. However, Zakat Payer failed to provide any proof of the write-off of these amounts. Given that the dispute is documentary in nature, and since the Department did not observe any requirement for correction or further comment based on the evidence provided by Zakat Payer. Therefore, the Department dismisses Zakat Payer's appeal and upholds the primary decision in this regard.



Regarding the item (Partners' Current Account Difference for the Years 1994 and 2002 AD), it has been determined that the subject of the appeal lies in Zakat Payer's disagreement with the decision not to deduct this item from the zakat base. Zakat Payer argues that the audited financial statements do not show an opening balance for the partners' current account, and that the closing balance of the partners' current account was established during the year and had not been held for a full year. ZATCA failed to clarify its position regarding Zakat Payer's objection for 1994 AD and the Committee did not address Zakat Payer's objection for either 1994 or 2002 AD in the reasoning of the primary decision. Instead, it made a general decision regarding the disputed item. The Committee's decision, which encompassed all years of objection without considering the specific reasons for Zakat Payer's objection does not reflect a uniform cause for each of the years in question. Furthermore, deducting the current account difference does not negate the impact of covering the realized losses from the current account. According to the applicable zakat procedures for all zakat payers, the deduction of retained earnings or the addition of carried forward losses is based on the lower balance, whether at the beginning or end of the year. The carried forward losses at the beginning of the year represent the lower balance for the account. Since there was no evidence contradicting Zakat Payer's claims, the Department concluded to accept Zakat Payer's appeal.

Decision

First: Accept the Appeal filed by Zakat Payer/ (...) Company) in form against Decision No. (25) 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 carried forward losses for all years in dispute and overturn the primary decision on this matter, in accordance with Grounds and merits mentioned herein.
2. Dismiss Zakat Payer's appeal regarding the item of write-offs of amounts from related parties for the years 1998, 2005, and 2010 AD and uphold the primary decision on this matter, in accordance with Grounds and merits mentioned herein.
3. Accept Zakat Payer's appeal regarding the item of partners' current account difference for the years 1994 and 2002 AD and overturn 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. (IAR-2020-98)
Issued in Appeal No. (V-88828-2021)

Appeal

Appeal Committee Decision No. (IR-2021-153)

First Appellate Department for Income Tax Violations and Disputes issued in Appeal No. (Z-32736-2020)

Principle No. 121

The acceptance or rejection of the deduction of investment losses is not related to the deduction of the investment itself.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Tuesday, 24/12/1442 AH, corresponding to 03/08/2021 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 09/05/1442 AH, corresponding to 24/12/2020 AD by/ (...) Company against the First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-231) issued in Case No. (Z-2019-10703), filed by the Appellant against ZATCA. The primary decision included the following rulings:

1. **Confirm settlement of the dispute between the Plaintiff/ (...) Company and the Defendant/ ZATCA concerning the item of the decline in investments recorded on the income statement as losses for the years 2015 and 2016 AD.**
2. **Confirm settlement of the dispute between the Plaintiff/ (...) Company and the Defendant/ ZATCA concerning the approval of depreciation and the deduction of fixed assets based on the audited financial statements as the basis for calculating the zakat base in question.**
3. **Cancel the decision made by the Defendant/ ZATCA against the Plaintiff/ (...) Company regarding the non-deduction of long-term stock investments for the years 2015 and 2016 AD.**
4. **Dismiss the Plaintiff's/ (...) Company objection against the decision of the Defendant/ ZATCA regarding the investment deduction for the years 2015 and 2016 AD.**
5. **Cancel the Defendant's decision/ ZATCA against Plaintiff/ (...) regarding the non-deduction of losses from temporary investments that were excluded from the equity value for the years 2015 and 2016 AD.**
3. **Dismiss the Plaintiff's/ (...) Company, objection against the decision of the Defendant/ ZATCA regarding non-deduction of unrealized losses for the years 2015 and 2016 AD.**

Since the aforementioned decision was not accepted by Zakat Payer (... Co.), it presented a statement of appeal to the Department, summarized as follows:



Zakat Payer appeals the Primary Committee's decision on two points; Regarding (Non-Deduction of Investment in For 2015 and 2016 AD), the Zakat Payer clarifies that the purchase of units in ... was for long-term investment purposes and to generate income from returns. The Fund regulations indicate that the Fund was established for the long term and is closed, meaning that purchasers cannot exit the fund, nor can new participants enter after its closure. The duration of the Fund is (5) years, and its purpose is to establish and operate a hotel in Therefore, it is evident that the investment in ... is long-term and intended for use and operation. Based on the foregoing, Zakat Payer requests the acceptance of the deduction of investments in ... from the zakat base for 2015 and 2016 AD, while confirming its readiness to pay zakat on its share in ... amounting to SAR (17,145,026). Regarding the item (Non-Deduction of Unrealized Losses in ... for 2015 and 2016 AD), Zakat Payer refers to what was mentioned in the first item, stating that the investment in ... is long-term and intended for operation. The treatment of unrealized losses resulting from that investment must be taken into account when calculating zakat for the years 2015 and 2016 AD. In view of the above, Zakat Payer requests the acceptance of the deduction of unrealized losses in ... from the zakat base for the years 2015 and 2016, as they are long-term investments.

The Department decided to open the pleadings, where ZATCA submitted a Reply Memorandum in response to Zakat Payer's appeal regarding the contested items. ZATCA, regarding Zakat Payer's appeal on the item (Non-Deduction of Investment in For 2015 and 2016 AD), for 2015 and 2016 AD), clarifies that the investments in ... were not deducted because they are considered as trading assets, and since the investments in funds are commercial, tradable investments and not considered as acquisition assets, they cannot be deducted, nor can similar investments, based on Paragraph (4/B), Item (Second) of Article (4) of the Implementing Regulations for Zakat Collection, Decision No. (1941) of 1439 AH, Decision No. (1519) of 1437 AH, Decision No. (1939) of 1439 AH, and Appellate Decision No. (1806) of 1439 AH. Moreover, ZATCA, regarding Zakat Payer's appeal concerning (Non-Deduction of Unrealized Losses in ... for the Years 2015 and 2016 AD) item, explains that the loss claimed by Zakat Payer arises from revaluation, which is an unrealized loss and is not eligible for deduction, as per Paragraph (1/A/B) of Article (5) of the Implementing Regulations for Zakat Collection. Furthermore, a review of the financial statements and their notes reveals that the available-for-sale investments are investments in funds, which cannot be deducted from the zakat base as they are not acquisition assets. Since these losses are related to these investments, the losses must be amended accordingly and cannot be recognized because the deduction of the original investment was not permitted. Consequently, the rejection of the investment deduction is followed by the rejection of the methods of its treatment. Therefore, ZATCA insists on accuracy and correctness of its procedures.

On Tuesday, 19/11/1442 AH corresponding to 29/06/2021 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 Wednesday 04/12/1442 AH corresponding to 14/07/2021 AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds

Upon reviewing Case documents and appeal Brief submitted by Zakat Payer, the Department found that conditions for hearing the appeal are fulfilled in form in accordance with conditions



stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law.

As for the merits of case, it was found that, regarding Zakat Payer's appeal concerning (Non-Deduction of Investment in ... for the Years 2015 and 2016 AD) item, upon the Department's review of the dispute and after examining the case file and Zakat Payer's appeal, as well as reviewing the terms and conditions of ... Real Estate Fund, it is a closed-end fund whose main activity is purchasing land for development through construction and then sale. Since this Fund is not available for trading and its assets are not available for sale in their current state, it falls outside the scope of trading assets. Given that Zakat Payer treated the Fund as a company for the purpose of calculating zakat and paid zakat on behalf of the Fund, Zakat Payer is entitled to deduct the investment in ... from its zakat base. Therefore, the Department decides to accept Zakat Payer's appeal and overturn the primary decision regarding this item.

It was found, regarding Zakat Payer's appeal concerning (Non-Deduction of Unrealized Losses in ... for the Years 2015 and 2016 AD) item, upon the Department's review of the dispute and after examining the primary decision, Zakat Payer's appeal, and ZATCA's response to Zakat Payer's appeal, that the reason for ZATCA's refusal to deduct the losses was due to their association with an asset that ZATCA had already refused to deduct. Additionally, these losses resulted from the revaluation of assets classified as available for sale. Given that the accounting treatment of the disputed loss results in a reduction of the zakat base by the amount of that loss and a corresponding decrease in the amount deducted for the investment, it is determined that Zakat Payer is entitled to deduct this loss. ZATCA's argument that the loss is associated with an asset not accepted for deduction does not invalidate this right, as the acceptance of the loss deduction is not contingent upon the deduction of the underlying asset. Therefore, the Department concluded to accept Zakat Payer's appeal and overturn the primary decision delivered in this regard.

Decision

First: Accept the appeal filed by Zakat Payer/... Company, CR (.....), in form against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2020-231).

Second: On Merits:

1. Accept Zakat Payer's appeal concerning (Non-Deduction of Investment in ... for the Years 2015 and 2016 AD) item and overturn the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer's appeal concerning (Non-Deduction of Unrealized Losses in ... for the Years 2015 and 2016 AD) item and overturn 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

Decision No. (IR-2021-332)
Issued in Appeal No. (Z-
283630 -2020)

Principle No. 122

In principle, all ordinary and necessary expenses incurred to generate zakat-liable income are deductible, provided they are supported by documentary evidence and directly related to the generation of such income.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Tuesday, 14/02/1443 AH, corresponding to 21/09/2021 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 18/03/1442 AH, corresponding to 03/11/2020 AD, by/ (...), National ID No. ...), In his capacity as attorney of Zakat Payer (as per PoA No. ...) and the appeal presented on 18/03/1442 AH, corresponding to 03/ 11/ 2020 AD, 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), regarding zakat assessment for the years 2008 to 2012 AD, filed by the Appellant against ZATCA. The primary decision included the following rulings:

First: In Form:

Accept the Case of Plaintiff/ (...) Company, under C.R. No.: (...), in form.

Second: On Merits:

1. Accept the objection of the Plaintiff (...) Company, cancel Defendant's decision regarding the vacation provision for the years 2008 to 2012 AD, and dismiss Plaintiff's objection concerning travel expenses and ticket entitlements for the years 2008 to 2012 AD.
2. Accept the objection of 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 the zakat base for the years 2010 to 2012 AD.
3. Dismiss the objection of Plaintiff/ (...) Company regarding the addition of the item of import variances for the years 2008 to 2012 AD.
5. Dismiss the objection of Plaintiff/ (...) Company regarding the addition of the end-of-service gratuity provision for the years 2010 to 2012 AD and add major maintenance costs provision item to the Plaintiff's zakat base for 2012 AD.
6. Accept the objection of the Plaintiff (...) Company, Cancel the Defendant's decision regarding the addition of the loans item to the Plaintiff's zakat base for 2008 AD.



7. Dismiss the objection of Plaintiff/ (...) Company regarding the non-deduction of the investments item for the years 2008 to 2012 AD.

Since this decision was not accepted by both parties, they submitted a statement of appeal, summarized 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. Zakat Payer, regarding (Investments) item, 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 provision is paid within the year, it should be considered an expense deductible 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 a provision that was excluded from profit in previous years should be allowed as a deduction from the profit of the year in which the provision was actually utilized. Regarding the item (Assessment Issued 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 the zakat declaration for 2008 and 2009 AD and requests application of the statute of limitations on the zakat assessment. Consequently, Zakat Payer seeks to overturn the primary decision regarding the contested items for the aforementioned Grounds.

As the decision was not accepted by ZATCA, it filed its appeal against the contested decision, as detailed in the following statement of appeal:

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 presented 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 the 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 contested 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 (Assessment Issued 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 Paragraph (6) of Article (6) of the Implementing Regulations for Zakat Collection. Moreover, ZATCA, regarding (Import Variances) item, states that it relied on Paragraph (A-1) of Article (5) and Paragraph (2) of Article (6) of the Implementing Regulations for Zakat Collection and further clarifies, regarding (End-of-Service Gratuity and Future Maintenance Provisions), that it based its actions on Paragraph (9) of Article (4) of the Implementing Regulations for Zakat Collection. 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.

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 Wednesday 14/03/1443 AH corresponding to 20/10/2021 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 Zakat Payer and ZATCA, the Department found that conditions of two appeals have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, both appeal requests were accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

As for the merits of case, Zakat Payer's appeal regarding (Assessment Issued After Expiry of the Statutory Period) item, is based on the claim that ZATCA conducted zakat assessment five years after the deadline for submitting the declaration for the years 2008 and 2009 AD. ZATCA, on the other hand, insists on accuracy and correctness of its procedures and requests dismissing Zakat Payer's appeal in form due to not having presented it initially before the Primary Department. 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, and 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 reinitiate the 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.

Zakat Payer's appeal, regarding (Amounts Due for Airfare Tickets and Travel Expenses for the Years 2008 to 2012 AD) item, 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, the balances of these expenses have not remained outstanding for 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, this consequently entails acceptance of Zakat Payer's appeal regarding this item for 2008 and 2009 AD.



This Department, for 2010 to 2012 AD, determined that ZATCA's action, as evidenced in the primary decision, was based on the Implementing Regulations for Zakat Collection 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 legal argument 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, this consequently entails acceptance of Zakat Payer's appeal regarding this item for 2008 and 2009 AD. This Department, regarding the years 2010 to 2012 AD, upon reviewing the primary decision regarding import variances and its subsequent findings and considering Zakat Payer's submission of supporting documents, including a statement specifying the value of import variances and a letter from (...) Company indicating the value of these supplies, concluded to accept the appeal and overturn the primary decision delivered in this regard.

Zakat Payer's appeal, regarding (End-of-Service Gratuity and Future Maintenance Provisions) item, lies in its objection, claiming that this item should be considered a deductible expense if paid during the year when adjusting profit for tax and zakat purposes, not only for tax purposes. 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 became evident from the facts and reasoning of the primary decision that ZATCA's action was not substantiated, and the Primary Department requested ZATCA to provide a written response to Zakat Payer's objection regarding this item. Given that the established principle for zakat is to rely on Zakat Payer's declaration unless there is evidence to the contrary. Since Zakat Payer's objection is based on the payment of the disputed amounts and ZATCA failed to provide evidence that contradicts zakat Payer's declaration, 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 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, this consequently entails acceptance of Zakat Payer's appeal regarding this item for 2008 and 2009 AD. Zakat Payer, for the years 2010 to 2012 AD, 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 Creditor Balances) item, lies in its objection, claiming that the Primary Decision 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 the balances in dispute had not been outstanding for a full year. ZATCA's argument is based on



the 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 been outstanding for a full year and this Department confirmed the validity of the 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 it did not include the loan balances in the zakat base for 2008 AD. Instead, ZATCA asserts that it added the creditor balance for the letters of guarantee reflected in the financial statements, which had indeed been outstanding for a full year. Since the Department ruled that ZATCA's right to assess zakat for the years 2008 and 2009 lapsed, this leads to dismissal of ZATCA's appeal on the loans item for 2008 AD and upholding the primary decision delivered in this regard.

Decision

First: Accept the Appeal filed by Zakat Payer/ (...) Company, CR No. (...), in form, as well as the Appeal filed by ZATCA against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2020-112), issued in case number (Z-179-2018), related to zakat assessment for the years 2008 to 2012 AD.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item (Assessment Issued 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 merits 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 merits mentioned herein.
 3. Accept Zakat Payer's appeal regarding the item (Import Variances) and overturn the primary decision, in accordance with Grounds and merits 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 merits mentioned herein.
 5. Accept Zakat Payer's appeal regarding the item (Investments) and overturn the primary decision, in accordance with Grounds and merits 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 merits mentioned herein.
- 1- Dismiss ZATCA's appeal regarding the item (Loans) and uphold the primary decision, in accordance with Grounds and merits mentioned herein.



Similar Decisions:

**First Appellate Department for Income Tax
Violations and Disputes**

Appeal Decision No: IR-2021-391

Appeal Decision No: IR-2022-8

Appeal Decision No: IR-2022-7

Appeal Decision No: IR-2021-373

Appeal Decision No: IR-2021-126



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 123

Investments in existing domestic companies are deductible from the zakat base provided that Zakat Payer's share in the equity of those companies is subject to zakat, as evidenced by the financial statements of the investee companies.

Principle No. 124

Deferred expenses (which can also be referred to as prepaid expenses or long-term prepayments) are deductible from the zakat base as they are considered acceptable expenses for zakat purposes.

Principle No. 125

Adjusted losses are deductible in accordance with the amended assessments.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Saturday 04/11/1441 AH corresponding to 05/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (65474) of 23/12/1439 AH and Article 67(b) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/10/1425 AH, as amended by Royal Decree No. (M/113) of 20/11/1438 AH convened in Riyadh to consider the appeal filed on 15/10/1438 AH, corresponding to 09/07/2017 AD, by ... Company against Decision No. (14) of the year 1438 AH delivered by the Second Primary Zakat and Tax Objection Committee in Riyadh in Case No. (Z-2018-1474) filed by the Appellant against the General Authority of Zakat and Tax (GAZI). The primary decision ruled as follows:

First: Accept the objection submitted by Zakat Payer/ (...) Company regarding the zakat assessment for the years 2011 to 2013 AD in form.

Second: On Merits:

1. Accept Zakat Payer's objection regarding non-deduction of the supporting loan for investment item, based on the merits stated in the decision.
2. (Calculation of Zakat on Foreign Companies) Item, stating the following:

First: Reject Zakat Payer's objection to the calculation of the Sharia-compliant Zakat on Zakat Payer's share in the investment in Company..., for the merits stated in the decision.

Second:

- A. Confirm settlement of the dispute with regard to zakat assessment of profits of ... Company, amounting to SAR (12,016,875) for 2012 AD twice, based on the merits stated in the decision.



- B. Dismiss deduction of deferred expenses from the zakat base for ... Company for 2012 and 2013 AD, based on the merits stated in the decision.
- C. Reject calculation of Zakat on the adjusted profit, rather than on Zakat base for 2012, for the merits stated in the decision.
3. Dismiss Zakat Payer's objection regarding deduction of the provision for the deficit in equity item, based on the merits stated in the decision.
4. Accept Zakat Payer's objection regarding non-acceptance of the company's share in the losses of the investee subsidiary companies, based on the merits stated in the decision.
5. Dismiss Zakat Payer's objection regarding the adjusted carried-forward losses item, based on the merits stated in the decision.

Since this decision was not accepted by the Plaintiff/ (... Company), it submitted a statement of appeal, summarized as follows:

1. The company's appeal is primarily based on its objection to the calculation of zakat on its foreign investments in ... Ltd. Company for 2012 and 2013 AD. 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, as mentioned in paragraphs (b) and (d) of (First) in Clause (2) of the appealed decision issued by the Committee. 2. The Company is appealing the calculation of the adjusted carried-forward losses for 2011, 2012, and 2013 due to a contradiction. While the decision does not explicitly exclude these losses from the calculation, the various clauses within the decision's reasoning and findings indicate that ZATCA has agreed with Zakat Payer's objection and the Committee has acknowledged this. However, this agreement is not reflected in the operative part of the appealed decision. 3. The Company is appealing the imposition of Zakat on the profits of Company ... At (SAR 12,016,875), which has been carried out twice: once by ZATCA assessing Zakat Payer Company, and again by ZATCA assessing Company ... for 2012. 4. Reject the deduction of a provision for the deficiency 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 the rejection of this deduction. 5. The Company's share of losses incurred by its subsidiary companies in 2011, 2012, and 2013 was not recognized as an ordinary expense, despite the fact that the reasons and merits for this decision, as stated in the clauses related to these losses, support their inclusion and recognition when calculating Zakat base for the purpose of deducting them when calculating Zakat owed by Zakat Payer Company.

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

Having reviewed the case documents and the statement of appeal submitted by the Appellant Company, the Department found that the formal requirements for accepting the appeal are met as stipulated in the relevant laws, regulations and decisions. Accordingly, this appeal is accepted 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, the Department finds the following:

First: Regarding the calculation of Zakat on foreign companies in which the Company has invested for 2012 and 2013, the Company's appeal is primarily based on its objection to the calculation of Zakat on foreign investments in Ltd. Company... for 2012 and 2013. The Company's appeal essentially requests that Zakat not be calculated on these foreign investments for 2012 and 2013, arguing that the purpose of these investments was to generate income, and therefore Zakat is not due on them in its argument, citing a number of fatwas and decisions to support its position, and considering them as fixed assets, and also due to the absence of an intention to trade with them, and that they were acquired for their income. However, after considering the reasons presented by Zakat Payer, which it believes justify not considering these investments as assets subject to Zakat, and considering that Zakat Payer's claim regarding these investments, denying the obligation of Zakat on them 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 the equity of these invested companies based on the financial statements of those invested companies, which ZATCA has done in accordance with the primary decision. Therefore, Zakat Payer's request not to subject these investments to Zakat obligation based on its financial statements is unfounded, and consequently, Zakat Payer's appeal against the imposition of Zakat on these investments is rejected from the outset, as previously stated.

The dispute regarding this particular item arose due to Zakat Payer Company's objection, contending that the correct treatment for calculating zakat on these investments should involve the deduction of deferred expenses for both 2012 and 2013 AD, as well as calculation of based on the net base rather than on the adjusted net profit, taking into account accumulated losses, and that the zakat base should be determined without considering the impact of purchasing acquisition assets from the profits of 2012 AD. The Zakat Payer insists on calculating zakat on the zakat base rather than on the adjusted profit. The Department, concerning deferred expenses, noted that Zakat Payer mentioned in its appeal that this item appeared in the financial statements under two names: prepaid expenses and long-term prepayments, both of which fall under the same treatment as deferred expenses. ZATCA and the subsequent committee failed to provide a legal basis for excluding these deferred expenses from the zakat base, especially since Zakat Payer pointed out in its appeal that these expenses are clearly evident in the audited financial statements of ... Company for distribution. Additionally, the Primary Committee did not request any further documentation from the Company to clarify any ambiguities and explain the nature of these expenses. ZATCA's rejection of these expenses was based on the absence of the term "deferred expenses" in the financial statements, failing to consider the existence of synonymous terms that are treated in the same accounting manner, namely prepaid expenses and long-term prepayments. It became clear to the Department the dispute centered on the principle of the existence of these expenses, not their amount. Since the Committee confirmed the presence of these expenses in the financial statements, necessitating the acceptance of Zakat Payer's claim to deduct these expenses in accordance with its zakat declaration.

Regarding Zakat Payer's request to calculate Zakat on Zakat base rather than on the adjusted profit of Company ... in 2012, Zakat Payer stated in its appeal that it is entitled to reduce the adjusted profit for 2012 by the adjusted accumulated losses, citing a Fatwa and a circular from ZATCA in this regard. It also pointed out in its appeal that the Primary Committee did not mention in its decision the Company's request to reduce the adjusted profit by the adjusted accumulated losses. It further added that the Company's use of profits to purchase fixed assets during the year necessitates the calculation of Zakat on Zakat base rather than on the adjusted profit, citing a Fatwa and a number of appellate decisions. Given that the established principle for calculating Zakat base and determining the amount due based on it requires the existence of the money subject to Zakat with Zakat Payer at the end of the year, and given that the calculation of the net Zakat



base requires taking into account accumulated losses and excluding fixed assets, regardless of how they were financed, to arrive at Zakat assessment without being affected by whether the net amount is less than the adjusted profit; therefore, the Department has concluded in this matter to uphold Zakat Payer's argument of calculating Zakat based on the net taxable base without considering the amount of the adjusted profit, which does not necessarily reflect the existence of the money subject to Zakat that Zakat Payer is obligated to pay. This does not affect ZATCA's objection in support of its argument of subjecting the net profits of the Company to Zakat, as these profits are with the Company at the end of the financial year and have not been spent. Given that such a conclusion, as stated by ZATCA, does not mean that the cash remains with the Company when it classifies it as its profits as long as it has been proven that the Company has invested it in fixed assets, and does not change the fact that it does not exist as a financial result of the Company recorded as a profit in its financial statements. This does not affect ZATCA's objection in support of its argument of subjecting the net profits of the company to zakat, as these profits are with the company at the end of the fiscal year and have not been spent. Given that such a conclusion, as stated by ZATCA, does not mean that the cash remains with the company when it classifies it as its profits as long as it has been proven that the company has invested it in acquisition assets, and does not change the fact that it does not exist as a financial result of the company recorded as a profit in its financial statements.

Second: Regarding Zakat Payer's objection to the item in the primary decision titled (approval of adjusted deferred losses), Zakat Payer's objection was based on the inconsistency in the primary decision's conclusion regarding this item, despite the decision's upholding in the fourth paragraph of its operative part and acceptance of Zakat Payer's objection to deducting the company's share of losses of subsidiary companies as stated in the conclusion of that item and the Committee's upholding of Zakat Payer in this regard. The Department has concluded on this objection to accept the appeal of Zakat Payer Company regarding the approval of deducting the adjusted deferred losses to confirm the committee that issued 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 disputed item. The Committee accepted the deduction of these amounts by determining their amount as shown in the details and reasons for its discussion of the item of approving the company's share of losses of subsidiary companies as it was in the statement of reasons for its decision when discussing that item. Regarding the deduction of the provision for the deficiency in equity from the adjusted losses of 2011 AD, the Committee that issued the decision, during its discussion of this item and the reasons for reaching its conclusion, concluded that ZATCA would reduce the amount of the company's share in the losses of subsidiary companies in zakat assessment and the amount returned to profit by the same amount of the provision, which means that the effect of the error in recording the value of the provision is eliminated, and although the Committee concluded in this regard to reject 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 to deduct the amount of SAR (5,031,813), and acknowledged that the dispute between it and Zakat Payer had ended, and therefore it was necessary for this conclusion to be reflected in the adjustment of the total amount of adjusted losses in the manner in which the dispute with ZATCA was resolved, as well as the Committee's ruling, upholding Zakat Payer's argument in this regard, which came within the statement of facts and reasons in order to achieve the removal of the contradiction with what was decided in its operative part in this regard, and to achieve the committee's conviction and justification for what it came to within its decision. It is judicially established that if the conclusion of the operative part of the decision 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 the operative part of the judgment alone but rather is what achieves the adjudication of the case



wherever it may be, whether it is stated in the reasons or the operative part, because the judgment constitutes a single, indivisible unit, based on the aforementioned and since the reasons of the decision included ZATCA's agreement to resolve what was the subject of the 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 issuing the decision confirming that conclusion regarding that item, requiring deduction of those losses included in the discussion of item (deduction of the provision for the deficiency in equity from the adjusted losses of 2011AD), by an amount of SAR (5,031,813), the Department has concluded to accept Zakat Payer's appeal in approving the adjusted deferred losses, taking into account the impact of ZATCA's approval of what was included in the discussion of item (3) in the facts and reasons of the primary decision, and what also entails the upholding of the primary decision in favor of Zakat Payer in item (4) included in the operative part of the primary decision.

Decision

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

Second: On Merits:

A. Regarding Zakat Payer's appeal on item (calculation of Zakat on foreign companies):

1. Reject Zakat Payer's appeal regarding its request to exempt its foreign investments in ... Company for Distribution from zakat calculation as a condition for deducting these investments from zakat base for 2012 and 2013 AD, in accordance with Grounds and merits mentioned herein.
2. Accept Zakat Payer's appeal regarding its request to deduct deferred expenses from the zakat base of ... Company for 2012 and 2013, for the reasons and merits detailed in this decision.
3. Accept Zakat Payer's appeal regarding its request to calculate zakat based on the net zakat base rather than on the adjusted profit for ... Gulf Company for 2012 AD, in accordance with Grounds and merits mentioned herein.

B. Accept Zakat Payer's appeal regarding its request to calculate adjusted deferred losses for the Company for 2011, 2012, and 2013, after making the following adjustments:

1. Following the resolution of the dispute with ZATCA: Given ZATCA's support for Zakat Payer in the reasons provided for Item 2 of the primary decision, in connection with the Company's objection to imposing Zakat on the profits of company ... At (SAR 12,016,875), which has been carried out twice: once by ZATCA assessing Zakat Payer Company, and again by ZATCA assessing Company ... for 2012, for the reasons and merits detailed in this decision.
2. Following the resolution of the dispute with ZATCA: Given ZATCA's support for Zakat Payer in the reasons provided for Item 3 of the primary decision, in connection with (Deduction of the provision for deficiency in equity from the adjusted losses for 2011), for the reasons and merits detailed in this decision.
3. Following the primary decision's upholding for Zakat Payer with regard to Item 4 of the decision titled (Non-recognition of the Company's share in the losses of subsidiary companies, in which Zakat Payer has investments, as deductible expenses for 2011, 2012, and 2013 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-2021-92)
Issued in Appeal No. (ZW-
2018-1505)

Principle No. 126

Life insurance expenses are deducted from the zakat base as they are considered costs incurred to incentivize and recruit employees.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no 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 submitted on 01/03/1439 AH by/ (...) Company against decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (26) of 1438 AH, issued regarding Objection No. (9/38) concerning zakat assessment for the years 2009 to 2011 AD, filed by the Appellant against ZATCA. The primary decision included the following rulings:

First: In from:

Accept objection filed by Taxpayer/..... Company to (...), Regarding zakat assessment for the years 2009 to 2011 AD in form, for the merits stated in the decision.

Second: On Merits:

1. Zakat:

First: Confirm settlement of the dispute regarding the carry-forward losses for the years 2010 and 2011 AD upon ZATCA's approval of Zakat Payer's viewpoint, for the merits stated in the decision.

Second: Confirm settlement of the dispute regarding the net fixed assets upon ZATCA's approval of Zakat Payer's viewpoint, for the merits stated in the decision.

Third: Dismiss Zakat Payer's objection regarding the non-recognition of life insurance expenses as deductible expenses, for the merits stated in the decision.

Fourth: Dismiss Zakat Payer's objection regarding non-recognition of billed and prepaid phone expenses and the reduction of the adjusted net loss by that amount in the declaration, for the merits stated in the decision.

Fifth: Dismiss Zakat Payer's objection regarding the addition of trade payables related to financing fixed assets and accrued expenses for financing fixed assets to the zakat base, for the merits stated in the decision.

Sixth: Dismiss Zakat Payer's objection regarding the inclusion of shareholder contributions, financing through Murabaha, capital lease obligations, long-term loans, payables to related parties, and accrued partner commissions as deductible expenses in the zakat base, for the merits stated in the decision.



2. Withholding Taxes:

First: Dismiss Zakat Payer's objection regarding the amounts charged to expenses that were not included in the credit balances and from which withholding tax was not deducted, for the merits stated in the decision.

Second: Dismiss Zakat Payer's objection regarding the interest on loans that were capitalized within the advances to shareholders for the years 2010 and 2011 AD and confirm settlement of the dispute for the remaining items, for the merits stated in the decision.

Third: Dismiss Zakat Payer's objection regarding payables to related parties, while accepting part of which, and confirm settlement of the dispute for the remaining items, for the merits stated in the decision.

Fourth: Dismiss Zakat Payer's objection regarding the withholding tax on services related to construction under progress for the years 2010 and 2011 AD, for the merits stated in the decision.

Fifth: Late payment fines apply to the items for which Zakat Payer's objection was dismissed, while they do not apply to the items for which the objection was accepted, for the merits stated in the decision.

Since the aforementioned decision was not accepted by Zakat Payer (... Company), it presented a statement of appeal to the Department, summarized as follows:

Zakat Objection:

Zakat Payer, regarding its appeal against (Life Insurance Expenses for 2009 to 2011 AD), objects to the Primary Committee's decision not to recognize life insurance expenses as deductible expenses, maintains its position as outlined in the justifications of the contested decision, and asserts its right to deduct life insurance expenses for the years in question, arguing that such expenses are appropriate for the company's activities and revenue size and are necessary for its operations. Zakat Payer responds to the contested decision, which considers these expenses unrelated to the business activity, stating that these expenses are related to the company's employees and thus fall under salaries and employee benefits provided by the company to motivate performance and questions how these expenses can be deemed unrelated to the business activity when they directly concern the company's employees. Additionally, Zakat Payer addresses the reliance of the contested decision on Article 5 of the Implementing Regulations for Zakat Collection, noting that this article does not specify the prohibition of deducting life insurance expenses. Zakat Payer believes that this article supports its viewpoint, asserting that the insurance expense is an actual cost incurred by the company and is substantiated by documentation; therefore, it should be included under this provision. Zakat Payer concludes its objection to this item by requesting that the committee recognize life insurance expenses as deductible expenses and exclude the same from the zakat base for the aforementioned Grounds.

Zakat Payer, regarding its appeal against (Billed and Prepaid Phone Expenses), objects to the Primary Committee's decision not to recognize billed and prepaid phone expenses as deductible expenses, maintains its position as outlined in the justifications of the contested decision, and asserts its right to deduct the amount of SAR (359,250,237) for 2010 AD and SAR (259,201,338) for 2011 AD, considering these expenses ordinary and necessary. Additionally, Zakat Payer notes that these expenses are supported by documentation and responds to the Primary Committee's appealed decision indicating that the portion not approved by the Committee and ZATCA pertains to international roaming expenses. Zakat Payer explains it is a member of a clearinghouse for telecommunications operators, through which international roaming expenses are settled between all telecommunications operators worldwide. This process occurs when telecommunications operators in different countries provide international roaming services to the company's customers while they are outside the Kingdom. Zakat Payer



emphasizes in its appeal if ZATCA decides not to recognize part of this expense, it should also exclude the corresponding revenues and concludes its objection to this item by requesting that the Department recognize the expenses related to this item as deductible expenses for the years in question.

Zakat Payer, regarding its appeal against (Carry-Forward Losses for 2010 and 2011 AD), following ZATCA's approval of Zakat Payer's position concerning the carry-forward losses for 2010 and 2011 AD and the resolution of the dispute on this matter, as determined by the Primary Committee in its decision under review, provides clarification on how these approved carry-forward losses should be calculated from its viewpoint. After considering the appeal regarding (Life Insurance Expenses) and (Billed and Prepaid Phone Expenses), Zakat Payer stated that the adjusted carry-forward loss as of 01/01/2010 AD, should amount to SAR (7,807,220,696), the adjusted carry-forward loss as of 01/01/2011 AD, should amount to SAR (11,382,312,990), and the adjusted carry-forward loss as of 01/01/2012 AD, should amount to SAR (14,139,109.82). Furthermore, Zakat Payer also stated that it reserves its right not to reduce the carry-forward loss due to depreciation differences based on the justifications provided in the primary decision and maintains its position on calculating the aforementioned carry-forward losses.

Zakat Payer, regarding its appeal against (Trade Payables for Financing Fixed Assets and Accrued Expenses for Financing Fixed Assets), objects to the Primary Committee's decision dismissing its objection regarding the non-addition of trade payables financed for fixed assets to the zakat base and maintains its position as outlined in the objection memorandum submitted to the Primary Committee. In conclusion, Zakat Payer requests, at the conclusion of its objection to this item, not include the balances of this item in the zakat base.

Zakat Payer, regarding its appeal against (Payments from Shareholders, Murabaha Financing, Capital Lease Obligations, Long-Term Loans, Notes Payable, Payables to Related Parties, and Partner's Commission Due Within Accrued Expenses), objects to the Primary Committee's decision dismissing its objection to deduct this item from the zakat base, maintains the arguments presented in its memorandum of objection before the Primary Committee, and asserts that ZATCA's reliance on the company's declaration is not considered a valid presumption, as the company has the right to amend its zakat declaration in accordance with Shariah guidelines concerning zakat matters. Therefore, Zakat Payer objects to the inclusion of the total amounts listed under this item to the zakat base under ZATCA's zakat assessment, even if a full year passed, since they were not used to finance fixed assets but rather to fund the company's working capital (company's ongoing operations), which is not subject to zakat according to fatwas, which confirmed that zakat is due on the lender and not the borrower as long as the borrower is solvent and not delaying payment. Zakat Payer concluded its objection to this item by requesting the Department not to add this item to the zakat base.

Withholding Tax:

Zakat Payer, regarding its appeal against (Amounts paid to residents of GCC countries that are not subject to withholding tax), initially objects, prior to appealing the items related to withholding tax in the decision under review, by stating that ... Company is not subject to withholding tax on amounts paid to residents of GCC countries, as they are treated the same as residents of the Kingdom of Saudi Arabia, based on the Economic Agreement between the GCC countries, which stipulates that "Natural and legal citizens of GCC countries shall be treated in any Member State in the same manner as its own nationals without any discrimination or distinction in all economic fields, especially: .. Tax Treatment.". Furthermore, Article (3) of the Saudi Tax Law stipulates that "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”. Furthermore, numerous decisions reinforced the equal treatment between GCC citizens and Saudi citizens, among which, Zakat Payer cites Royal Decree No. (5/506/4) dated 19/3/1405 AH, addressed to the Minister of Finance and National Economy by the Prime Minister regarding “Approval of the tax settlement of GCC citizens in the Kingdom on par with 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 GCC countries, ensuring that GCC citizens are not subject to withholding tax, as they are considered residents of the Kingdom.

Zakat Payer, regarding its appeal against (ZATCA’s lack of entitlement to make assessments and claims related to withholding tax for 2009 AD due to the five-year statute of limitations), despite being convinced that no withholding tax is due based on the provisions of the GCC Economic Agreement, presented its objection as a precautionary measure against ZATCA’s tax assessment for 2009 AD, despite the expiration of the deadline for such assessments according to Article (65) of the Tax Law. Zakat Payer affirms that this procedure is not permissible and invokes the statute of limitations regarding ZATCA’s assessment procedure.

Zakat Payer, regarding its appeal against (Amounts charged to expenses that were not included under credit balances and no relevant withholding tax was deducted for 2009 to 2011 AD), objects to the Primary Department’s decision to dismiss its objection to the imposition of tax on the amounts included in this item and emphasizes that withholding tax is not applicable to amounts charged to expenses and not included under credit balances from 2009 to 2011 AD. Zakat Payer relied in its objection on the fact that the nature of interconnection services relates to services not derived from a source within the Kingdom. These services involve the rental of international external networks to provide international phone services to local customers, which is precisely the case with the interconnection services provided to customers of ... Company in the Kingdom, where the company rents external operators' networks to allow its local customers to make phone calls to individuals residing outside the Kingdom by renting the networks of external operators. Zakat Payer argues that, according to Article 63 of the Implementing Regulations, these services are subject to withholding tax only if the income is derived from a source of income within the Kingdom. Since these services relate to the rental of external operators' networks, who are non-residents in the Kingdom, there is no income source realized within the Kingdom because the services are performed entirely outside the Kingdom. Additionally, Zakat Payer believes that these expenses should not be subject to tax based on the double taxation avoidance agreements applicable to certain beneficiaries residing in countries that have such agreements with the Kingdom. Zakat Payer concluded its appeal on this item by requesting the Department not to subject these amounts to withholding tax, as there is no source of income within the Kingdom, and because of the relevant tax agreements in force.

Zakat Payer, regarding its appeal against (Returns on loans capitalized within the advance payments to shareholders in 2010 and 2011 AD), objects to the Primary Committee’s decision to dismiss its objection to the imposition of withholding tax on returns on loans that were capitalized within the advance payments to shareholders for 2010 and 2011 AD. Zakat Payer limits its objection on this item to returns on loans from ... Bank and returns on loans from the company's owners. Moreover, Zakat Payer, regarding returns on loans from ... Bank, asserts its right to exempt these returns based on the Double Taxation Avoidance Agreement between the Kingdom and the Republic of France. Specifically, Article 7 of the agreement stipulates that “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 emphasizes that, based on the cited provision, the returns on loans earned from the source country (the Kingdom) is not subject to tax in the source country (the Kingdom), but rather is taxable only in the country of residence (France) and also notes in its objection that ZATCA issued multiple rulings confirming that returns on loans paid to a resident of the Republic of France is not subject to tax. For example, one such ruling is Letter No. (4785/9) dated 5/9/1428 AH, which confirms that the agreement included withholding taxes, contrary to the claim of the Primary Committee. Regarding the returns on loans from the company's owners, Zakat Payer asserts that for the returns on loans related to ... Plant, totaling SAR (124,314,717), the dispute with ZATCA was resolved, as ZATCA agreed with Zakat Payer's position on this matter. As for the returns on loans related to ... Kuwait, Zakat Payer points out that ZATCA erred in classifying the amounts presented in its view to the Primary Committee, amounting to SAR (376,801), as loan returns. These amounts actually represent payables to related parties, which will be addressed later in Zakat Payer's appeal. Meanwhile, the amount included in ZATCA's assessment, which the company is appealing as loan returns to ... Company, is SAR (312,570,565). Zakat Payer asserts that the Primary Committee neither corrected ZATCA's error nor commented on it and further emphasizes that these amounts were recorded in the accounts as liabilities to the company, and the company has neither paid nor settled them against any other accounts. Zakat Payer concluded its objection by requesting the Department to exclude these amounts from the revised assessment.

Zakat Payer, regarding its appeal against (Payables to related parties), objects to the Primary Committee's decision to dismiss its objection to all items related to related parties and focuses its objection on the related parties as outlined in its initial statement of appeal, specifically (... Company -Bahrain) with a total amount of SAR (80,676,658) and an estimated tax of SAR (12,101,499). These amounts consist of reconciliation entries for unrealized revaluation gains resulting from foreign exchange rate changes, amounting to SAR (7,607,798), a reversal of an expense of SAR (18,466,803), and a reclassification from ... -Bahrain of SAR (54,602,057), totaling SAR (80,676,658). Zakat Payer points out that the statement made by ZATCA and the Committee that delivered the decision that reclassification is considered equivalent to an actual payment—is incorrect. Zakat Payer emphasizes that the reclassification does not represent an actual payment or any form of settlement through offsetting, as the credit balances and accrued expenses to non-resident entities remain visible in the financial statements, which demonstrates that no actual payment had occurred. Additionally, Zakat Payer argues that ZATCA's action in this matter would result in double taxation when these amounts are actually paid in the future. Regarding the reversal of the expense, Zakat Payer clarifies that it was a reversal of an entry and not a reclassification. Since the expense entry was reversed, it should not be subject to withholding tax, as it essentially no longer exists. Zakat Payer also notes that the reconciliation entries for unrealized profits are related to unrealized gains. Therefore, Zakat Payer questions how unrealized profits, for which no actual payment occurred, can be subject to withholding tax. For these reasons, Zakat Payer asserts that withholding taxes should not apply to the above-mentioned items and notes that, in any case, the company reserves the right to apply a 5% withholding tax rate instead of 15%, as there is no related party relationship or control. Zakat Payer also referred in its appeal to another related party, namely (... Company -Bahrain for 2010 AD), with an amount of SAR (491,853,646) and an estimated tax of SAR (73,778,047). Zakat Payer confirms, as per its statement of appeal, that ZATCA subjected the loan amount of SAR (491,853,646) to tax



twice, once in 2009 and again in 2010. However, the Primary Committee supported the company's objection regarding the unlawfulness of ZATCA's procedure for 2009 AD, as well as for 2010 AD concerning the same loan, with the exception of three amounts, including (Payments for services provided by various non-resident entities and paid by ... Group on behalf of the company, totaling SAR 22,772,323, outstanding amounts for services rendered by ... Group, which have not been paid to date, amounting to SAR (23,744,210), and Various debit notes issued by ... Group, amounting to SAR (93,840,842). Zakat Payer further elaborates on these three amounts sequentially, where such amounts, regarding payments for services provided by non-resident entities, represent amounts paid by ... Group on behalf of the company for services received from non-local entities. Zakat Payer notes that a significant portion of this amount had already been subjected to withholding tax by the company. Zakat Payer, regarding outstanding amounts for services rendered by ... Group, clarifies that this amount represents services owed by ... Group to the company, which have not been paid to date. Zakat Payer further explains that this amount was reclassified from the mentioned loan account to ... Group's account, and this reclassification does not have any tax implications. Zakat Payer asserts that this amount is still due to ... Group and remains unpaid. Regarding the various debit notes issued by ... Group, Zakat Payer asserts that this item represents debit notes issued by ... Group to the company for amounts that were paid by the former on behalf of the latter. Zakat Payer also pointed out in its appeal to a third party involved in this disputed item, which is (... Company -Kuwait) for an amount of SAR (376,800) and its tax of SAR (56,520). Zakat Payer confirms that ZATCA agreed to a portion of the amount, and requests confirmation that the remaining amount of SAR (188,400) should not be subject to withholding tax, as this amount represents a reclassification rather than an actual payment. Zakat Payer asserts that, in any case, it reserves the right to apply a 5% withholding tax rate instead of 15%, due to the absence of any related party relationship or control. Furthermore, Zakat Payer lists the remaining related parties in its appeal and requests that the amounts related to these parties not be subject to withholding tax, including ... Group for SAR (318,185) in 2010 AD, (... Group) for SAR (19,659,247) in 2010 AD, ... Group -Sudan for SAR (11,814,443) in 2010 AD, ... Group for SAR (88,696,985) and its tax of SAR (13,304,548) in 2011 AD, and (... Company -Sudan) for SAR (3,562,500) and its tax of SAR (534,375) in 2011 AD, arguing that the transactions with these parties involved account reclassifications and do not represent actual payments. Therefore, these amounts should not be subject to withholding tax.

Zakat Payer, regarding its appeal against (Withholding tax on services listed under "Construction in Progress" amounting to SAR (1,518,379) for 2010 and 2011 AD, objects to the Primary Committee's decision to dismiss its objection regarding the imposition of withholding tax on the services listed under "Construction in Progress" for the years in question. Concerning the advance payments to (... -Switzerland), Zakat Payer affirms that it had indeed made some payments during 2008 to 2011 AD to ... Company in Switzerland. According to Zakat Payer, these payments were made in return for installation services, while others were for the purchase of goods (supplies). Zakat Payer stated that it did not withhold taxes on the amounts paid for the purchase of goods, as such purchases are not subject to withholding tax under Article (68) of the Income Tax Law and Article (5) of its Implementing Regulations. Paragraph (H), Article (68) of the Income Tax Law 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". Paragraph (7), Article (5) of the Implementing Regulations of the same Law stipulates "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 stated in its statement of appeal, subjected the payments made for installation services to withholding tax in accordance with the legally stipulated rates and pointed out that it attached the monthly withholding forms along with the related payment receipts, which prove it withheld taxes on those payments. Based on this, Zakat Payer believes that no additional withholding taxes are due. Regarding the advance payments made to (...) Company in Bahrain, which Zakat Payer asserts should be correctly named as (...), Zakat Payer confirms that these payments were indeed made in 2008 AD in exchange for consultancy services. Consequently, Zakat Payer subjected these payments to withholding tax in accordance with the legally stipulated rates and further pointed out that it attached the monthly withholding forms along with the related payment receipts, which prove it withheld taxes on those payments. Based on this, Zakat Payer believes that no additional withholding taxes are due. Regarding the advance payments made to (...) Company in China, Zakat Payer confirms that payments were made during 2010 and 2011 AD to ... Company in China, where some of which were made for technical services (installations), while others were for the purchase of goods (supplies). Zakat Payer states that no withholding tax was applied to the amounts paid for the purchase of goods, as the purchase of goods is not subject to withholding tax based on Article (68) of the Income Tax Law and Article (5) of its Implementing Regulations. Moreover, Zakat Payer further mentions that it subjected the payments made for installation services to withholding tax at the legally stipulated rates. As stated in its statement of appeal, Zakat Payer subjected the payments made for installation services to withholding tax in accordance with the legally stipulated rates.

Zakat Payer, regarding its appeal against (Late Payment Fine), objects to the Primary Committee's decision to dismiss its objection to all fines mentioned in its objection and asserts that ZATCA imposed a late payment fine of 1% for every 30 days of delay, which it deems inappropriate, because the amounts subject to these fines are still under appeal. Zakat Payer also objects to ZATCA's action of not accounting for the differences in withholding tax mentioned in the contested items until many years later, after the legally prescribed period of five years for amending the assessment for 2009 AD had expired. Zakat Payer argues that these fines on the tax differences are invalid because they arose from a clear and genuine difference in opinion between ZATCA and Zakat Payer. It notes that Appeal Committees ruled in several cases that no late payment fine should be imposed when there is a real and substantive difference. Additionally, Zakat Payer believes that the late payment fine should only be calculated from the date when the tax liability becomes final, which can only occur after Zakat Payer accepts the assessment or after the appeal procedures are completed. Therefore, the late payment fine should be imposed from the date when the obligation becomes final, in accordance with the relevant laws and regulations.

ZATCA was addressed on 23/11/1441 AH, corresponding to 13/07/2020 AD, requesting its response to the appeal filed in the case and it responded with a Reply dated 3/12/1441 AH, corresponding to 23/07/2020 AD, which broadly addressed the contents of the Appellant's memorandum. ZATCA confirmed that the points raised by the Appellant Company in its appeal were no different from those it had previously raised before the Committee for Determination and that ZATCA had responded to at that time. ZATCA reiterated its position as stated in the memorandum submitted to the Committee for Determination on the contested items and concluded in its response by requesting the Department to dismiss Plaintiff's appeal and uphold the primary decision delivered in this regard.



On 25/3/1442 AH, corresponding to 10/11/2020 AD, the Department requested Zakat Payer 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 Zakat Payer submitting any additional information.

In its session held on 13/07/1442 AH, corresponding to 25/02/2021 AD, the Department decided to hold an electronic hearing for a period of ten days, where Zakat Payer submitted a memorandum that did not introduce new information beyond what had already been presented. The Department reiterated its appeal regarding the interconnection charges and included a copy of the Communications, Space and Technology Commission's (CITC) view on withholding a (5%) tax on amounts paid by local telecom companies to foreign telecom companies in exchange for using their networks to transmit international phone traffic. Zakat Payer also attached a copy of an agreement with ... Company for Telecommunications concerning interconnection. No additional information was submitted by ZATCA beyond what had already been provided. In 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 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 Appellant Company, the Department found that the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

Regarding Zakat Payer's appeal concerning (Life Insurance Expenses for 2009 to 2011 AD), after careful consideration of the appeal, the Department noted that the appeal regarding this item is focused on Zakat Payer's request to deduct life insurance expenses for the years in question. Zakat Payer believes that this expense is related to the company's operations as it pertains to the company's employees, being one of the employment benefits provided by the company to motivate better performance. However, ZATCA views life insurance expenses as personal expenses, not essential to business operations, and therefore should not be deductible. After reviewing the foregoing, and considering that life insurance expenses are costs incurred to motivate and attract employees, and since it has been established that Zakat Payer spent the funds in question, and given the principle that zakat is not obligatory on funds that left Zakat Payer's obligation, life insurance expenses for the disputed years are deductible. 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. Furthermore, the primary decision's reliance on Article (5) of the Implementing Regulations for Zakat Collection 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.

It is noted, regarding Zakat Payer's appeal against (Postpaid and Prepaid Phone Expenses), that the appeal is focused on Zakat Payer's request to deduct the postpaid and prepaid phone expenses from the zakat and tax base for 2010 and 2011 AD. Zakat Payer argues that these are expenses are activity-related costs, whereas ZATCA contends that the expense was rejected due to the lack of supporting documentation. Having carefully considered the foregoing, and based on the established regulations regarding the deduction of expenses from the zakat base, it is required that



the expense be an actual cost supported by documentary evidence or verifiable indicators. The disagreement between ZATCA and Zakat Payer regarding the acceptance of these expenses is a documentation-related dispute, which necessitates Zakat Payer provide all supporting documents for its claims. Upon examining the documents attached to Zakat Payer's statement of appeal, no supporting documents for these expenses were found. Additionally, the financial statements for the fiscal year 2010 AD did not include any details or notes regarding this item. In view of the foregoing, the Department decided by majority to dismiss Zakat Payer's appeal regarding this item and uphold the primary decision delivered in this regard.

Zakat Payer's appeal, regarding (Carried Forward Losses for 2010 and 2011 AD), lies in its request to approve the correct calculation of the carried forward losses for the years in question. Having carefully considered the foregoing, and given that this item is linked to the previously contested items (Life Insurance Expenses/ Postpaid and Prepaid Phone Expenses), for which the Appellant requested to adjust the carried forward losses as outlined in its statement of appeal. Since the Department ruled on these two items related to Zakat Payer's calculation of carried forward losses—rejecting the appeal concerning postpaid and prepaid phone expenses while accepting it regarding life insurance expenses—the Department therefore decided by majority to accept Zakat Payer's appeal by adopting the adjusted number of carried-forward losses as determined by the Department regarding the life insurance expenses item.

Zakat Payer's appeal, regarding (Trade Payables for Financing Fixed Assets and Accrued Expenses for Financing Fixed Assets), lies in Zakat Payer's request to exclude trade payables for financing fixed assets and accrued expenses for financing fixed assets. While ZATCA, on the other hand, the balances were added because it financed fixed assets that were deducted from the base. It was found, upon reviewing Zakat Payer's financial statements, that the disputed items are classified as current liabilities. Given that current liabilities are generally associated with the financing of current assets unless proven otherwise, and since ZATCA failed to provide any substantial evidence linking these liabilities to fixed assets, the default position is to accept Zakat Payer's declaration and the financial statements' classification of these liabilities as trade debts rather than loans for fixed asset financing. Consequently, the Department concluded by majority to accept Zakat Payer's appeal and uphold the primary decision delivered in this regard.

Zakat Payer's appeal, regarding (Payments from Shareholders, Murabaha Financing, Capital Lease Obligations, Long-Term Loans, Notes Payable, Payables to Related Parties, and Partner's Commission Due), lies in Zakat Payer's request to deduct the mentioned items from the zakat base, as they were not used to finance fixed assets but rather to finance the company's working capital; therefore, they should not be subject to zakat, even if a full year passed. However, ZATCA, in view of these items completed a full year, maintains that they were added to the zakat base, based on Fatwa No. (22665) of 1424 AH. After reviewing the above, it is established under Zakat Payer's declaration in its statement of appeal that these amounts were used to finance the company's working capital and that a full year passed over the same, which necessitates zakat thereon, in accordance with the established principle that both the creditor and the debtor are obligated to pay zakat on a debt. Since Zakat Payer's objection to ZATCA's procedure was not related to the completion of the full year but rather to the fact it financed working capital, it is therefore established that zakat is due to the completion of a full year. Since the Department did not observe any requirement for correction or further comment based on 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 primary decision in respect of this item.

Zakat Payer's appeal, regarding (Amounts paid to residents of GCC countries that are not subject to withholding tax), lies in Zakat Payer's request to exempt these payments from withholding tax based on the provisions of the Economic Agreement among GCC countries. After reviewing the above and examining the Income Tax Law in the Kingdom, it is evident that the determination of tax liability is based on the concept of residency, not nationality, according to Article (68) of the



Income Tax Law. Consequently, the law does not differentiate between Saudi citizens and GCC nationals based on nationality when applying the provisions of the Income Tax Law. Therefore, the department concluded to dismiss Zakat Payer's argument regarding the non-application of withholding tax on GCC nationals residing in their home countries.

Taxpayer's appeal, regarding (Non-entitlement of ZATCA to conduct tax assessments and withholding tax claims for 2009 AD due to the five-year statute of limitations) lies in Taxpayer's request to cancel ZATCA's tax assessment for 2009 AD, after the deadline stipulated in Article (65) of the Income Tax Law. Upon careful consideration of the foregoing, it is evident from the provisions of the law and the nature of the imposition and collection of withholding tax that the five-year statute of limitations for hearing claims applies to taxes calculated on income, not to those withheld on amounts paid to non-residents in the Kingdom. Article (65) of the Income Tax Law states that the period begins at the end of the statutory deadline for submitting the tax declaration for the tax year, which indicates that it relates to income tax and does not pertain to withholding tax, for which Taxpayer is not required to submit a tax declaration. Therefore, the Department concluded to dismiss Taxpayer's argument regarding non-entitlement of ZATCA to impose withholding tax after five years from the date of the tax withholding on paid amounts, based on legal provisions.

Taxpayer's appeal, regarding (Amounts charged to expenses that were not included in the credit balances and were not subject to withholding tax from 2009 to 2011 AD), lies in Taxpayer's request not to impose withholding tax on amounts charged to expenses and not included in the credit balances from 2009 to 2011 AD. Taxpayer asserts that these amounts were in exchange for services fully rendered outside the Kingdom. Referring to Article (2), Item (2), Paragraph (A) of the Implementing Regulations of the Income Tax Law, which includes the provision of international telephone communication services from the Kingdom, and after careful consideration by the Department of the dispute, it is clear that determining whether amounts paid to non-resident entities are subject to withholding tax requires an understanding of the nature of work and services provided, including identifying the occurrence of income generated in the Kingdom and the applicable withholding tax rate to be imposed according to the regulations. Therefore, it is necessary to refer to the relevant facts regarding the provided service. Taxpayer's argument was limited to claiming that the amounts were not subject to withholding tax, as services were rendered outside the Kingdom. However, based on a review of the law and its implementing regulations, the general rule is that amounts paid to non-residents are subject to withholding tax if the income is sourced from the Kingdom. It is evident, according to the relevant legal provisions of the Income Tax Law regarding withholding tax, that the nature of the service provided by the non-resident company is subject to a 5% withholding tax, because the service is aimed at enabling the clients of (...) Company to make international calls through networks located outside the Kingdom. As the law emphasizes the source of income, and since the department found that the income was derived from a source within the Kingdom, a 5% withholding tax is imposed on Taxpayer. Therefore, the Department, by majority, decided to dismiss Taxpayer's appeal and uphold the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Returns on loans capitalized as contributions to shareholders in 2010 and 2011AD), lies in Taxpayer's request to exclude the capitalized returns on loans included in contributions made to shareholders for 2010 and 2011 AD from being subject to withholding tax. Having carefully considered the foregoing, and given that Taxpayer relies on the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and the Government of France concerning returns of loans from ... Bank and upon examining Taxpayer's objection based on the assertion that it was not the one who repaid the amount owed to ... Bank; instead, the payment was made by ... Kuwait, making Taxpayer indebted for the loan and its returns to ... Company in Kuwait. ZATCA, in its view as stated in the primary decision, acknowledged that Taxpayer had not repaid this loan, yet it imposed withholding tax on returns, assuming that Taxpayer had made the payment. According to the Income Tax Law and its Implementing Regulations stipulate that



withholding tax is imposed upon the occurrence of a payment, which did not materialize in the matter under dispute and the primary decision's reliance on the Double Taxation Avoidance Agreement between KSA and France is not supported by the fact that no payment of the disputed amount was proven before the Department, the Department decided to accept Taxpayer's appeal and overturn the primary decision delivered in this regard. Regarding returns on loans related to (...) Kuwait, the primary decision based its ruling to impose withholding tax on the Grounds that both parties were related and that the recording of the transaction and the accrual of the interest constituted a form of payment. However, the Income Tax Law and its Implementing Regulations stipulate that withholding tax is imposed upon the actual occurrence of a payment, which did not happen in this case. Therefore, the Department decided to accept Taxpayer's appeal and overturn the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Payables to related parties), lies in Taxpayer's request to exempt the amounts owed to related parties from withholding tax, for the reasons outlined in the facts of the primary decision. Meanwhile, ZATCA maintains the validity of its actions regarding this item, based on the reasoning included in the primary decision, which it reiterated in its response to Taxpayer's appeal before the Department. Upon careful consideration of the foregoing, and with respect to the amount due to the related party (... Company -Bahrain for 2010 AD) totaling SAR (80,676,658), it is evident that Taxpayer is requesting, under the item of reclassification between the related party and the account of ... -Sudan, that no withholding tax be imposed on the amount of SAR (54,602,057). Taxpayer argues that this does not represent an actual payment but rather a reclassification of the expense's nature, without any set-off or elimination of amounts due to non-resident entities. Regarding the amounts owed to the same related party (...Company -Bahrain), it is also noted that Taxpayer requests that the reversal of the expense, amounting to SAR (18,466,803), not be subject to withholding tax, as this represents a reversal of an entry rather than a reclassification, effectively nullifying the transaction. Additionally, Taxpayer is contesting the imposition of withholding tax on a settlement entry for unrealized revaluation gains arising from exchange rate fluctuations, totaling SAR (7,607,798), both of which are related to the same related party (... Company -Bahrain). Since it is established by the Department that reclassification or entries in the accounting records do not constitute actual payment, the amount owed by ... Company -Sudan is not subject to withholding tax, as the event of payment, as the statutory requirement of an actual payment for the imposition of withholding tax has not been met. Regarding the reversal of the expense and the amounts related to unrealized revaluation gains, the primary decision, while presenting Taxpayer's viewpoint, noted that Taxpayer provided supporting documentation, specifically in Statement No. (8) attached to the objection. The Committee did not dispute the submission of this statement by Taxpayer nor did it clarify the nature of the documents that should have been provided. Given that Taxpayer presented documents supporting its position, the Department concluded to accept Taxpayer's appeal regarding the request to exempt the amounts owed to the related party (... Company -Bahrain), totaling SAR (80,676,658) from withholding tax.

Regarding the amounts owed to the related party (... -Bahrain for 2010 AD), totaling SAR (491,853,646), it has been determined that Taxpayer is requesting that the amounts owed to (... Company -Bahrain for 2010 AD) be exempt from withholding tax for three specific amounts, including: (Payments for services provided by various non-resident entities and paid by ... Group on behalf of the company, totaling SAR 22,772,323, outstanding amounts for services rendered by ... Group, which have not been paid to date, amounting to SAR (23,744,210), and Various debit notes issued by ... Group, amounting to SAR (93,840,842). Having carefully reviewed the primary decision, it is noted that the primary decision supported Taxpayer's argument regarding the repeated imposition of withholding tax on several components of the disputed amount. It found that these components do not, in themselves, qualify for withholding tax as they represent cash support from ... Group and are not in exchange for services provided to Taxpayer. The primary decision limited the amounts subject to withholding tax to services provided by non-resident



entities and services rendered by ... Group, along with debit notes issued by ... Group and based its conclusion on imposing withholding tax on these amounts after ZATCA verified their amounts, concluding that the settlement to a loan constitutes a form of payment since both parties are related. However, the Department established that reclassification or entries in the accounting records do not constitute actual payment. Therefore, the amounts identified by the Primary Committee as subject to dispute are not subject to withholding tax, as the payment event required by law for withholding tax has not occurred. Consequently, the Department concluded to accept Taxpayer's appeal regarding its objection to the imposition of withholding tax, as determined by the Primary Committee based on its classification of the amounts as subject to withholding tax due to their settlement as a loan and to overturn the primary decision delivered in this regard.

Regarding the amounts owed to the related party (... Company -Kuwait, totaling SAR (376,800), it has been determined that Taxpayer is requesting that part of this amount, specifically SAR (188,400) be exempt from withholding tax, as this amount represents a reclassification of an account (reversal of an entry). ZATCA based its decision to impose withholding tax on this amount on the premise that it is a reclassification, asserting that reclassification pertains to the presentation and disclosure methods in the financial statements and does not alter the nature or substance of the transaction. However, since ZATCA did not establish that an actual payment event occurred, this amount is not subject to withholding tax. Consequently, the Department decided to accept Taxpayer's appeal and overturn the primary decision delivered in this regard.

Regarding the other related parties: (...) Group for SAR (318,185) and its tax of SAR (47,728) in 2010 AD, and (... Group for SAR (19,659,247) and its tax of SAR (2,948,887) in 2010 AD, and (... Company - Sudan) for 2010 AD for SAR (11,814,443) and (...) Group for SAR (88,696,985) and (... -Sudan) for SAR (3,562,500) and its tax of SAR (534,375) in 2011 AD, it is clear to the Department that Taxpayer argues regarding these parties that withholding tax should not be imposed on the amounts allocated to each party, on the Grounds that these amounts do not represent an actual payment event that would trigger the calculation of withholding tax. The primary decision based its conclusion to impose withholding tax on these amounts on the premise that reclassification constitutes an actual payment, in addition to not relying on the documentation provided by Taxpayer for some of these amounts. However, it is established by the Department that reclassification or entries in the accounting records do not constitute actual payment. Therefore, the amounts for which the Primary Committee upheld the imposition of withholding tax are not subject to withholding tax due to the lack of an actual payment event as required by law for the obligation to withhold tax. Furthermore, since the primary decision did not provide a justification for dismissing Taxpayer's objection regarding certain amounts, nor did it clarify the nature of the documents that were supposed to be submitted, the Department concluded to accept Taxpayer's appeal regarding the objection to the imposition of withholding tax and overturn the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Withholding tax on services listed under "Construction in Progress" amounting to SAR (1,518,379) for 2010 and 2011 AD), lies in Zakat Payer's request for the total amounts paid to (... Company in Switzerland), (... in China), and (... in Bahrain) to be exempt from withholding tax. The Department, having carefully considered the foregoing and reviewed the documents submitted in relation to the disputed items, found that concerning the amounts paid to (... Company in Switzerland) and (... in China), Taxpayer failed to provide a breakdown of the amounts attributable to services and goods, making it impossible to identify the associated activities of the goods. Therefore, the Department concluded to apply provisions of Paragraph (6) of Article (16) of the Implementing Regulations of the Income Tax Law, which stipulates a 10% estimate for the revenues associated with the disputed amounts. Accordingly, the Department concluded to accept Taxpayer's appeal, establishing that 10% of the total amounts paid will be subject to withholding tax at a rate of 5%. Regarding the payments made to (... Company in Bahrain), since the dispute is documentary in nature and Taxpayer failed to provide the necessary documents that would enable the Department to verify the true name of the company or link the



taxable amounts to the relevant parties as stated in Taxpayer's appeal, and since the Department did not observe any requirement for correction or further comment based on the evidence provided, it concluded that the submissions did not affect the outcome of the primary decision delivered in this regard. Consequently, the Department decided by majority to dismiss Taxpayer's appeal and uphold the primary decision concerning the payments made to this company.

Taxpayer's appeal, regarding (Late Payment Fine), lies in Taxpayer's request to avoid imposing a late payment fine on the contested items, arguing that the fines arose due to differences in viewpoints. Taxpayer also requests that the late payment fine be calculated from the date of receipt of the assessment rather than from the statutory deadline for filing the declaration. However, ZATCA contends that the fine was imposed in accordance with Article (77/1) of the Income Tax Law and Article (68/1) of the relevant Implementing Regulations. Having considered the foregoing, and given that Article (77), Paragraph (a) of the Income Tax Law stipulates 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". Furthermore, Paragraph (c) of Article (68) of the Income Tax Law stipulates "The person responsible for withholding tax under this Article is personally liable to pay the unpaid tax and 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". Paragraph (1/e) of Article (68) of the Implementing Regulations of the Income Tax Law stipulates "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 decided that the late payment fine imposed on the withholding tax in the items for which Taxpayer's appeal was upheld, due to the expiration of the original liability, is not applicable. As for the late payment fines for which Taxpayer's appeal was dismissed, the Department decided to deny the request for the annulment of late payment fines.

Decision

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

Second: On Merits:

1. Accept Zakat Payer's appeal regarding the item (Deduction of Life Insurance expenses from the Zakat Base for 2009 to 2011 AD) and overturn the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
2. Dismiss Zakat Payer's appeal by majority regarding the item (Deduction of Billed and Prepaid Phone Expenses) and uphold the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
3. Accept Zakat Payer's appeal by majority regarding the item (Carried Forward Losses for 2010 and 2011 AD) with the carried forward losses being approved after adjustment based on the Department's decision regarding the life insurance expenses, in accordance with Grounds and merits mentioned herein.
4. Accept Zakat Payer's appeal by majority regarding the item (Deduction of trade payables related to financing fixed assets and accrued expenses for financing fixed assets to the zakat base) and overturn the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
5. Dismiss Zakat Payer's appeal regarding the inclusion of shareholder contributions, financing through Murabaha, capital lease obligations, long-term loans, payables to related parties, and accrued partner commissions as deductible expenses in the zakat base and overturn the



primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.

6. Dismiss Zakat Payer's appeal regarding the item (Non-subjection of amounts paid to GCC residents to withholding tax), in accordance with Grounds and merits mentioned herein.
7. Dismiss Taxpayer's appeal regarding the item (ZATCA's lack of entitlement to make assessments and withholding tax claims for 2009 AD due to the five-year statute of limitations), in accordance with Grounds and merits mentioned herein.
8. Dismiss Taxpayer's appeal regarding the item (Amounts charged to expenses that were not included in the credit balances and from which withholding tax was not deducted from 2009 to 2011 AD) and uphold the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
9. Accept Taxpayer's appeal regarding the item (Returns on loans capitalized as contributions to shareholders for the years 2010 and 2011 AD) and overturn the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
10. Regarding (Payables to Related Parties) item:
11. Accept Zakat Payer's appeal regarding the request not to subject payables to the related party (... Company -Bahrain for 2010 AD), totaling SAR (80,676,658) to withholding tax.
12. Accept Zakat Payer's appeal regarding the item of the related party (... -Bahrain for 2010 AD), totaling SAR (491,853,646) in its objection to the imposition of withholding tax, as determined by the Primary Committee, on the Grounds that it was subject to withholding tax due to its classification as a loan settlement and overturn the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
13. Accept Zakat Payer's appeal regarding the item of the related party (... Company -Kuwait, amounting to SAR 376,800) and overturn the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
14. Accept Zakat Payer's appeal regarding the item of the related party (... Group for SAR (318,185) and its tax of SAR (47,728) in 2010 AD, and (... Group for SAR (19,659,247) and its tax of SAR (2,948,887) in 2010 AD, and (... Company - Sudan) for 2010 AD for SAR (11,814,443) and (...) Group for SAR (88,696,985) and (... -Sudan, amounting to SAR (3,562,500) and its tax of SAR (534,375) for 2011 AD and overturn the primary decision delivered in this regard, in accordance with Grounds and merits mentioned herein.
15. Regarding (Withholding tax on services listed under "Construction in Progress" for 2010 and 2011 AD):
16. Accept Taxpayer's appeal regarding the amounts paid to (... Company in Switzerland) and (... Company in China), reporting that 10% of the total amounts paid are subject to a withholding tax rate of 5%.
17. Dismiss Taxpayer's appeal by majority regarding contributions made to (... Company in Bahrain) and uphold the primary decision delivered in this regard.
18. The Department, regarding (Non-imposition of late payment fines on the withheld amounts), decided to uphold the imposition of fines for the items where Taxpayer's appeal was dismissed and cancel fines for the items where Taxpayer's appeal was upheld due to expiration of the original liability, 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-2020-13)
Issued in Appeal No. (Z-2018-
1506)

Principle No. 127

The ownership of a piece of land belonging to the company by one of its partners, coupled with acknowledgment of such ownership, constitutes a presumption that supports the company's ownership of the land registered in the partner's name and deducted from the zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On ..., .../.../... AH, corresponding to .../.../... 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to consider the appeal presented on 27/06/1439 AH by/ (...) Company, CR No. (...), Against decision No. (5) dated 29/02/1438 AH of the Second Primary Committee for Zakat and Tax Objections in Riyadh issued in Case No. (Z-2018-1506) filed by the Appellant against ZATCA. The primary decision ruled as follows:

First: Accept the objection submitted by Zakat Payer/ (...) Company regarding the zakat assessment ended on 30/01/1435 AH in form.

Second: On Merits:

1. Confirm settlement of the dispute between both parties regarding dividends in favor of Zakat Payer following ZATCA's acceptance of its appeal, for the merits stated in the decision.
2. Approve ZATCA to add the partners' current account closing balance to Zakat Payer's zakat base, for the merits stated in the decision.
3. Lack of support for Zakat Payer to add the difference in net fixed assets to its zakat base, for the merits stated in the decision.
4. Approve ZATCA to dismiss the difference in long-term investments, for the merits stated in the decision.
5. Approve ZATCA's approach to handling the differences in long-term loans, for the merits stated in the decision.

Since this decision was not accepted by Plaintiff, (... Company), it submitted a statement of appeal, summarized as follows:

First: In Form: We were unable to attend the discussion session held on Wednesday, 15/10/1437 AH, before the Second Primary Zakat Objection Committee in Jeddah due to circumstances beyond our control at that time. However, we received Decision No. (5) of 1438 AH on 06/05/1439 Ah and paid the zakat due accordingly. Pursuant to Article (66) of the Income Tax Law issued by Royal Decree No. (M/2) dated 15/01/1425 AH and



Ministerial Decision No. (1527) dated 24/04/1435 AH: “Both ZATCA and Zakat Payer have the right to appeal the primary decision by submitting a substantiated appeal to Zakat and Tax Appeal Committee within sixty days from the date of receipt of the decision, provided that Zakat Payer pays the due zakat or tax before filing the appeal, or provides a bank guarantee for the amount of zakat or tax in accordance with the decision of the Primary Objections Committee”. Thus, the appeal shall be deemed submitted within the legally stipulated period of (60) days and meets the formal acceptance conditions.

Second: In Merits,

1. The partners' current account balance shows a difference of SAR (46,091,136) and zakat difference of SAR (1,152,136). The partners' current account opening balance is SAR (116,355,620), where the following transactions were recorded:

A. It was reduced by withdrawals related to the partners amounting to SAR (14,752,149), resulting in a closing balance of SAR (101,703,471).

It was credited on 30/01/1435 AH from the distribution of profits for the fiscal year 1434 AH, ending on 30/01/1435 AH, amounting to SAR (60,743,285). This amount is one of the components of the adjusted profit added to the zakat base.

In accordance with Item (2) of the first paragraph of Article (4) of the Implementing Regulations for Zakat Collection to determine zakat base for those maintaining commercial records, which stipulates: “ The following items shall be deducted from the zakat base of a Zakat Payer who maintains Commercial Records: First: The zakat base consists of all the assets of the Zakat Payer that are subject to zakat, including: 2: The current account balance payable to the owner or partner at the beginning or end of the year, whichever is lower, as well as any increase in the current account if it originates from equity or is financing for acquisition assets”. Therefore, by comparing the opening and closing balance, the amount to be added to the zakat base is the closing balance of SAR (101,703,471), as it is the lower amount. Addition of dividends to the partners' current account balance by ZATCA is considered a duplication of an amount that was previously included in the adjusted net profit for zakat purposes. Furthermore, there were no carried forward profits from the previous fiscal year. Attached is a statement of changes in equity that illustrates the same.

2. There is a difference in net fixed assets of SAR (10,929,640) not deducted, resulting in a zakat difference of SAR (273,241), as ZATCA deducted the value of the land amounting to SAR (85,120,000), within the limits of the current account balance of the partner who owns the land, which amounts to SAR (74,190,370), justifying that the company does not own the land.

-Land title deeds numbered ... dated 04/09/1385 AH and ... dated 02/06/1403 AH, pertaining to a land plot in Madinah, financed through a loan amounting to SAR (94,500,000) between ... Company and Bank As stated on page 16 of the attached facility agreement, which was designated for the construction of a hotel in Mecca on a long-term leased plot of land, it later became evident that the land was part of government projects. Consequently, the investment agreement with the landowners was canceled. The mentioned loan was utilized to purchase the two plots of land referenced above for the purpose of development and use in the company's activities. Attached is evidence of the work being done to prepare, equip, and plan the land for development. The two plots of land are owned by ... Company, but temporarily registered in the name of ... in his capacity as the General Manager of the company, after obtaining the necessary declarations affirming the company's full ownership of the land, with the complete agreement of the other partners in the company. The process of transferring ownership in accordance with laws is currently underway.

B. We would like to inform you that one of the founding partners, ... partner passed away in 1435 AH. There are ongoing disputes concerning one of his heirs, namely Mrs. ...,



and these matters are still pending in court. To date, the company has been unable to amend its Articles of Association to substitute the deceased partner's heirs due to the refusal of the heir, Mrs. ..., to sign the amendment before the regulatory authorities. As a result, the company has not been able to modify its Articles of Association, which would allow for the transfer of property ownership to the company. ... Partner is fully prepared to complete ownership transfer procedures of those deeds to ... Company in any manner once permitted in accordance with the regulations. Therefore, there is an impediment to transferring the ownership of those deeds, as stated in item (1), Paragraph (2) of Article (4) of the Implementing Regulations for Zakat Collection, which stipulates:

“Second: The following shall be deducted from the 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 shall be deducted, provided that these assets are owned by Zakat Payer, unless there is an impediment preventing the transfer of ownership, and that they are used in the business activity”. Consequently, the failure to transfer ownership of those assets was due to an impediment. Therefore, ZATCA’s deduction of the net assets within the limits of the current account payable to the partner is in violation of the regulations. Hence, we request the full deduction of the land cost amounting to SAR (85,120,000) from the zakat base.

2. Non-deduction of the amount of SAR (7,200,000), representing an investment in land and a house in Madinah, and its classification as part of trading assets rather than acquisition assets.

3. The amount of SAR (7,200,000) represents investments in a land and a house located in ... area in Madinah, owned by the company and registered in the name of the General Manager, ..., utilized in the company’s activities. The house was rented out to a third party for an annual rent of SAR (35,000), which is included in the company’s revenues. The land and building were subsequently expropriated by the government as part of an expansion project, where 80% of the compensation for this land and building was received, amounting to SAR (26,894,151) (SAR 19,140,000 + SAR 7,754,154), which was accounted for in the fiscal year ending on 30/01/1437 AH, including the realized capital gain, which was included in the zakat base for the year ending on 30/01/1437 AH, as shown in the attached document. How is it possible to consider the profit while the asset is excluded from the zakat base, and why does this apply even though the ownership was not transferred to ... Company? Based on the information provided in Paragraph (b), Item (2) above regarding fixed assets, we demand the deduction of the investment amounting to SAR (7,200,000) in the aforementioned land and property, as it constitutes a fixed asset of acquisition assets used in the company’s activities under long-term investments.

4. The non-deduction of the amount of SAR (6,962,387), representing a long-term investment in ... Company for Food Supplies, is the value of investments made by ... Company in ... Company for Food Supplies, which is a limited liability company based in Madinah, in which ... Company held a founders' share since its inception, as per the Articles of Association. We also attach the first audited balance sheet issued by the chartered accountant of ... Company dated 29/01/1426 AH, which shows that (...) Company owns 50% of ... Company for Food Supplies, as well as the financial statements for the period ending on December 31, 2014. Additionally, ... Company for Food Supplies is subject to zakat collection, and we attach a copy of its zakat and income certificate. The failure to deduct these investments from the zakat base is inconsistent with the Implementing Regulations for Zakat Collection in Article (4) of Section (II) (Calculating the Zakat Base for Zakat Payers with Commercial Records -



Determination of the Zakat Base), which states: “Second: The following shall be deducted from the zakat: 4-(A): Investments in establishments within the Kingdom—shared with others—shall be subject to zakat collection in accordance with these regulations. If the investment in these establishments is not subject to zakat collection, it shall not be deducted from the zakat base”.

Accordingly, we request the deduction of the investment amount in ... Company for Food Supplies, amounting to SAR (6,962,387).

On Tuesday, 10/06/1441 AH, corresponding to 04/02/2020 AD, the Department held a session to consider the case. Upon calling the litigants, ..., holder of National ID No. (...), appeared in his capacity as the attorney of Zakat Payer Company under PoA No. (...) issued by the Second Notary Office in Madinah. Representatives of ZATCA: ..., ... and ... under ZATCA's Authorization No. (...) dated 19/05/1441 AH. Having asked the attorney of Zakat Payer Company regarding any additional points to contest partners' account difference of SAR (46,091,136), he responded that the memorandum contained sufficient details to clarify the Grounds for the objection concerning ZATCA's calculation method for this item. In response to a question from ZATCA's representatives regarding the objection raised by Zakat Payer Company as per the memorandum submitted concerning the disputed item, they stated that the balance of the partners' account at the beginning of the period was taken into account as it was the balance that completed a full year, adding the retained earnings deposited in the current account, and the balance was calculated on this basis. Having asked the attorney of Zakat Payer Company regarding his response to what ZATCA's representatives stated regarding their position on the objection submitted by Zakat Payer Company concerning the method of calculating its balance within the zakat base, he explained that it should be clarified that the balance was also burdened with dividends for the same year, which were also calculated within the zakat base under the net profit item, resulting in double payment of zakat based on ZATCA's calculation method for this item and its inclusion in the zakat base. He further pointed out that the financial statements of the company for the fiscal year ending on 30/01/1434 AH indicated that there was no balance for retained earnings at the beginning or end of the period. When questioned regarding the statement made by Zakat Payer Company's attorney regarding the true nature of that balance and its exclusion from retained earnings, ZATCA's representatives replied that they would submit a Reply detailing how to handle the partners' account and retained earnings for zakat assessment, which is under objection, within a week. When the attorney of Zakat Payer Company was asked concerning the objection to the item related to the difference in net fixed assets that were not deducted amounting to SAR (10,929,640) and ZATCA's deduction of the value of the lands not registered in the name of the company within the balance of the partner who owns the land due to the company not owning the land, he responded that the memorandum submitted contains the reasons for the objection to that item and ZATCA's method of calculating it within the zakat base. He also attached documents to the Department that clarify the reasons the company has not yet registered the land in its name and the legal obstacles preventing the registration process. In response to the attorney's statement regarding the disputed item in the Primary Decision No. (3) concerning the difference in net fixed assets, ZATCA's representatives stated that fixed assets would be deducted if they were in the name of one of the partners as in the case of Zakat Payer's objection and they would be deducted within the limits of the partner's current account for the land that is in their name. They indicated that they would respond to the memorandum submitted by Zakat Payer Company to the Department and provide a detailed response to that objection within a week from that date. In response to the inquiry made to the attorney of Zakat Payer Company regarding the contested item number (5) in the appealed decision, specifically concerning the classification of the land



recorded at a value of SAR (7,200,000) as part of long-term investments, he stated that the intended purpose of acquiring this land was for development by constructing hotels and residential units, which would be utilized in the company's core activity of managing and operating hotels. When asked concerning the revenues from land sales, he responded that the company has not sold any land or property it has purchased to date, as the objective behind acquiring these properties is to invest in the construction of hotels and residential buildings and to utilize the same for this purpose in alignment with the company's main business activity. Furthermore, when ZATCA's representatives were inquired regarding the appeal filed by Zakat Payer Company in relation to this contested item and their relevant statements, they responded that the long-term investment in the land valued at SAR (7,200,000 SAR) recognized because it is registered in the name of ... partner. According to Note (1) in the financial statements, the company's activity is limited to purchasing, selling, and developing real estate. Therefore, this land is considered as trading assets and not as acquisition assets. It is noteworthy that the previous land mentioned in the earlier item, valued at SAR (85,120,000) has been accounted for under the holdings of the partner who owns the two plots of land. When asked regarding ZATCA's representative's response, the attorney added that there is a clarification regarding their statements that the company wishes to emphasize, including that the activity of selling and purchasing does not constitute the company's main business activity. Instead, we reaffirm that the company's primary focus is on utilizing properties for housing and hospitality services related to pilgrims, Umrah performers, and visitors. When asked whether there were any additional points to raise regarding the objection to the item concerning the long-term investment in ... Company for Food Supplies, valued at SAR (6,962,387), Zakat Payer Company's attorney confirmed that the company is a founding partner of ... Company for Food Supplies, as evidenced by its Articles of Association and commercial registration and the investment in this company, as per the submitted Articles of Association, represents 50% of the capital. Furthermore, the investee company is subject to zakat collection under the regulations in the Kingdom, which means that it is appropriate to deduct this long-term investment from Zakat Payer Company's zakat base. When ZATCA's representative were asked about the statements made by Zakat Payer Company's attorney regarding this contested item to support his position on not including it in the zakat base, they responded that when preparing the zakat assessment, Zakat Payer failed to provide the documentation necessary to substantiate that investment and the relevant payment. hey indicated that a response to Zakat Payer's appeal would be submitted to the Department within a week. When the parties involved in the case were asked if they had any additional comments or requests regarding the appeal related to the contested items, they replied that there were no further additions or requests based on the answers and statements provided. Consequently, the report was concluded and the Department decided to consider the case and render a decision based on the forthcoming submissions.

The Department, having taken cognizance of memorandums 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

The Department, upon reviewing the case documents and the appeal submitted by Zakat Payer Company, found that the appeal met the formal requirements as stipulated in the relevant law, regulations, and decisions. Consequently, the appeal request is deemed 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, having reviewed the case file and its contents, as well as the statement of appeal and the statements made before the Department, determined the following:

Item (1): A difference in partners' current accounts of SAR (46,091,136) and a zakat difference of SAR (1,152,278), as detailed in Item (2) of the primary decision.

Zakat Payer's appeal lies in the request to add the closing balance of SAR (101,703,471) to the zakat base, as it represents the lower balance. Zakat Payer argues that ZATCA's action of adding dividends for the same year to the partners' accounts constitutes a duplication of an amount that was previously included in the adjusted net profit for zakat purposes and then distributed to the partners' accounts for that year. Furthermore, the balance of the retained earnings account at the end of the fiscal year on 30/01/1434 AH, according to the financial statements and the statement of equity, is zero, indicating that there were no profits carried over from previous years to 1435 AH. The profits for the year ending on 30/01/1435 AH were closed at SAR (60,743,285) in the retained earnings account and distributed to the partners' accounts on that date. Therefore, the increase in the partners' current accounts is attributed to the profits of the current year, which is not yet completed, and were subject to zakat when the net profits of the year were added to the zakat base. ZATCA contends, as outlined in its Reply to the appeal and based on its statements during the consideration of Zakat Payer Company's appeal, that the closing balance of the partners' current accounts, amounting to SAR (101,703,471) was added as it represents the lower balance, as well as the profits closed in the partners' accounts amounting to SAR (60,743,285). Consequently, the total added to the zakat base is the closing balance of the partners' current accounts, amounting to SAR (162,446,756). The Department found that ZATCA's approach of adding the lower closing balance of the partners' current accounts, amounting to SAR (101,703,471), along with the profits closed in the partners' current accounts, totaling SAR (60,743,285), constitutes a double payment of zakat as profits were included in the zakat base twice, because the retained earnings from the previous year ending on 30/01/1434 AH are zero. Since the opening balance of the partners' current accounts include the last year dividends, it is not appropriate to add dividends for the year ending on 30/01/1435 AH, which were transferred to the current accounts at year-end, again to the zakat base. Therefore, the appealed decision regarding the contested item should be overturned, as agreeing with ZATCA's handling of the matter would result in an improper calculation of zakat, as previously explained.

Item (2): The difference in net fixed assets that have not been deducted amounts to SAR (10,929,640), along with a zakat difference of SAR (273,241) (As stated in Item (3) of the primary decision).

The essence of Zakat Payer's appeal in the request to deduct the full value of the land, amounting to SAR (85,120,000) from the zakat base. The land is owned by the company (Zakat Payer) as confirmed by the founding partners. The reason for not transferring the ownership of the land to the company name to date is that the company's Articles of Association does not permit the transfer of land or properties under the general manager's authority. Additionally, due to the death of ... Partner, who owned 28% of the company's capital, and the ensuing dispute among his heirs, the company's Articles of Association could not be amended. Consequently, the partners decided to purchase the land on behalf of the company and register it under the name of the general manager, ..., while obtaining a declaration affirming the company's ownership of the land until the Articles of Association is amended. ZATCA contends, as stated in its Reply to the appeal and based on its statements during the consideration of Zakat Payer Company's appeal, that the value



of the land should be deducted only to the extent of the current account of the partner-owner/ ..., amounting to SAR (74,190,370), due to the lack of evidence proving the company's ownership of the disputed lands.

The Department, upon reviewing the arguments presented by the parties involved regarding the disputed item and the statements made, and after examining the overall content of the case file concerning the contested item, found that the company's inability to register the land in its name was due to circumstances beyond its control, specifically the death of one of its partners and the ensuing dispute with the heirs, which delayed the procedures for amending the company's Articles of Association to facilitate the transfer of land ownership. Furthermore, the Department noted the declaration signed by the company's manager, who is also one of the partners, acknowledging with all partners that the lands valued at SAR (85,120,000), which is the subject of this dispute, is indeed owned by the company and determined that the content of this declaration serves as strong evidence supporting the company's ownership of the lands. The challenges associated with registering the land ownership do not negate the apparent ownership of the company. Therefore, the mere fact that the ownership is not registered in the company's name cannot be a reason to include its value or a portion thereof in the company's zakat base. Consequently, the Department was convinced to exclude the amount added by ZATCA to the zakat base, as stated in the primary decision and therefore overturn the contested item as previously detailed.

Item (3) and (4): Failure to deduct an amount of SAR (7,200,000) representing an investment in land and a house in Madinah and classifying it as part of trading goods rather than fixed assets; and failure to deduct an amount of SAR (6,962,387) representing the value of an investment in ... Company for food catering (both mentioned in Item (4) of the Primary decision).

Zakat Payer's Appeal revolves around the demand to deduct the amount of SAR (7,200,000), which represents an investment in land and a house in Madinah, where the land is owned by the Company and registered in the name of the general manager, used within Company's activities, and classified as a fixed asset under long-term investments. ZATCA views that the land is registered under name of the partner/... and there is no corresponding entry in partner's current account, as partner's account balance has been fully utilized in connection with land worth SAR (85,120,000) registered under his name.

After reviewing the arguments presented by both parties in the Appeal document and the responses concerning the land valued at SAR (7,200,000), which was contested for inclusion in zakat base, and after hearing testimonies before the Department and examining case file as a whole, the Department has made the following determination. Upon reviewing the declaration signed by Company's general manager, who is also a partner, which contains a statement from all partners confirming that the disputed land, worth SAR (7,200,000), belongs to the Company, the Department concludes that Company's inability to register the land in its name does not negate its apparent ownership. Therefore, the lack of formal registration is not sufficient Grounds to justify including land's value, or any part of it, in Company's zakat base. Additionally, the Department has reviewed documents provided by the Zakat Payer Company that show the state expropriated the land and compensated the Company accordingly. This compensation was reflected in Company's financial statements for a fiscal year following the year in question, and the resulting capital gains were included in the zakat base for that later year. In light of this, the Department is persuaded that the amount added by ZATCA to zakat base shall be excluded, as per the original decision under Appeal. Consequently, the primary decision regarding the contested item is overturned, as previously detailed.

As for the Appeal regarding failure to deduct the amount of SAR (6,962,387) representing the value of investment in Company for food catering, Zakat Payer's Appeal revolves around the demand to deduct SAR (6,962,387), which represents a long-term investment in the ... Company for food catering, as the disputed amount is classified as an investment in that Company and charged to the current account of the investing Company. Failure to deduct this investment from zakat base does not comply with the Implementing Regulations of Zakat Collection Law. ZATCA



holds the view that the Zakat Payer has not sufficiently demonstrated that these investments qualify as long-term investments. It has been found through the documents provided that Zakat Payer owns shares in the capital of (... Company for food catering), with Company participating as a founding shareholder, owning 50% since its inception, as outlined in the founding contract. Whereas (... Company for food catering) is registered with ZATCA, submits its zakat declarations, and is subject to zakat through ZATCA. Therefore, the amounts listed in Zakat Payer's financial statements for the year 1435 AH, related to this investment amounting to SAR (6,962,387), represent Zakat Payer's shares in the ownership rights of invested Company's capital. Accordingly, ZATCA's refusal to approve deduction of this investment from Zakat Payer Company's zakat base, as argued by the Zakat Payer Company, would lead to double zakat collection. Consequently, the Department upholds Zakat Payer's objection and decides to exclude the investment amount from zakat base, overturning the primary decision on this matter.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Commercial Register No. (...).

Second: On Merits:

-Item (1): The difference in partner's current account totals SAR (46,091,136), with a zakat discrepancy of SAR (1,152,136). Accept Zakat Payer's Appeal, and overturn the primary decision for the reasons and Grounds mentioned in this decision.

-Item (2): The net fixed assets discrepancy, which was not deducted, amounts to SAR (10,929,640), with a zakat difference of SAR (273,241). This is due to ZATCA deducting the land value of SAR (85,120,000), within the limits of the land owner partner's current account balance, which stands at SAR (74,190,370):

Item (3): Failure to deduct SAR (7,200,000) representing an investment in land and a house in Madinah, and classifying it as part of trading goods instead of fixed assets:

-Item (4): Failure to deduct SAR (6,962,387) representing a long-term investment in (...) Company for food catering: Accept Zakat Payer's Appeal, and overturn the primary decision regarding this item for the reasons and Grounds mentioned in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-40)
Issued in Appeal No. (Z-1508-
2018)

Principle No. 128

If provisions are not accepted as deductible expenses in the year they are created when determining the zakat or taxable net profit, it is reasonable from an accounting perspective for the Zakat Payer to deduct these provisions in the year they are utilized, from the accounting net profit, to determine the zakat or taxable net profit.

Facts:

Praise be to Allah, and peace and blessings be upon the one after whom there is no prophet.

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/ ... Trading Company Ltd. 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 ZATCA. The primary decision included the following rulings:

First: In from:

Accept the objection submitted by Zakat Payer/ ... Trading Company Ltd. regarding zakat assessment for the period from 25/06/2006 to 31/12/2012 in terms of form, in accordance with decision's Grounds.

Second: On Merits:

1. Affirm ZATCA's decision to add short-term loans to Zakat Payer's zakat base in accordance with decision's Grounds.
2. Uphold ZATCA's decision to add short-term loans from partners to Zakat Payer's zakat base in accordance with decision's Grounds.
3. Annul Zakat Payer's request to deduct fixed asset additions from the 2011 net profits, in accordance with decision's Grounds.
4. Uphold ZATCA's action in calculating zakat for the first financial period on the basis of a long financial period defined as (555) days in accordance with decision's Grounds.
5. Affirm ZATCA's handling of provisions used during the disputed years in accordance with decision's Grounds.
6. Affirm ZATCA's handling of provisions used during the disputed years in accordance with decision's Grounds.
7. Uphold ZATCA's decision to add amounts payable to related parties to Zakat Payer's zakat base in accordance with decision's Grounds.



8. Affirm ZATCA's action in adjusting net profits of the disputed years by the excess board member compensation over SAR (540,000) in accordance with decision's Grounds.
9. Uphold ZATCA's adjustment of the net profit for the year 2012 with logistical costs incurred by a subsidiary Company, according to reasoning of the decision.
10. Affirm ZATCA's addition of commissions and incentives of ... Limited Company to the net profits of the disputed years, according to reasoning of the decision.
11. Uphold ZATCA in subjecting profits from external procurement differences to zakat for the disputed years, according to reasoning of the decision.
12. Affirm ZATCA's adjustment of the net profits for the disputed years based on sales cost differences, in accordance with the reasoning provided in the decision.
13. a) Resolution of the dispute between the parties regarding the rental differences item, according to reasoning of the decision.
b) Uphold ZATCA's non considering of school fees as deductible expenses from the zakat base of Zakat Payer, according to reasoning of the decision.
c) Resolution of the dispute between the parties regarding the transportation expenses item, according to reasoning of the decision.
d) Confirm accuracy of ZATCA's procedures in addressing the inventory provision for the year 2011, in line with reasoning of the decision.
14. Resolution of the dispute between the parties regarding profits from the supply contract with the university, according to reasoning of the decision.
15. Settlement of the dispute between the parties concerning the profits from asset sales, depreciation discrepancies, and valuation of fixed assets, as outlined in the reasoning of the decision.
16. a) Uphold ZATCA's handling of the provisions used for written-off debts, according to the reasoning of the decision.
b) Affirm ZATCA's non considering of taxes, fines, and fines as deductible expenses from the zakat base of Zakat Payer, according to the reasoning of the decision.
c) Resolution of the dispute between the parties regarding the paid withholding tax item, according to the reasoning of the decision.

Since this decision was not accepted by the Plaintiff (... Company Ltd.), they submitted an Appeal to the Department, which included the following summary:

Regarding the Appeal concerning the item (short-term loans), the Zakat Payer disputes Primary Committee's decision to include the (opening/closing) balances of short-term bank loans (whichever was lower) for the years 2009 to 2012 in the zakat base. The objection is based on the fact that these funds were not in operation for a full 12-month period and were used to meet Company's working capital requirements, rather than for purchasing fixed assets. The Company highlights that it secured short-term financing arrangements to address its working capital needs, with short-term loan durations ranging 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 ZATCA'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 concerning the item (profit used to finance long-term assets), Zakat Payer objects to Primary Committee's decision, which endorsed ZATCA's treatment that subjected the net profit of the year used to finance long-term assets to zakat. Zakat Payer asserts that the religious fatwa issued under No. (23408) on 18/11/1426 AH states that the net profit used to purchase fixed assets is not subject to zakat.

Regarding Appeal on the item (calculation of zakat on a proportional basis for the first long financial period), Zakat Payer objects to Primary Committee's decision, which



supported ZATCA's treatment that 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 mentioned that Trading Company was established on July 15, 2006, and purchased the business of ... Foods Company from January 1, 2007, meaning it acquired the assets and liabilities at book value. Until January 1, 2007, the Company had no assets or liabilities before transferring the mentioned net assets to the Company at book value. This confirms the necessity of not applying proportional calculations to the net assets, as these net assets were already subject to zakat in Foods 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 ZATCA's treatment 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). Zakat Payer confirms that these provisions were transferred during 2007 from Foods Company as a result of a business reorganization, and Foods Company did not claim a deduction for these transferred provisions in its zakat declaration for the year. Therefore, ... Foods Company paid zakat on the provisions that were transferred during the year. Zakat Payer believes that, in light of the above, subjecting these provisions to zakat in Zakat Payer's assessment would result in the same amount being subject to zakat twice.

With regard to the Appeal concerning the item (use of provisions), Zakat Payer objects to Primary Committee's decision, which endorsed ZATCA's treatment related to adjustment of the used/reduced provisions during the period of 2007 and the years from 2008 to 2012, by comparing them 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 ZATCA's treatment, 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.

Regarding the Appeal concerning the item (Board of Directors' fees), Zakat Payer objects to Primary Committee's decision, upholding ZATCA's stance that disallowed deduction of Board of Directors' fees paid during the years 2007 to 2012 in excess of SAR (45,000). Zakat Payer bases their disagreement with ZATCA's treatment on the fact that zakat shall not be imposed on funds that did not remain in the business for a full lunar year. Zakat Payer refers to fatwa No. (2264) dated 9/3/1424 AH, which states that amounts paid even to the owners of the establishment as fees for services they provide shall be treated the same as wages paid to employees, and thus, they are not subject to zakat. Zakat Payer also mentions that the Company paid this amount to one of its partners for managing Company's affairs, considering the partner as a full-time employee.

Regarding the Appeal concerning the item (logistical costs incurred by a related Saudi entity), Zakat Payer objects to Primary Committee's decision, which supported ZATCA's position disallowing deduction of logistical costs as allowable expenses. Zakat Payer argues that these expenses were paid to ... Operations and Services Company Ltd., and that the latter Company reported the amount in question as part of its revenues. Therefore, disallowing the logistical costs as deductible expenses results in double zakat being imposed.

Regarding the Appeal concerning the item (sales promotion and discount related to ... Company), Zakat Payer disputes Primary Committee's decision, which upheld ZATCA's approach of including sales promotion amounts in zakat base. ZATCA added the 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 functioned solely as a "pass-through entity" facilitating the settlement and reimbursement of sales promotion and discount amounts paid by ... Trading Company and covered by ... Company without generating any profit margin. As a result, ... Trading Company does not record any costs or revenues associated with this transaction.

In the Appeal concerning "Foreign Purchase Differences" item, Zakat Payer disputes Primary Department's decision, which supported ZATCA's approach of estimating profit on import discrepancies for the years 2007, 2011, and 2012. Zakat Payer argues that variance between Company's declared foreign purchases and those documented in customs records is primarily due to timing differences, variations in prices/rates, imports of consumables/fixed assets, and promotional items that were not categorized as foreign purchases. Zakat Payer concluded by requesting that, given the significant volume of transactions and discrepancies, the Department considers these differences within a reasonable threshold.

With regard to the appeal on the item (Cost of Sales Differences), Zakat Payer objects to the Primary Committee decision upholding ZATCA'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 of "Non-Deductibility of School Fees". Zakat Payer objects to Primary Department's decision, which upheld ZATCA's stance in disallowing deduction of school fees paid for employees. Zakat Payer believes that these fees are part of the benefits provided to Company's employees, and the amounts were incurred within the same year without the tax period being completed.

With regard to the appeal on the item (Goods Provision), Zakat Payer objects to the Primary Committee decision upholding ZATCA's procedure in adding goods provision during 2011 to zakat base. Zakat Payer states that he agrees with ZATCA 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.

Regarding the Appeal on the item of "Provision for Bad Debts". Zakat Payer objects to Primary Department's decision, which upheld ZATCA's stance in adding the provision for bad debts to the zakat taxable profit for the year 2011. In support of this objection, Zakat Payer presents Schedule No. (8) from the final declaration, Appendix (6) - Provision Movements. Zakat Payer indicates that the movements presented within ZATCA's notes are not related to ... Trading Company.

As for the Appeal on the item of "Taxes, Fines and Penalties" Zakat Payer objects to Primary Department's decision, which upheld ZATCA's stance in disallowing deduction of taxes, fines and penalties as deductible expenses, arguing that the amounts disallowed by ZATCA 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 reopen the pleadings, ZATCA was addressed on 25/02/1442 AH (corresponding to 12/10/2020 AD) to provide the Department with a response to the Appeal submitted in the case. In response, a memorandum was received from ZATCA on 23/03/1442 AH (corresponding to 8/11/2020 AD), which generally addressed the contents of Appellant's memorandum. ZATCA emphasized that the points



raised by the Appellant Company in its Appeal were no different from what had already been presented before the Primary Department and were addressed by ZATCA at the time. ZATCA reaffirmed its position outlined in the memorandum submitted before the Primary Department concerning the items under Appeal, and stated that the submitted Appeal did not present any arguments that would impact validity of the conclusion reached by the primary decision. ZATCA concluded its response by requesting the Department to verify, as a precaution, validity of Appellant's submission of the Appeal within the statutory period and also requested rejection of Plaintiff's Appeal and upholding Primary Department's decision and its conclusions.

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 the Department and a copy of financial statements, which were attached to the case file. In 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 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 Appellant Company, the Department found that the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On merits, regarding Zakat Payer's Appeal concerning the item "Short-Term Loans". after the Department reviewed the submitted Appeal, it was found that Appeal basis lies in Zakat Payer's request not to add short-term loans to zakat base, arguing that the zakat year had not elapsed on them and that they were not used to finance fixed assets, but rather to finance Company's working capital. ZATCA, 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 the zakat year had elapsed. Upon reviewing the matter, the Department found that the disagreement between Zakat Payer and ZATCA 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 on them 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, ZATCA believes that balances of the loans provided by the partners were correctly added to zakat base since they were used to finance fixed assets. Upon Department's review of the content of Zakat Payer's Appeal regarding this item and ZATCA's response to it, and after examining 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 is based on Zakat Payer's request to reduce the annual profit by the amount of fixed assets added. However, ZATCA 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. ZATCA 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 ZATCA's inclusion of the net annual profit used to finance long-term assets in the zakat base. 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. ZATCA 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 the Zakat payer's request not to calculate Zakat on the long fiscal period due to not reaching the minimum amount determining Corporate zakatability, along with trade division transformation into an independent company. However, ZATCA believes that Hawl conditions are met and Zakat is due for the long fiscal period. Upon Department's review of Note (1) in the financial statements prepared at the end of 2007, it was found that the transfer of the commercial division to ... Company Foods Ltd. took place on 01/01/2007. Accordingly, Zakat Payer is entitled to calculate zakat for the year 2007 only, excluding the additional period from 2006, which was included in the zakat base of ... Company Foods Ltd. Consequently, the Department concludes to accept Zakat Payer's Appeal and overturn the primary decision regarding this item.

Regarding the Zakat payer's appeal on the item (Provisions transferred from a related party), it was found that the appeal lies in the Zakat payer's request not to add the provision for employees' severance pay and the provision for bad debts that were transferred from a related party to the Zakat base, while ZATCA believes that these provisions shall be added, as they financed deducted assets. Upon Department's consideration of the matter, it was found that ZATCA indicated in its position stated in the primary decision that these provisions were added to the zakat base of ... Company Foods Ltd., meaning that they were already included in that Company's base. Thus, they shall not be included again in Zakat Payer's zakat base. ZATCA's argument that the impact of these provisions on ... Company Foods Ltd.'s zakat base was negative, and therefore the addition



was merely formal, is not valid, as what matters is calculation method and not the result of that calculation. Had these provisions not been included in ... Company Foods Ltd.'s base, its zakat base would have been lower by the same excluded amount. 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 "Use of Provisions". it was found that the Appeal is based on Zakat Payer's request to deduct the utilized amount of provisions from the adjusted profit rather than from the opening balance. ZATCA, however, maintains that there is no real impact on the zakat base, as the net profit in all the years was higher than the adjusted net profit. Additionally, reducing book profit by the utilized provisions is governed by tax instructions aimed at preventing double taxation and shall not extend to zakat Payers, as zakat is governed by a legitimate basis, which is the completion of zakat year on the excess wealth. Since these provisions were not accepted as deductible expenses in the year of their creation to determine the net zakat or taxable profit, it would be fair, when accounting for these provisions, to deduct them in the year they are utilized from the accounting net profit to determine the net zakat or taxable 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 to exclude the amounts due to related parties from the zakat base, as they arose from commercial transactions and did not remain in the business for a period of twelve months. However, ZATCA believes that these amounts shall be added to zakat base because Zakat Payer did not provide sufficient documentation for the movement of this item. Upon Department's review of the financial statements for disputed years and the analysis provided by Zakat Payer for the item "Amounts Due to Related Parties". it was found that the opening balances were settled 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 the 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 preliminary 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 ZATCA believes that only the amount registered in the social insurance shall be considered. Upon Department's review of the matter, it was found that the dispute is based on the principle of exceeding the salaries and wages registered in the social insurance, rather than support of these amounts with documentary evidence. Thus, there is no dispute over the actual payment of compensation to the board member. Limiting the accepted salaries to the amount 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 the board member without being limited to the amount registered in social insurance and overturns the primary decision regarding this matter.

Regarding Zakat Payer's Appeal on the item "Logistics Costs Charged by a Related Saudi Entity", it was found that the Appeal is based on Zakat Payer's request to accept deduction of SAR (110,850,826) as expenses charged to the income statement for the year 2012 in exchange for logistics services. However, ZATCA does not accept deduction of these expenses due to lack of complete supporting documents. Upon Department's review of the Appeal and responses thereto, as well as the conclusion reached in the primary decision on this matter, it was found that ordinary and necessary expenses related to the activity, whether paid or payable, may be deducted if they are actual expenses. Zakat Payer provided a letter from the subsidiary (... Company for Services



and Operations Ltd.) indicating that the cost was recorded as part of its revenue. Additionally, Zakat Payer submitted a copy of the contract with the affiliated Company. Note (1) of Zakat Payer's financial statements for the year 2012 states: "The Company entered into an agreement during the year with an affiliated Company, Support Company for Transportation Services Ltd., under which ... Company for Transportation Services will provide transportation and storage services to the Company in exchange for fees agreed upon in advance, utilizing assets owned by the Company. The Company will charge ... Company for Transportation Services a fixed monthly rental fee for using these assets, while the Company remains the beneficial owner of those assets..." Furthermore, Note (15) of the financial statements states that: "The 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 the use of Company's assets..." . As ZATCA did not present any evidence contradicting what Zakat Payer provided and confirmed, the Department concludes to accept Zakat Payer's Appeal for deduction of logistics expenses and overturns the primary decision regarding this matter.

Regarding the Zakat payer's appeal on the item (Sales Promotion and Discount related toCompany), it was found that the appeal lies in the Zakat payer's request not to add the amounts of sales promotion and discount related to (.....) Company regarding zakat base, these amounts are considered payments made by the Company to the final commercial customers on behalf of ... Company and then reimbursed without any profit margin. However, ZATCA views these amounts as undisclosed revenue that shall be included in zakat base. Zakat Payer submitted a sample of documents related to sales promotions and discounts that were passed on to customers and settled by ... Company to the supply Company. Zakat Payer's transactions show that the revenue generated from sales promotions and discounts related to ... Company is offset by a similar cost of promoting to the Zakat payer's business clients, the Zakat payer's appeal regarding the deduction of logistics expenses shall be accepted by the majority, and the preliminary decision shall be reversed.

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, ZATCA believes that an estimated profit shall be calculated on these differences due to Zakat Payer's failure to provide evidence explaining the reasons for the discrepancies between the foreign purchases stated in the declaration and those in the customs statement. Upon Department's review of the matter, it was found that the import data recorded by customs for Zakat Payer's foreign purchases formed the basis for ZATCA's assessment, based on the information provided regarding this item. These data represent information from a neutral third party and serve as a presumption that can be relied upon to substantiate their contents. Zakat Payer was given the opportunity to present documents to prove the actual reasons for the discrepancies. 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 Appeal did not affect 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 "Cost of Sales Differences". it was found that the Appeal is based on Zakat Payer's request to exclude the cost differences in sales, 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, ZATCA believes that they shall be added to the zakat base due to the lack of a convincing explanation for their deduction. The Department may rely on the Grounds of the contested decision concerning the



item under review 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 ZATCA's adjustment of the net profits for the 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 reject Zakat Payer's Appeal and uphold the primary decision on this matter.

Regarding the Zakat payer's appeal on the item (Disallowing School Fees Deduction) under (Other Expenses), it was found that the appeal lies in the Zakat payer's request to accept school fees as a deductible expense, while ZATCA considers that it shall not accept these fees due to insufficient documentation. Based on the Department's consideration of the above, and whereas the ordinary and necessary expenses of the 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, the Department concludes that the Zakat payer's appeal regarding the deduction of school fees is accepted and the preliminary decision on this regard is reversed.

Regarding the Zakat payer's appeal on the item (Goods Provision), it was found that the appeal lies in the Zakat payer's request not to add the retained balance of the physical stock provision to the Zakat base as the provision does not exist in the Company's accounts, while ZATCA believes that the provision was added in accordance with Circular No. (84431) of 1392 AH, which stipulates that all provisions shall be added as they are considered as capital. Based on the Department's consideration of the above, and since the basis of the dispute between ZATCA and the Zakat payer does not relate to the validity of adding these provisions, but rather to the Zakat payer's objection that the provision did not exist in its books. After the Department's verification of the existence of the provision or not in the accounts concerned, it was found that there was no physical stock provision in 2011 financial statements. After verifying Statement No. (8) on which ZATCA relied in the preliminary decision to prove the existence of the provision, and based on the Department's review of the cited statement, it is clear that there is no physical stock provision, and the burden of proving that is on ZATCA. Since ZATCA did not prove otherwise, and since the 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 the Zakat payer's appeal on this item is accepted and the preliminary decision on this item is reversed.

Regarding the Zakat payer's appeal on the item (Bad Debit Provision), it was found that the appeal lies in the Zakat payer's request not to add the bad debts provision to the profits subject to Zakat for 2011, as the provision activity is not related to the Appellant, while ZATCA believes that the provision was added in accordance with its Circular No. (2057/6) dated 14/04/1426 AH. After reviewing 2011 financial statements, the Department found that there was no breakdown of the bad debt provision. The Zakat payer attached Statement No. (8) for the year 2011 showing the bad debt provision with the opening balance, the activities during the year and the closing balance, from which it was found that its component is amounted to (SAR 4,076,785). As it is established that the provision is added to the Zakat profit, and that the Zakat payer is responsible for providing documents that prove their point of view, however, the Zakat payer did not provide any proper documents that support their claim. In light of what was presented before it, the Department did not see any reason to appeal or comment, which leads the Department to conclude that what was presented has no effect on the preliminary decision on this item. Accordingly, the Department decided to reject the Zakat payer's appeal and uphold the preliminary decision on this item.

Regarding Zakat Payer's Appeal on the item "Taxes, fines, and Penalties", it was found that the Appeal is based on Zakat Payer's request to deduct the taxes, fines, and penalties item, arguing that they represent banking expenses for various banking transactions. However, ZATCA believes that this item consists of taxes, fines, and penalties rather than banking charges. It is established



that ordinary and necessary expenses related to the activity, whether paid or payable, can be deducted if they are actual expenses. Upon Department's review of the financial statements, it was found that there is a separate item for financial charges, and the Appellant provided statements with the details of the amounts under Appeal, along with journal entries and the final declaration containing the amounts related to the Appealed item. Since ZATCA did not present any evidence contradicting what Zakat Payer provided and confirmed, the Department concludes to accept Zakat Payer's Appeal for deducting the banking expenses and overturn the primary decision regarding this matter.

Decision

First: Accept, in form, the Appeal in form submitted by Zakat Payer/ ... Trading Ltd. Company, against the decision of the Second Primary Committee for Zakat and Tax Objections in Jeddah, Decision No. (30) of 1438 AH.

Second: On Merits:

1. Reject Zakat Payer's Appeal regarding the item (Short-Term Loans) and uphold primary decision's outcome in this regard, in accordance with the reasons and justifications stated in this decision.
2. Reject Zakat Payer's Appeal regarding the item (Short-Term Loans Provided by Partners) and uphold the primary decision's conclusion in this regard, in accordance with the reasons and justifications stated in this decision.
3. Reject Zakat Payer's Appeal regarding the item (Profit Used to Finance Long-Term Assets) and affirm primary decision's outcome in this regard, in accordance with the reasons and justifications 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 justifications stated in this decision.
5. Accept Zakat Payer's Appeal regarding the item (Provisions Transferred from a Related Party) and overturning primary decision's conclusion in this regard, in accordance with the reasons and justifications stated in this decision.
6. Accept Zakat Payer's Appeal regarding the item (Use of Provisions), in the request to deduct the utilized amount of provisions from the net profit, and overturn primary decision's outcome in this regard, in accordance with the reasons and justifications 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 justifications stated in this decision.
8. Accept Zakat Payer's Appeal regarding the item (Board Members' Fees), in the request to deduct the 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 justifications stated in this decision.
9. Accept Zakat Payer's Appeal regarding the item (Logistics Costs Charged by a Related Saudi Entity) and overturn primary decision's outcome in this regard, in accordance with the reasons and justifications stated in this decision.
10. Accept, by majority, Zakat Payer's Appeal regarding the item (Sales Promotion and Discount Related to Company ...), and overturn primary decision's outcome in this regard, in accordance with the reasons and justifications stated in this decision.
11. Reject Zakat Payer's Appeal regarding the item (Foreign Purchase Differences) and uphold primary decision's conclusion in this regard, in accordance with the reasons and justifications stated in this decision.
12. Reject Zakat Payer's Appeal regarding the item (Cost of Sales Differences) and affirm primary decision's ruling in this regard, in accordance with the reasons and justifications stated in this decision.



13. Accept Zakat Payer's Appeal regarding the item (Non-Deductibility of School Fees) and overturn primary decision's outcome in this regard, in accordance with the reasons and justifications stated in this decision.
14. Accept Zakat Payer's Appeal regarding the item (Inventory Provisions) and reverse primary decision's conclusion in this regard, in accordance with the reasons and justifications stated in this decision.
15. Reject Zakat Payer's Appeal regarding the item (Provision for Bad Debts) and uphold primary decision's outcome in this regard, in accordance with the reasons and justifications stated in this decision.
16. Accept Zakat Payer's Appeal regarding the item (Taxes, Fines, and Penalties) and overturn primary decision's outcome in this regard, in accordance with the reasons and justifications stated in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 129

Failure to register temporary employees with the social insurance does not constitute sufficient Grounds to deny realization and payment of expenses by Zakat Payer for those employees during the probation period.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

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

First: Accept, in form, the objection submitted by Zakat Payer/ ... Company, Certified Public Accountants, regarding zakat assessment for the years 2009 to 2011.

Second: On Merits:

1. Uphold GAZT's decision regarding the processing of item (Annual Bonuses in Excess of 5% of Net Profit), for the Grounds stated in the decision.
2. Uphold GAZT's decision regarding item (Addition of Social Insurance Differences and Personnel Housing Allowance to Zakat Base), for the Grounds stated in the decision and the amounts included therein.
3. Uphold GAZT's decision regarding item (Addition of Rent Expenses of Partners' Private Housing and Medical Insurance to Zakat Base), for the Grounds stated in the decision.
4. Uphold GAZT's decision regarding item (Addition of Expenses of Travel Tickets and Accommodation to Zakat Base), for the Grounds stated in the decision.
5. Uphold GAZT's decision regarding item (Addition of Expenses of Gifts, Tips, Donations, and Administrative Expenses to Zakat Base), for the Grounds stated in the decision.
6. Uphold GAZT's decision for accepting medical insurance expenses for personnel and their families as a deductible expense from its Zakat Base, for the Grounds stated in the decision.



7. Uphold GAZT's decision regarding item (Addition of Zakat Paid in 2009 and 2010 to Zakat Base), for the Grounds stated in the decision.
8. Resolution of the dispute between parties to Case over item (Fixed Asset Sale Profit), for the Grounds stated in the decision.
9. Uphold GAZT's decision regarding item (Addition of Revolving Adjusted Current Account Balance to Zakat Base of Zakat Payer), for the Grounds stated in the decision.
10. Resolution of the dispute between parties to Case over item (Investments), for the Grounds stated in the decision.

As this decision was not accepted by (... Company, Certified Public Accountants), the Company submitted an Appeal to the Department, including a summary of the contested items as follows:

1. Annual Bonuses Exceeding 5% of Net Profit for the Years 2009, 2010, and 2011: Zakat Payer objects to ZATCA'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, ZATCA'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 allowable deductible expenses.
2. Item (Social Insurance Differences and Personnel Housing Allowance to Zakat Base of 2009 – 2011):

Zakat Payer objects to the Objection Committee's decision for upholding GAZT's decision for the non-calculation of the full difference amount of social insurance, salaries, and housing allowance for personnel for years 2009 – 2011, as stated in Zakat Payer's Declaration, not on the amount on which GAZT made its Assessment, as Zakat Payer contends that the difference that was not calculated within those amounts is due to the existence of wages for temporary personnel during their probationary period, for the purpose of later on-boarding in full-time positions, after their competence to work for Zakat Payer is proven, which is consistent with the approved Work Regulations for the probationary period; hence, there is no reason hindering the exclusion of the difference between the wages subject to GOSI subscription represented by the basic salary and the housing allowance that has been added thereto as basic wages, and amounts added to those wages and salaries that represent amounts due to temporary personnel.

3. Item (Rent Expenses of Partners' Private Housing and Medical Insurance of 2009 – 2011):

Zakat Payer objects to GAZT's decision, claiming that the housing rents represent actual expenses incurred by Zakat Payer that were paid for its partners working at the Office "Zakat Payer" and their private medical insurance; hence, there is no reason hindering the exclusion of those expenses incurred by Zakat Payer for the purpose of carrying out its business and activity. In addition, stating that the rented properties were for transactions between non-independent parties does not change its consideration as an expense.

4. Item (Unapproved Expenses of Travel Tickets and Accommodation of 2009 – 2011):



Zakat Payer objects to GAZT's decision, claiming that these expenses represent amounts for tickets that were paid to travel agencies within the Kingdom, in addition to accommodation expenses for assignments that are necessary to be carried out for the Office "Zakat Payer," which are undertaken by its partners and personnel through reviewing clients' accounts in different regions of the Kingdom, which renders the same as actual expenses related to Zakat Payer's activity; hence, they must be deducted from the overall net profit, since they represent expenses necessary to generate revenues for Zakat Payer. They also represent amounts of ticket to the families of Zakat Payer's partners and personnel, which are considered deductible expenses, as they represent financial obligations on Zakat Payer when contracting with personnel; hence, they are related to revenue-generating. Accordingly, GAZT's procedure of not deducting these expenses from Zakat Base is not sound, especially since Zakat Payer has provided GAZT with an analytical statement of those expenses for travel and accommodation, the names of the beneficiaries, and the amounts paid per beneficiary.

5. Item (Addition of Expenses of Gifts, Gratuities, Donations, and Administrative Expenses):

Zakat Payer objects to GAZT's decision for non-approval of expenses for gratuities and donations in the amount of (SAR 204,767), and the amount of (SAR 153,693) of 2009 and 2010, respectively, expenses for gifts and gratuities in the amount of (SAR 204,167), and administrative expenses in the amount of (SAR 485,995) of 2011, as Zakat Payer contends that these expenses represent expenses for business lunches and for "Iftar" personnel during the month of Ramadan, and expenses for coffee and tea provided to personnel during work, in addition to incentive gifts. As for donations, they were paid for assistance and to various associations and entities. Moreover, Zakat Payer had previously submitted a detailed statement of the donations and gratuities paid; hence, there is no reason hindering the exclusion of those expenses from Zakat Base for years in question.

6. Item (Zakat Provision of 2009 and 2010):

Zakat Payer objects to GAZT's decision for the addition of an amount of (SAR 101,586) and an amount of (SAR 39,804) representing the Zakat differences of 2009 and 2010, which resulted in amendment of the net profit subject to Zakat Base accordingly, as Zakat Payer asserts that it had submitted the financial statements and the expenses charged during the discussion of accounts of 2009 and 2010, and that those amounts were not charged to the expenses of the years in question; hence the net income contained in the Zakat Base does not include the Zakat provision, since Zakat is calculated by adding the net income prior to deducting its provision; thus, Zakat differences that GAZT has deduced, and by which it adjusted the net profit, were not based on the data shown in Zakat Payer's accounts, in light of GAZT's failure to provide any proof of the exclusion of the amounts of those provisions based on GAZT's explanation regarding Zakat Payer's approach in processing these provisions and including the same in the Zakat Base, and the method in which Zakat Payer's has processed these provisions.

7. Item (Adjusted Partners' Current Account Balance with Partners' Private Rent of 2011):

Zakat Payer objects to the Objection Committee's decision for upholding GAZT's decision for the addition of the balance of partners' current account of 2011 to Zakat Base despite the fact that it did not complete the Zakat Year, as Zakat Payer contends that the rule for the calculation of Zakat on partners' current account is by adding the lower balance at the beginning or end of the Zakat period to Zakat Base. In addition, since these balances were recorded during 2011, as clarified in the partners' accounts previously submitted to GAZT, their addition to Zakat Base is not valid due to the non-completion



of Zakat Year. Even assuming that GAZT adjusted the balance of that account, the lower balance at the beginning of the Zakat period was excluded from Zakat Base, while the balance at the end of the Zakat period was added to the same, which is higher than the balance at the beginning of the Zakat period, amounting to (SAR 985,586).

In addition to its requests, the Appellant has emphasized that the Department should order ZATCA to implement the primary decision regarding Zakat Payer's objection to the approval of amounts related to medical insurance for the families of partners and employees for the period from 2009 to 2011. Furthermore, Zakat Payer has requested that the Department order ZATCA to amend the assessment by adding salaries of Riyadh branch and deducting them from Zakat base, as stated in the decision issued by the Primary Objections Committee.

Based on the aforementioned arguments, objections, and requests raised by Zakat Payer regarding the appeal under consideration, the Department requested ZATCA to respond to the objections included in the Appellant's statement of appeal regarding the items raised. Upon examination of ZATCA's Reply dated 01/11/1441 AH regarding the appeal under consideration and the items addressed in the Appellant's statement of appeal, it became clear to the Department that ZATCA reaffirms its position presented regarding these objected items during the consideration of Zakat Payer's objection before the primary committee. ZATCA maintains correctness and validity of its procedures regarding the items subject to the appeal, and that the committee's decision was in accordance with the provisions of the law. Therefore, ZATCA adheres to the 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 ZATCA had responded to it at that time. As such, ZATCA requests the Department to uphold the primary decision and reject Zakat Payer's appeal regarding the appealed items.

Grounds

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

On merits: it has been determined that the appeal is now ready for consideration, as the Department believes that the statement of appeal, Reply, and accompanying documents of the Case file are sufficient to form its conviction to adjudicate on the disputed items. Therefore, the Department has decided as follows:

1. Annual Bonuses Exceeding 5% of Net Profit for the Years 2009, 2010, and 2011: After the Department reviewed Zakat Payer's Appeal and ZATCA's response, which was based on its reliance on the arguments made during the hearing and pleadings before the Objection Committee, it was found that these bonuses paid by Zakat Payer to its employees—exceeding the amount accepted by ZATCA as the maximum deductible expense—do not fundamentally represent a dispute over the principle of considering them as an expense. Therefore, this dispute shall not be considered a documentary issue related to providing evidence proving the actual amounts paid as bonuses. ZATCA's 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 the zakat base, as long as the dispute is not over the actual expense itself, as previously stated. Consequently, exceeding this percentage to nearly (24%), as assessed by the Primary Department, does not justify excluding this expense from zakat base within this percentage, especially when considering the nature of the bonuses linked to 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 what Zakat Payer presented in their declaration.



2. Item (Social Insurance Differences and Personnel Housing Allowance to Zakat Base of 2009 – 2011):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question and GAZT's Reply thereto based on its sufficiency with arguments presented during the hearing and pleadings before the Objection Committee, found that; since Zakat Payer did not object to the entire item in question, but rather its objection was to the lack of exclusion of amounts of temporary employment contracts that were under probationary period and were not covered by the subscription amounts paid to GOSI, considering their status as temporary personnel under probationary period and their incompetence to work for Zakat Payer except after proving otherwise upon completion of their probationary period; and since Zakat Payer's failure to register its temporary personnel with GOSI does not constitute a sufficient ground to claim that these expenses were not incurred by Zakat Payer and were paid to temporary personnel during their probationary period, especially since registering with GOSI is considered a presumption that may be supported by evidence or other signs establishing the validity of those expenses as wages of temporary personnel paid during their probationary period; and since Zakat Payer has provided evidence that proves the Department's satisfaction of the existence of these expenses; Therefore, the Department satisfies to accept Zakat Payer's appeal on the item in question by considering these expenses related to wages of temporary personnel as a deductible expense for the years in dispute.

3. Item of Housing Allowance and Medical Insurance Costs for Partners for the Years 2009 to 2011: Following Department's review of Zakat Payer's Appeal and ZATCA's response, which referenced the arguments presented during the hearing and discussions 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, ZATCA argues that the 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 the housing of some partners. Furthermore, Zakat Payer's recording of these rental values in its books and counting them as a debit on partners' current account results in exclusion of these amounts from the zakat base for the partner Mr. ... Moreover, ZATCA argues that since these properties are owned by the partners themselves, the transaction is not independent and lacks impartiality in determining a fair rental value. Moreover, such rent constitutes additional income for the partners, which shall be recognized in their zakat declaration; therefore, it cannot be considered a deductible expense. After reviewing the dispute as outlined above, the Department finds that, in the case of companies, any payments made by a Company to its partners are generally considered a profit distribution. The only payments that may be considered deductible expenses are those that can be recognized as such when paid to a partner managing the business, which would be treated as compensation for management services rather than as profit distribution. This is because 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, however, can only be considered a profit distribution to the partner, regardless of the label 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 the 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, given the nature of partners' professional work, it is evident that their collective efforts rely on individual contributions of each partner, which are ultimately represented under office name. The deductible expense is defined as one that is directly tied to the 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 does not meet this criterion as a deductible expense when provided to a partner, it is not related to generating Company's revenue. An example of a deductible expense would be when a partner travels to review the files and accounts of a client outside Company's location, as such expenses are directly connected to generating Company's income. However, the housing allowance provided to the partner is, in essence, a benefit offered by the Company to the partner. Moreover, the amount paid in this manner cannot be considered part of the compensation given to the partner for contributing to management and operation of the Company to enable partners at the office to perform their professional accounting duties, which justify existence of the Company. The justification for granting and allocating this allowance to the partners is not tied to their direct participation in the management of the office, which is centered around the professional activities carried out by all partners. 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. Department's decision that the housing allowances given by the Company to partners shall not be treated 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 partner shall be deducted from zakat base, just like employee salaries and allowances, considering what their peers receive. This is because the essence of the fatwa indicates that treating such allowances as wages and salaries, similar to what is given to employees, is contingent on partner's involvement in managing and running the Company. Thus, applying the fatwa to every amount given to the partners by the Company, without linking it to partner's role in managing the Company and separating it from their professional work as a partner, would be a misapplication. It would incorrectly compare what is given to the partner as if it were equivalent to employee wages, since what the partner receives for their professional work is considered a share of 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 partners when they perform their professional duties under the Company's framework, for which they receive fees for their professional work, and the resulting profit is then divided among partners according to their agreement. The validity of this conclusion is not undermined by issuing committee's argument regarding ZATCA's decision not to deduct rental amounts on the Grounds that they 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 a profit distribution from the Company to partners, as previously detailed. It is established in the Appeals judiciary that a decision may be upheld in its conclusion with modification to its reasoning. As a result, it is evident that treating these allowances as a profit distribution to the partners, rather than as wages comparable to those received by office employees, is appropriate since a partner is not considered an employee when carrying out their professional responsibilities at the office. Therefore, the majority of the Department concurs with decision's conclusion that the housing allowances granted by the Company to the partners shall not be classified as a deductible expense from Zakat Payer's zakat base.



As for the other element related to the disputed item, namely (health insurance amounts paid by the office to the partners), and Zakat Payer's request to deduct these paid amounts as deductible expenses from Zakat base, after examining the Appellant's objection in this regard, the Department found that these expenses provided as health insurance by the Company to the partners cannot be treated in the manner demanded by Zakat Payer, unlike health insurance for employees. There is no relationship between the realization of revenue for the office and the existence of health insurance for partners, as measuring this against what is spent on employees to attract them to work for the office is different from what is spent on partners by the Company. The Company's relationship with the partners is not governed by the same rules as the employment relationship between the office and its workers and employees, and therefore the ruling on this relationship cannot be applied to the relationship between the partners and the office when they exercise their professional work. Accordingly, it is not appropriate to deduct the health insurance amounts paid by the office for the partners as a deductible expense. In reality, these amounts are a benefit provided by the Company to its partners and shall be considered as distributed profit rather than treated as an expense similar to health insurance paid for Company's workers and employees, as the partner is not an employee when performing their professional duties at the office. Therefore, the majority of the Department agrees with decision's conclusion that the health insurance amounts paid by the Company for its partners shall not be treated as a deductible expense from Zakat Payer's zakat base.

4. Item of Unapproved Tickets and Travel & Accommodation Expenses for the Years 2009 to 2011: Zakat Payer provided a detailed statement of the beneficiaries of these tickets and payments made for travel and accommodation expenses. During Zakat Payer's objection hearing before the committee, ZATCA argued that there was a lack of detailed information regarding these expenses. However, after examining the evidence submitted by Zakat Payer, the Department found that the details included a list of beneficiaries and the entities to which these expenses were paid, which led the Department to be convinced of the validity and reasonableness of these expenses as necessary for office operations when engaging with its clients and verifying accuracy of their financial statements during reviews conducted at their various locations across the Kingdom. ZATCA's objection that the list of beneficiaries included the partners themselves does not affect this conclusion. This is because the professional activities of the Company rely on personal efforts of the partners to carry out audit and review work for office clients. Therefore, partners' benefit from travel tickets and accommodation expenses is justified by the nature of office business and connection of these expenses to generation of revenue arising from partners' professional activities. As such, these expenses are considered allowable deductible expenses.
5. Item of Expenses for Gifts, Gratuities, Donations, and Administrative Expenses: After evaluating Zakat Payer's Appeal regarding the specifics of this item, particularly the expenses for gifts, gratuities, and donations, the Department determined that Zakat Payer failed to present any credible evidence to support these expenses as eligible deductions from the zakat base. Zakat Payer simply classified these expenses with the intention of deducting them from zakat base. Accordingly, the Department decided to reject Zakat Payer's claim to deduct these expenses from the zakat base. However, the department concluded that these amounts shall be treated as a profit distribution and funds utilized by Zakat Payer in the manner claimed. Therefore, these expenses shall be considered as a profit distribution that reduces the balance of retained earnings 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 the disputed years.

As for administrative expenses, the dispute between Zakat Payer and ZATCA is primarily based on documentation. The committee supported ZATCA's position of not accepting these expenses because Zakat Payer did not provide any supporting documents. The Department requested Zakat Payer to provide a clear breakdown of these 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 listing these expenses and some documents that, in his view, support his claim. The Department did not find sufficient evidence to confirm that these expenses meet the criteria of allowable deductible expenses, especially since some of them were stated as having been incurred by one of the partners. 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 partners. Therefore, the Department concluded that these amounts shall be treated as a profit distribution and funds utilized by Zakat Payer in the manner claimed. Consequently, these expenses shall be considered a profit distribution that reduces the retained earnings 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 the disputed years.

6. Item of Zakat Provision for the Years 2009 and 2010: Zakat Payer's Appeal regarding this item, as previously outlined in the summary of his arguments included in this decision, was based on the fact that ZATCA concluded that Zakat Payer had accounted for zakat as an expense for the disputed years without verifying this from the various financial statements provided by Zakat Payer for the years under objection. Merely stating that zakat is not a deductible expense is not enough to dismiss the Zakat Payer's claim based on his declaration. Consequently, ZATCA did not present any evidence to substantiate its conclusion that Zakat Payer incorrectly deducted zakat as an expense in the disputed years. Thus, the initial stance remains valid, which is to accept Zakat Payer's submission on this matter due to the lack of evidence disproving it and insufficiency of ZATCA's conclusions to overturn that stance. Therefore, the Department accepted Zakat Payer's Appeal on this item and ruled against adjusting the profit as suggested by ZATCA and stated in the primary decision by adding it back to zakat base.

7. Item (Adjusted Partners' Current Account Balance with Partners' Private Rent of 2011):

The Department, having taken cognizance of Zakat Payer's appeal regarding the item in question, found that: since the established rule when conducting the Zakat processing for partners' current account is based on adding the account balance at the beginning or the end of Zakat period, whichever is less, to Zakat Base; and since GAZT has failed to add the lower balance of that account without stating a reason for its renunciation of that established principle when calculating the Zakat Base for partners' current account; and since the said amount on which the Assessment was made to that account has not been confirmed whether it had completed the Zakat Year; Therefore, the Department satisfies to accept Zakat Payer's appeal on the item in question, dismiss the appealed decision as to conclusion it had in this regard, and calculate the balance of that account at the beginning of Zakat period, as shown by the financial statements submitted by Zakat Payer in connection with that account.

As for Zakat Payer's appeal regarding its request for ZATCA to confirm what was concluded in the primary decision, which favored Zakat Payer in some items or particulars, the Department has decided to disregard it as it is not a subject of dispute. Rather, the matter is related to ZATCA's implementation of what was included in the primary decision regarding it, which is a matter that falls outside the jurisdiction of the Department due to the absence of a dispute therein, as previously stated.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Certified Public Accountants, Commercial Register No. (...), against Decision No. (23) of 1438 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's appeal on item (Annual Bonuses in Excess of 5% of Net Profit of 2009, 2010, and 2011) by approving the same as a deductible expense as stated in Zakat Payer's Declaration, 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 (Social Insurance Differences and Personnel Housing Allowance to Zakat Base of 2009 – 2011) and reverse the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Dismiss Zakat Payer's appeal on item (Rent Expenses of Partners' Private Housing and Medical Insurance of 2009 – 2011) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
4. Accept Zakat Payer's appeal on item (Unapproved Expenses of Travel Tickets and Accommodation of 2009 – 2011) 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 (Addition of Expenses of Gifts, Gratuities, Donations, and Administrative Expenses) by considering the same as a distributed profit reducing the balance of retained profits at the end of the year, which in turn represents the opening balance for the following year for the purposes of calculating Zakat in each of the years in dispute, for the Grounds stated herein.
6. Accept Zakat Payer's appeal on item (Zakat Provision of 2009 and 2010) and reverse the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
7. Accept Zakat Payer's appeal on item (Adjusted Partners' Current Account Balance with Partners' Private Rent of 2011) 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-2020-38)
Issued in Appeal No. (Z-1514-2018)

Principle No. 130

Projects undergoing development and implementation cannot be considered as assets intended for trade purposes except in their final state after being offered for sale, unless evidence is provided showing that they were sold during the development phase.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Wednesday, 17/11/1441 AH, corresponding to 08/07/2020 AD, the First Appellate Department for Income Tax Violations and Disputes, formed in accordance with Royal Order No. (65474) dated 23/12/1439 AH based on Paragraph (b) of Article 67 of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/07/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh to review the Appeal submitted on 19/10/1438 AH, corresponding to 07/07/2017 AD, by/ ... Company against the decision of the Primary Committee for Zakat and Tax Objections in Dammam, Decision No. (14) of 1438 AH, issued in Case No. (1514-2018-Z), filed by the Appellant against ZATCA, The primary decision ruled as follows:

First: Accept, in form, the objection submitted by the Applicant/ ... Company ..., to the Zakat assessment made by ZATCA for the years from 2008 to 2012.

Second: On Merits:

1. Uphold GAZT's decision regarding item (Non-Deduction of Projects Under Implementation and Payments on Land Account from Zakat Base of 2009 – 2012).
2. Uphold GAZT's decision regarding item (Non-Deduction of Investments in Funds with Banks of 2009).
3. Uphold GAZT's decision regarding item (Non-Deduction of Land Contributions with Third Parties from Zakat Base of 2009).

Since this decision was not accepted by the Plaintiff (... Company), they filed an Appeal with the Department, providing the following summary:

Regarding the first disputed item, it does not involve lands and projects being considered as trade goods during the planning and development phases, as the residential units within these projects cannot be sold until their construction is completed and services are connected. This position is supported by religious fatwas issued by the Permanent Committee for Islamic Research and Ifta, indicating that zakat should only be calculated and paid once these projects are fully completed and offered for sale, which the Company has already done. As for the item related to bank investments in 2009, and land contributions with others for the year 2009, the Company maintains the same reasons it presented before the Preliminary Committee when contesting the assessment decision.



The Department received a Rejoinder from GAZT, in which it responded to Zakat Payer's appeal, stating that it adheres to the validity and soundness of its procedures in addressing the contested items, and requests to uphold the Objection Committee's decision for the Grounds stated therein, which upheld support of the validity of GAZT's Assessment. GAZT added that claims raised by Zakat Payer 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

Having reviewed the case documents and the statement of appeal submitted by the Appellant Company, the Department found that the formal requirements for accepting the appeal are met as stipulated in the relevant laws, regulations and decisions. Accordingly, this appeal is accepted in form for being submitted by a person with a capacity and within the period prescribed by law.

Regarding the first item related to (Projects Under Development and Payments on Account of Land), the Department did not find any indication that the Company intended to offer these lands for sale during the years under assessment. The Department noted that the Company disclosed residential units intended for sale under current assets in its financial statements, while at the same time categorizing projects under development, land contributions with others, and payments for land purchases under non-current assets. This indicates that the Company differentiates between assets intended for sale and those that are not. Consequently, these projects under development cannot be considered as assets held for trading purposes except in their final state, upon completion of development work. Therefore, the Department concluded not to include the amounts related to this item in zakat base for Zakat Payer Company, as they do not meet the criteria of trade assets, as established through this review, for the years under dispute between ZATCA and Zakat Payer.

As for the second item (Investments in Banks in 2009), after reviewing the Appeal submitted by Zakat Payer objecting to inclusion of this amount in its zakat base, it was found that the primary nature of investments in these funds is for trading purposes. Fund Managers typically generate returns by actively trading funds' capital, which involves activities such as trading in goods, buying and selling securities, or speculating on currencies, among others. Zakat Payer, by participating in such a fund, is aware that trading is the core activity of these funds; thus, the intention of holding these investments for acquisition is not applicable. Therefore, participating in these funds is essentially a form of trading and involves frequent buying and selling of the invested capital according to fund's objectives. As a result, the funds allocated for investment shall be considered as trade assets that cannot be excluded from Zakat Payer's zakat base, particularly since Zakat Payer did not present any evidence to contradict the apparent and known nature of these investments. Based on the above, the Department, by majority, concluded that inclusion of this item in the zakat base is correct and, therefore, rejected Zakat Payer's Appeal regarding this item.

As for the third item: (Land Contributions with Others amounting to SAR 5 million for the Year 2009), Zakat Payer's Appeal for this item is centered on the request to overturn the decision of the Primary Objections Committee, which upheld ZATCA's decision to add land contributions with others for the year 2009 to zakat base, considering them as real estate investments for trading purposes, thereby subjecting them to zakat. In contrast, the Appellant argues that these contributions shall be considered deductible elements, as the Company enters into these contributions with others for the purpose of constructing on its share of the contributed land and may sometimes resort to selling these contributions if investment's feasibility is reassessed. After reviewing case documents and the statements provided regarding this disputed item, it is evident that the purpose of establishing the Appellant Company is to purchase land for constructing



buildings and investing in them through sale or rental for Company's benefit, as well as managing and operating residential and commercial buildings, establishing and operating exhibitions and commercial complexes for the purpose of selling or leasing them to others, investing in hospitality and entertainment services, undertaking general contracting for buildings, constructing residential complexes, and investing in them through sale or rental for Company's benefit, along with establishing, managing, maintaining, and developing real estate properties. Accordingly, Company's activities include investing in land for the construction of buildings and, on the other hand, investing in land through sales or rentals. However, it is widely known and commonly practiced in real estate contributions that such contributions represent a shared ownership interest for the contributor, and the contributor may transfer or sell their ownership share to others, either for compensation or as a gift, after notifying contributor's representative to transfer the ownership to the designated individual. It is also customary for such contributions to include an agreement granting the contributor the authority to sell the contribution whenever it is deemed beneficial or profitable to execute the sale of all or part of the contribution, even if the development phase is not yet complete. Moreover, there is no distinct, allocated share for the contributor; rather, the contributor has only the right of first refusal when the contribution is sold at the value at which the group of lands intended for purchase is sold and allocated to the contributor. This implies that the intention to invest in purchasing these lands for establishing Company's projects is not the primary apparent intention, but rather is overshadowed by the main purpose of the contribution, which is generally trading. Therefore, the Department, by majority, has determined to subject the amount to zakat and include the value of these contributions with others in Zakat Payer's zakat base.

Decision

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

Second: On Merits:

1. Accept Zakat Payer's appeal on item (Deduction of Projects Under Implementation and Payments on Land Account from Zakat Base of 2009 – 2012) and reverse the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
2. Dismiss Zakat Payer's appeal on item (Deduction of Investments in Funds with Banks from Zakat Base of 2009) and uphold the appealed decision as to conclusion it had in this regard, for the Grounds stated herein.
3. Dismiss Zakat Payer's appeal on item (Deduction of Land Contributions with Third Parties of "SAR 5,000,000" of 2009) 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-2020-115)
Issued in Appeal No. (Z-2018-
1519)

Principle No. 131

In the context of zakat treatment, investments paid by Zakat Payer and recorded under partners' credit account shall be viewed and treated as an equity investment rather than being limited to amounts representing ownership shares in the original capital or documented capital increases. This is because Zakat Payer's financial statements reflect the actual payment of these amounts to the invested Company, indicating that they do not represent loans from Zakat Payer to the invested Company. Accordingly, these investment amounts shall be excluded from Zakat Payer's zakat base to avoid duplication of zakat.

Facts

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Wednesday, 25/03/1442 AH, corresponding to 11/11/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to review the Appeal submitted on 04/03/1438 AH by/ Company against the decision of the Primary Committee for Zakat and Tax Objections in Dammam, Decision No. (29) of 1437 AH, issued in Case No. (8) of 1436 AH, filed by the Appellant against ZATCA, the primary decision ruled as follows:

First: Accept, in form, the objection submitted by Company ..., to the Zakat assessment made by ZATCA for the years from 2007 to 2009.

Second: On Merits:

1. Uphold GAZT's decision regarding item (Addition of "SAR 41,536,047" for Fixed Asset Finance of 2009).
2. Establish resolution of dispute on item (Lands of 2007 – 2009).
3. Accept the calculation of the accepted expenses of social insurance by (11%) of the total salaries of Saudis and (2%) of the total salaries of non-Saudis, and refund the excess, if any, to the result of the year.
4. Uphold GAZT's decision regarding item (Addition of Loans of "SAR 5,907,952" to Zakat Base of 2009).
5. Uphold GAZT's decision regarding item (Deduction of Investment of "SAR 250,000" from Zakat Base of 2009).

Since this decision was not accepted by (.... Company,) In regard to some of its items, the Company submitted an Appeal to the Department on 04/03/1438 AH, followed by a supplementary memorandum dated 05/03/1442 AH, after the Appeal hearing was



reopened. In the latter memorandum, the Company stated that it maintains its original position on the disputed items outlined in its initial memorandum, except for item (3) related to the advance payments from customers amounting to SAR (61,382,110) for the year 2009. The Company explained that these amounts are deducted from the payments made to the contractor to enable them to prepare the site and supply materials to begin work, in exchange for providing bank guarantees. Deductions are made as a percentage of the ongoing invoices over project execution period. However, due to unforeseen circumstances beyond Company's control, the projects in the Jazan area were halted because of the outbreak of war, making it impossible to continue project implementation and preventing reduction of the advance payments. It is worth noting that there is a debit balance for the year 2019 for the same parties from whom these advance payments were received. Therefore, ZATCA shall perform a reconciliation between the debit balance and the outstanding advance payments for the same creditor, as stipulated in the guideline issued by ZATCA for the construction sector. The Company concluded its supplementary memorandum by requesting an adjustment to the final zakat assessment for the indicated years.

The Department, having requested GAZT regarding its response to Zakat Payer's appeal, it submitted a Rejoinder on 20/03/1442 AH, corresponding to 06/11/2020 AD, in which it stated that claims raised by Zakat Payer are consistent with the earlier submissions, which GAZT responded to at that time, and that its decision came in compliance with relevant legal provisions and applicable instructions and decisions supporting the validity and soundness of its procedure. GAZT added that it requests to uphold the conclusion reached by Objection Committee in its decision for lack of effect of Zakat Payer's appeal on the same. Moreover, GAZT requests the Department not to accept any new requests from Zakat Payer upon considering the appeal in question based on Article (186) of 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 reviewed case documents and statement of appeal submitted by Zakat Payer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with capacity and within the period prescribed by law.

On merits, having perused the case file and documents contained therein, contents of statement of appeal and ZATCA's response thereto, since the aforementioned attached memorandum included Zakat Payer's objection to customer payments item in the amount of SAR (61,382,110) of 2009. Having considered the primary decision, the Department found that Zakat Payer Company had previously objected to that item, which was considered when the primary committee addressed the dispute thereon regarding another assessment that included that item, and a primary decision was issued thereon other than this decision, which is subject of Zakat Payer's appeal. Since Zakat Payer did not deny the item when he objected thereto within another assessment by virtue of which a primary decision was issued containing a decision on the fate of that item according to what was stated in facts of the primary decision under consideration, this entails not discussing Zakat Payer's appeal regarding that item because settlement of the dispute therein is not related to the decision that Zakat Payer appeals on items that its wording concluded, which did not include the item raised by Zakat Payer (Customer Payments in the Amount of SAR (61,382,110) of 2009), and that Zakat Payer has the right to appeal in accordance with what is legally stipulated regarding this item, was included in the other primary decision when considering



its dispute and determining his fate within conclusion of its wording. Moreover, this applies to Zakat Payer's objection to the increased social insurance of 2009, which included a further primary decision to decide on the fate of its connection to zakat base for that year. Accordingly, the Department decided not to consider the dispute, while maintaining the right of Zakat Payer Company to appeal outcome of that decision in light of what is legally stipulated for considering the appeal against the primary decision, which contained deciding on the objected item in that other primary decision, in terms of details that this decision will address regarding discussing items that were subject to Zakat Payer's appeal against the decision under consideration, as follows:

1. (Item of Financing from Partners to Purchase Assets in the Amount of SAR (41,536,047)): Zakat Payer's Appeal summarized a request to exclude partners' current account balance of SAR (41,536,047) for the year 2007 from zakat base. Upon reviewing the primary decision and ZATCA's position on this item, it was noted that the Committee upheld ZATCA's assumption that the disputed amount of SAR (41,536,047) was entirely used to finance fixed assets, based on the cash flow statement, which shows the purchase of fixed assets amounting to SAR (46,879,985). However, Zakat Payer clarified that the amount financed from partners' current account was SAR (17,392,000), which represents the value of the land added in 2007. The remaining amount added to the current account during the year was intended to fund Company's operational activities. After considering the nature of the dispute between Zakat Payer and ZATCA as previously presented, and given that ZATCA did not provide any evidence indicating a direct relationship between the increase in current account balance and the increase in fixed assets, it is not reasonable to deduce from cash flow statement that the fixed assets added during the year were financed from the current account. Cash flow statement does not establish a necessary link between sources of financing and their uses. Zakat Payer can finance assets from multiple sources, such as available cash, proceeds from selling other assets, revenue generated during the year, bank loans, partner contributions, and others. Therefore, it cannot be assumed that the increase in the current account was used to finance fixed assets without establishing a direct link between the increase in the current account and the specific asset being financed. Consequently, the Department concluded to accept Zakat Payer's Appeal and overturn the primary decision regarding this item, determining that the amount of SAR (41,536,047) mentioned in Primary Committee's analysis during its review of this objection shall not be included in the zakat base of Zakat Payer, as it had not met the conditions for a full zakat year and there was no evidence of it being used to finance elements deductible from zakat base.
2. (Item of Increased Social Insurance of 2009 in the amount of SAR (409,257) and SAR (387,825) of 2008): After examining Zakat Payer's Appeal for this item and the content of the primary decision - under Appeal-in outlining case details, it was found that Primary Decision No. (11) of 1435 AH had previously addressed the issue of the excess differences related to social insurance for the year 2009, and the assessment was made based on the conclusions reached in that decision. Zakat Payer argued that this decision was Appealed. Thus, the Department concluded that Zakat Payer's Appeal shall be limited to the item concerning the overcharged differences related to social insurance for the year 2008, as this is the specific dispute associated with the primary decision under review, Decision No. (29) of 1437 AH. Zakat Payer objects to the amount of these social insurance differences that ZATCA added to Company's zakat base, contesting primary decision's conclusion, which upheld ZATCA's position of including these differences and adding them back to Zakat Payer's base. Zakat Payer claims that the social insurance certificate was submitted, showing the paid contributions and penalties that were actually disbursed by the Company. Therefore, ZATCA's position, which is based on the argument that the increase arose after calculating wages and salaries according to the deducted percentages for both Saudi and foreign employees, and adding the excess amounts to Zakat Payer's base to adjust the results of that year, is not accurate. The primary decision was based on the fact that the case file did not include the social insurance certificate. ZATCA shall have clarified its position on Zakat Payer's claim that it had submitted the relevant certificate. There



is no indication from decision details that ZATCA denied Zakat Payer's claim. The default position is what was presented by Zakat Payer in its declaration, and there is no reason to depart from this position based on the review of case details when assessing validity of Zakat Payer's claim during the dispute. As there is no evidence from Appeal review to affirm that ZATCA disproved existence of the social insurance certificate verifying disbursement of these amounts, the Department concludes to accept Zakat Payer's Appeal, overturn the primary decision, and uphold what Zakat Payer declared, considering the wage and salary expenses as allowable deductible for that year without adding any additional amounts for 2008, which contradicts the conclusion reached in the primary decision.

3. (An item of advance payments from customers, due to strabismus, in the amount of (62,383,110) riyals for the year 2009): Upon reviewing Company's Appeal regarding this item and examining the primary decision under Appeal, the Department found that the facts stated in the primary decision indicate that this item had already been the subject of Zakat Payer's objection to another primary decision, No. (11) for the year 1435 AH. Since the Appeal submitted by the Company is not related to the primary decision under consideration—having been previously resolved in the aforementioned primary decision—the Department decided not to address this matter within the scope of the current Appeal. The current Appeal pertains to primary decision No. (29) for the year 1437 AH, issued by the Primary Committee in Dammam.
4. (Item of Short-Term Loans - Subject to Zakat for the Year 2009, Amounting to SAR (5,907,953): The Company objects to the approach adopted by GAZT, which was upheld by the Committee, to include the balance of short-term loans in Zakat base for that year. In reality, the amounts associated with these loans have been fully spent by the Company and are no longer in its possession. It is understood that the Zakat ruling (fatwa) is based on the principle that the borrower is obligated to pay Zakat on the funds if they remain in his possession and have not been wholly or partially used. In such cases, Zakat is due on the amount when one lunar year has passed. However, this was not the case with the loans for the Company. Upon reviewing movement of the short-term loans account, the Department found that the Committee had thoroughly examined and traced the transactions of this account, confirming that the year-end balance of this account matched the amount on which the Zakat was assessed. This indicates that Company's Appeal is not supported by the actual circumstances. Furthermore, the general principles and rules mentioned by the Company regarding Zakat treatment for loans do not align with the actual state of the loans in question. Despite Company's claim of having spent the entire loan amount and no longer possessing it, the balance was present at the end of the year. Therefore, the Department concluded to reject Company's Appeal and uphold the primary decision regarding the item under consideration.
5. (Investment Item of 2009): Zakat Payer Company objects that the investment amount paid to the investee company is calculated only according to the ratio of Zakat Payer's ownership in the original capital and the amount of investment credited to the partners' current account is not deducted, because otherwise dealing with such investments would result in paying zakat on the same money twice if the amount of investee company and of the Appellant Company investing in that company is assessed. GAZT believes that what shall be deducted is Zakat Payer's share of the statutory capital of the invested companies (... Company). Therefore, partner's current account balance was excluded from the investment balance at the end of the year as it is considered a loan. Thus, the responsibility for paying Zakat on the loan falls on both the lender and the borrower, as their financial obligations are distinct, thereby preventing duplication of Zakat. Having considered ZATCA's dealing with the amount of such investment, the Department found that ZATCA limited to deducting Zakat Payer's share in the capital of investee Company, and did not deduct the amount credited to partners' current account balance, considering that it does not represent an investment paid by Zakat Payer but rather a loan by him to the investee Company. 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, if it is also known that 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 long as it has not been proven that there is 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

First: Accept, in form, the Appeal submitted by Zakat Payer / ... Company, against Decision No. (29) for the year 1437 AH, issued by the Primary Committee for Zakat and Tax Objections in Dammam.

Second: On Merits:

- 1- Accept Zakat Payer's Appeal regarding the item "Partner Financing for Asset Purchase" amounting to SAR (41,536,047), and overturn primary decision's ruling on this matter. It was determined that this amount shall not be included in the Zakat base of Zakat Payer Company, for the reasons and justifications outlined in this decision.
- 2- Dismiss Zakat Payer's Appeal regarding the item "Social Insurance with Additional Charges for the Year 2009" for the reasons and justifications outlined in this decision.
- 3- Accept Zakat Payer's Appeal regarding the item "Social Insurance with Additional Charges for the Year 2008" amounting to SAR (387,825), and overturn primary decision's ruling on this matter. It was determined to accept Zakat Payer's declaration considering the expenses for wages and salaries deductible for that year without imposing any additional charges for the year 2008.
- 4- Dismiss Zakat Payer's Appeal regarding the item "Advance Payments from Customers - Subject to Zakat for the Year 2009" amounting to SAR (62,383,110), for the reasons and justifications outlined in this decision.
- 5- Reject Zakat Payer's Appeal regarding the item "Short-Term Loans - Subject to Zakat for the Year 2009" amounting to SAR (5,907,953), and uphold primary decision's ruling on this matter for the reasons and justifications outlined in this decision.
- 6- Accept Zakat Payer's Appeal regarding the item of "Investment for the Year 2009," overturn primary decision's ruling on this matter, and deduct the investment amount listed in its financial statements from its Zakat base for the reasons and justifications outlined in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-94)
Issued in Appeal No. (Z-1532-2018)

Principle No. 132

The relative stability of the investment values indicates the absence of active trading, suggesting that they are long-term investments not intended for sale, and therefore not subject to Zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Wednesday, 11/03/1442 AH, corresponding to 28/10/2020, 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 Paragraph (b) of Article 67 of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh to review the Appeal submitted on 16/04/1439 AH, corresponding to 01/01/2018, by / ... Company, against decision of the First Primary Committee for Zakat and Tax Objections in Jeddah, No. (9/2) for the year 1439 AH, issued in objection No. (1437/22/196), filed by the Appellant against GAZT. The primary decision ruled as follows:

First: Accept, in form, the Objection of ... Company

Second: On Merits:

1. Uphold GAZT's decision not to deduct the value of land intended for trade from Zakat Payer's Zakat base for the years 2009 to 2012.
2. Support Zakat Payer's position to add the opening or closing balance of the current account, whichever is lower, to Company's Zakat base for the year 2012.

Since this decision was not accepted by (... Company), it submitted a statement of appeal, summarized as follows:

The Appellant Company objects to the inclusion of investment amounts in land for the years 2009 to 2012, which the decision upheld by supporting GAZT's position not to deduct the value of land intended for trade from Zakat Payer's Zakat base for those years. The objection is based on Company's claim that its primary activity is purchasing and developing land with the intention of lease, i.e., for long-term purposes, and that the Company is not engaged in land trading, as was erroneously concluded by GAZT and the respected Primary Committee. The Company provided an analytical statement in the attachments to its Appeal, which, from its perspective, details the lands owned and the purpose of acquiring these lands, indicating that they are intended for investment rather than being prepared for sale. The analysis included detailed breakdowns, tables, values, and the relevant years as outlined in Appellant Company's Appeal memorandum.

Investments in land are claimed to be deductible from the Zakat base for the years 2009 to 2012.



The Company further argues that the sale of land during the year 2012 shall not be interpreted as trading activity, as there is no evidence or proof to indicate that slight changes in the investment balances of those lands suggest that the purpose of acquiring lands was for resale. The Appellant Company also adds that the amounts used to finance land acquisitions (partners' current accounts, reserves, and capital) were already included in Zakat base for those years. Therefore, the long-term income-generating investments shall be allowed as deductions from Zakat base, on the Grounds that the amounts used to finance these investments have already been added to Zakat base. The Appellant Company concluded its Appeal by requesting exclusion of land investments for the disputed years from its Zakat base, contrary to what was ruled in the primary decision on this matter.

The Department requested GAZT to respond to the contents of Appellant's memorandum regarding the item under objection within 10 days from the date the request was sent to GAZT, date 07/09/1441 AH, corresponding to 30/04/2020. However, the Department did not receive any response from GAZT regarding the requested reply to the reasons for Appeal stated in Appellant Company's memorandum for the item that Zakat Payer objected to GAZT's assessment on, after the granted deadline had expired and without providing a reason for their delayed response. Considering that the Appeal restores the case to its state prior to issuance of the Appealed decision, this necessitates relying on the statements and responses of GAZT as included in the primary decision regarding the item under review. The Department received an additional memorandum from the Appellant Company on 09/03/1442 AH, corresponding to 26/10/2020, which reiterated their claims and requests as stated in their original Appeal memorandum, along with some attachments that they indicated were related to clarifying their viewpoint.

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 the formal requirements for appeal hearing have been met as stipulated by the relevant laws, regulations and decisions. Therefore, the appeal is accepted in form for being filed by a party having capacity and within the statutory period.

On merits, after reviewing case file, its contents, and the Appeal Memorandum, the Department determined that the case is ready for consideration and decided to proceed with ruling on the Appeal submitted by Zakat Payer Company regarding the item under objection. Upon examining the primary decision related to the disputed item and contents of the Appeal memorandum submitted by Zakat Payer Company, the Department found that Company's Appeal is centered on its objection to Primary Committee's decision, which upheld GAZT's position of not deducting the value of land intended for trade from Zakat Payer's Zakat base for the years 2009 to 2012. The basis for this position is that the purpose of Company's establishment is to purchase land and real estate for the purpose of construction, development, and investment through sale, purchase, or lease for the benefit of the Company, as stated in Company's Articles of Association and approved financial statements. The Appellant argues that the disputed lands represent long-term investments and were disclosed in the financial statements as non-current assets, which shall be deducted from Zakat base. However, GAZT maintains that Company's purpose is to acquire land and real estate for construction, development, and investment through sale or lease for the Company's benefit. Accordingly, the Company has both rental assets and land investments intended for sale ("trading assets") that are subject to Zakat. Upon reviewing the facts stated in the primary decision under Appeal, it is evident that the committee based its ruling on its conviction that land investments are considered trading assets. This conclusion was reached because the constructions on lands were minimal compared to the actual value of lands, indicating that the objective is profit-making.



Therefore, they are classified as trading assets, supporting GAZT's position of not deducting these investments from Zakat base for the years 2009 to 2012.

Additionally, Company's objectives, as outlined in Article (2) of its Articles of Association, include: "Purchasing land and real estate: with the intention of constructing, developing, and investing through sale or lease for Company's benefit". This makes it difficult to definitively affirm accuracy of GAZT's and Committee's classification of these investments as trading assets under the given circumstances. Additionally, Committee's justification that these investments are trading assets that shall not be deducted from Zakat Payer's Zakat base was based on Note No. (2) of Appellant's financial statements for the years 2009 and 2010, which stated: "Company's policy is to revalue at least one-third of its land and real estate portfolio each year by an independent appraiser, while the remaining portion shall be evaluated by Company's management. Additionally, all land and real estate shall be revalued every three years by an independent appraiser to identify any changes in market value. This value is only adjusted in case of a decline in value as a result of the valuation". Moreover, Committee's reliance on the details of this note reflects its conviction that the purpose of land investment is profit-making through sales, thereby considering these lands as trading assets. However, upon Department's review of Committee's conclusion and the subsequent classification of these lands as trading assets, it cannot be definitively accepted. Also, Company's policy of periodically revaluing its fixed assets aligns with Paragraph (309) of the Financial Accounting Standards issued by the Saudi Organization for Chartered and Professional Accountants (SOCPA) concerning "Gains and Losses," which states: "6- Expected Losses: These losses shall be recognized in the financial statements if the available information indicates that one or more future events are likely to occur, confirming the occurrence of a loss or a decline in the value of a specific asset or creating a liability for the accounting entity, provided that the amount of this loss can be reasonably estimated."

The value of the investments shown in the financial statements — as noted in the primary decision — demonstrates relative stability, indicating the absence of active trading on the disputed item. This suggests that they are long-term investments not intended for sale in their current state, as evidenced by the ongoing construction on the lands over the years in dispute. This strengthens Department's view that Zakat is not applicable to these assets, as they do not meet the criteria of trading assets, contrary to the conclusion reached in the primary decision. Therefore, the Department concluded to accept Zakat Payer's Appeal by excluding the land investments for the years 2009 to 2012 from Zakat Payer's Zakat base and to overturn the primary decision on this matter.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/ ... Company against Decision No. (9/2) for the year 1439 AH, issued by the First Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

Accept Zakat Payer Company's Appeal to exclude land investments for the years 2009 to 2012 from its Zakat base, and overturn the decision on this matter, based on the reasons and justifications outlined in this decision.

Similar Decisions:

First Appellate Department for Income Tax Violations and Disputes

Appeal Decision No: (IR-2021-273)



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-99)
Issued in Appeal No. (Z-1566-
2018)

Principle No. 133

Late payment fines shall be considered ordinary expenses arising from the nature of business activities, which reduce Zakat Payer's revenues and shall be deductible for the purpose of calculating the profit subject to Zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no 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 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 18/08/1438 AH by/ ... Company against decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (15) of 1438 AH, issued in Objection No. (37/37), 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/ ... Company regarding the revised Zakat assessment for the year 2012.

Second: On Merits:

1. Accept Zakat Payer's objection regarding (Provision for Late Payment Fines) item, based on the merits stated in the decision.
2. Confirm settlement of the dispute with regard to Item (Loans, Promissory Notes, and Current Advances), based on the merits stated in the decision.
3. Confirm settlement of the dispute with regard to Item (Trade Creditors, Suppliers, and Subcontractors), based on the merits stated in the decision.
4. Dismiss Zakat Payer's objection regarding investments item, based on the merits stated in the decision.

Since this decision was not accepted by (... Company), it submitted a statement of appeal, summarized as follows:

1. The company objects to the addition of the amount of that provision SAR (84,673,558) to the adjusted net profit regarding (Provision for Late Payment Fines) item: Given that these fines are stipulated in the contracts with clients and do not impact expenses in subsequent years. Furthermore, the revenue account has been adjusted and subjected to zakat after deducting any withholdings from the interim invoices. Therefore, adding the provision for fines to the zakat base, along with reducing the provision in subsequent years and adjusting the revenue account, would result in double payment of zakat, contrary to the decision reached regarding this item.



2. (Investments) Item: Zakat Payer Company contests the exclusion of SAR (201,196,335) related to investments in joint ventures, arguing that such ventures are not registered with ZATCA. In fact, the company included its profits from the returns of these investments in its declarations to demonstrate good faith until the completion of the joint venture. Therefore, these profits should be deducted to avoid double payment of zakat.
3. (Investments Approved by ZATCA) Item: Zakat Payer Company contests the failure to deduct the full amount of these investments and the exclusion of SAR (26,544,315), as ZATCA added this difference to the company's zakat base, which is part of the investments that should be deducted from the base.

The Department requested GAZT to respond to the contents of Appellant's memorandum regarding the disputed items. The Department received GAZT's reply memorandum dated 11/04/1442 AH, addressing the points raised in Appellant Company's Appeal memorandum regarding the items for which Zakat Payer objected to GAZT's assessment. The reply memorandum reaffirmed GAZT's position concerning its view on the Appeal related to fines provision during the review of the dispute before the primary Committee. It emphasized that these amounts are held and remain as liabilities of the Company, and as provisions, they do not qualify as actual deductible expenses. Regarding the investment item, GAZT indicated that these investments are essentially (...) projects that are not registered with GAZT, and no accounts or relevant data were provided for them. Therefore, deductions were not accepted from Zakat base. It is noted that some companies are fully owned by the holding Company, and consolidated financial statements shall be submitted for them to account for the Company accordingly, as per the applicable rules and regulations. Regarding the value of investments recognized by GAZT for the subsidiary and associate companies, GAZT emphasized that the objection to this item is a new request that shall not be considered, in accordance with provisions of the Law of Civil Procedures that refer to the rules governing Committee Procedures.

Grounds

Having reviewed case documents and statement of appeal submitted by Zakat Payer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with 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: (Provision for Late Payment Fines) Item: 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, 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.

Second: (Investments) Item: The primary decision regarding these investments comprehensively addressed Zakat Payer's objection to the combination of investments in joint ventures and investments in existing companies, in which Zakat Payer holds an equity stake representing ownership rights. Therefore, GAZT's request to reject Zakat Payer's Appeal concerning the investments approved by GAZT in the subsidiary and associate companies, on the Grounds that it constitutes a new claim, is not valid, given that the primary Committee confirmed its acceptance of the dispute on this matter and addressed it along with the other investments. Given the above, regarding the deducted investments in companies registered with GAZT (subsidiaries and associates), mentioned in Zakat Payer's Appeal under Item (2-3: Value of Investments Approved by GAZT for Subsidiaries and Associates), which represents part of Zakat Payer's objection stated in the primary decision under Item (4- Investments), GAZT did not clarify the reason for deducting an amount less than the amounts stated in Zakat Payer's declaration. As a result, the Department did not find any reason to deviate from the original declaration of Zakat Payer, since GAZT did not support its position with credible evidence or compelling justification to affirm the validity of its stance on not considering the deduction of these investments in the invested companies, except for the amount of (SAR 98,075,555) raised by GAZT in response to Zakat Payer's objection. Therefore, the Department concluded to accept Zakat Payer's Appeal to deduct these investments, amounting to SAR (124,619,870) from its Zakat base, and to overturn the primary decision on this matter.

It was not evident to the Department, regarding the investment in joint ventures, after reviewing the Zakat Payer's appeal and the primary decision regarding this item, as well as ZATCA's response to Zakat Payer's appeal, which emphasizes that these ventures are not registered with ZATCA and that no relevant accounts or data were submitted, that ZATCA, prior to rejecting the deduction for these investments, had requested information from Zakat Payer regarding such ventures, including whether the amounts reported in the financial statements represent Zakat Payer's share in the assets and liabilities or its equity interest of those ventures in order to verify payment of zakat on any zakatable funds resulting from an examination of this situation. Since this was not fulfilled, and given that the Zakat Collection Instructions in effect at the time Zakat Payer submitted its declaration did not include a proper reference to requiring disclosure of information about such projects, as is typically requested under the tax system, GAZT has no right to reject deduction of these amounts from Zakat Payer's base solely on the Grounds that they are not registered with GAZT for the purpose of Zakat assessment. Regarding GAZT's claim in its response that there are companies fully owned by the holding Company, and that consolidated financial statements shall have been submitted for proper accounting, such a claim is unrelated to the dispute over investments in the form of (... projects). GAZT had the right to request what it deems necessary from Zakat Payer to account for it based on consolidated financial statements if there are fully-owned subsidiaries, as GAZT asserted in its response regarding the disputed item. However, this does not pertain to those joint projects that are not registered with GAZT. Therefore, the Department concluded to accept Zakat Payer's Appeal for the deduction of investments in joint projects from its Zakat base, as declared in its report, amounting to SAR (201,196,335), and to overturn the primary decision on this matter.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Commercial Register No. (...), against Decision No. (15) of 1438 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

Amend decision of the Primary Committee regarding the "Late Payment Fines Provision" item to read 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, in accordance with Grounds and merits mentioned herein.

- A. Accept Zakat Payer's appeal regarding its request to deduct investments in subsidiary and associate companies, amounting to SAR (124,619,870) from its zakat base and overturn the decision delivered on this matter, in accordance with Grounds and merits mentioned herein.
- B. Accept Zakat Payer's appeal regarding the deduction of investments in joint ventures from its zakat base as stated in its declaration, amounting to SAR (201,196,335) and overturn the primary decision in 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. (IAR-2020-135)
Issued in Appeal No. (Z-1587-2018)

Principle No. 134

The established principle is that the additional investment amount provided by the investing Company to the invested Company shall be deducted from Zakat base of the investing Company, provided that it represents equity and is included in Zakat base of the invested Company that submits its declarations to GAZT. This treatment ensures that the same amount is not subject to duplication of Zakat.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Wednesday, 10/04/1442 AH, corresponding to 25/11/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to review the Appeal submitted on 02/07/1439 AH by/ Company against the decision of the Second Primary Committee for Zakat and Tax Objections in Jeddah, Decision No. (2) of 1439 AH, issued in Objection No. (1436/22/3587), filed by the Appellant against GAZT, the primary decision ruled as follows:

First: Accept, in form, the objection submitted by/... Company regarding Zakat assessment for the years 2012 and 2013, in accordance with the reasoning outlined in the decision.

Second: On Merits:

1. The dispute between the two parties regarding the item "Partner Current Account Differences" for the years 2012 and 2013 has been resolved, in accordance with the reasoning outlined in the decision.
2. a. Uphold GAZT's position to fully deduct the investment balance in/... Company for Construction and Development Ltd. for the year 2012 from Zakat Payer's Zakat base, in accordance with the reasoning outlined in the decision.
- b. Deduct the difference amounting to SAR (3,000,000) from Zakat Payer's Zakat base, in addition to what was already deducted by GAZT in its assessment, related to the investment balance in/ Company for Construction and Development Ltd. for the year 2013, in accordance with the reasoning outlined in the decision.
- c. Uphold GAZT's decision not to deduct the additional financing in/ ... Company from Zakat Payer's Zakat base for the years 2012 and 2013, in accordance with the reasoning outlined in the decision.



Since this decision was not accepted by (... Company), it submitted a statement of appeal, summarized as follows:

Zakat Payer Company's Appeal revolves around its objection to the item for which the committee upheld GAZT's position of not deducting Zakat Payer's additional investment in the invested Company (... Company) from Zakat Payer's Zakat base for the disputed years, amounting to SAR (333,321,664) and SAR (443,088,589), respectively. Committee's decision not to deduct this investment was based on its assessment that since invested Company's zakat base was negative and because Zakat was calculated in that Company based on the adjusted net profit for both years, this indicates that the additional financing amount is not subject to Zakat in the invested Company. Furthermore, the committee considered that the amount provided by Zakat Payer Company to the invested Company is treated as a debt that has completed its Zakat year, which means that it shall be subject to Zakat by both the lender and the borrower without resulting in duplication of Zakat on the same asset. This is based on the ruling (fatwa) stating that the lender pays Zakat on the money he owns, even if it is owed by the debtor, and the borrower pays Zakat on the money he owns in his possession and under his control, making it subject to Zakat. In fact, according to Zakat Payer Company, Committee's decision contradicts GAZT's instructions as outlined in its letter No. (1723/9) dated 28/03/1426 AH, which confirmed that additional financing recorded under partners' current account and not adjusted to reflect partnership share in invested Company's Articles of Association shall be deducted from the Zakat base of the investing Company, provided that it is included in Zakat base of the invested Company, which submits its Zakat declarations to GAZT. Furthermore, this type of investment does not constitute receivables resulting from commercial transactions. Thus, deducting the additional investment from the Zakat base is consistent with the accounting standards for Zakat treatment when it is classified as equity in the financial statements. Moreover, this approach of deducting the additional investment amount from investing Company's Zakat base has been confirmed by several decisions issued by the Appellate Committee, as highlighted with examples in Appeal Memorandum. Accordingly, Zakat Payer Company requests deduction of the additional investment amount in the invested Company from its Zakat base for the disputed years, contrary to the ruling of the primary decision.

The Department requested GAZT to respond to the points raised in Appellant Company's memorandum regarding the disputed item. GAZT's response, dated 29/03/1442 AH, reiterated its stance presented before the Objection Committee during the review of Zakat Payer Company's objection. GAZT requests upholding the decision under Appeal, affirming the validity and correctness of GAZT's action, considering that the arguments raised by Zakat Payer Company were previously presented during the review of its objection before the Primary Committee, and GAZT addressed them at that time.

Grounds

Having reviewed case documents and statement of appeal submitted by Zakat Payer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in from for being submitted by a person with capacity and within the period prescribed by law.

On the merits, after reviewing the core of the dispute between the parties, the Department concluded that the dispute centers around Zakat Payer Company's stance that the additional investment shall be deducted from its Zakat base to prevent double taxation on the same amount. This is because the investment amount would be accounted for in the Zakat base of the invested Company, which submits its declarations to GAZT.



On the other hand, GAZT believes that Zakat is due on the investment amount as it is considered a debt that must be subject to Zakat by both the lender and the borrower alike when the Zakat year is complete, without resulting in double Zakat on the same amount. It is an established principle that the additional investment amount provided by the investing Company to the invested Company shall be deducted from the Zakat base of the investing Company, provided that it represents equity and is included in the Zakat base of the invested Company that submits its declarations to GAZT. This treatment ensures that the same amount is not subject to duplication of Zakat. Therefore, the additional investment amount shall be deducted from investing Company's zakat base to the extent that it is reflected in the equity of the invested Company, represented by the amount contributed to the original capital, its legally documented modifications, or the additional contributions that have not been formalized but are recorded in invested Company's books under "Partners' Current Account" and classified as equity in its financial statements. This conclusion is not undermined by Primary Committee's decision that classified the additional financing as a loan subject to Zakat by both the lender and the borrower. This is because there is no evidence that the amount in question was a loan resulting from commercial transactions that created creditor and debtor rights, nor is there proof of repayments for what is claimed to be a loan in borrower's accounts to the lender. Furthermore, Primary Department's decision to include the investment amount in the Zakat Payer's base, despite the Zakat calculation resulting in a negative outcome due to not adjusting the profit by incorporating the investment amount into invested Company's Zakat base, does not alter the conclusion. As long as the funds were removed from Zakat Payer's accounts for investment purposes in the invested Company, there is no Zakat due on an amount that is no longer in Zakat Payer's possession when a full Zakat year has passed. Accordingly, the Department concluded to accept Zakat Payer's Appeal and overturn the primary decision on this item, as the decision was not based on valid Grounds. Thus, it was decided to deduct the investment amount for both years from Zakat Payer's base as stated in its Zakat declaration.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Commercial Register No. (...), against Decision No. (2) of 1439 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

Accept Zakat Payer's Appeal regarding the item of additional financing in/ Company, and deduction of the investment amount for the two years under dispute from Zakat Payer's base, overturn the primary decision as per the conclusions stated therein, for the reasons and rationale outlined in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IAR-2020-93)
Issued in Appeal No. (Z-1617-2018)

Principle No. 135

If the balances of Dividend Payables and Shareholder Payables (Capital Adjustments) are maintained in a separate bank account, independent from Company's bank accounts, not mixed with its funds, and not under its control, they are deemed to be outside Company's possession. Consequently, these balances are not included in the Zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no 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 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 05/01/1438 AH by/ ... Company against decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (32) of 1437 AH, issued in Objection No. (22/37), 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/ ... Company regarding Zakat assessment for the year ended on 31/12/2013.

Second: On Merits:

1. Reject Zakat Payer's objection regarding the item of unrealized gains, based on the rationale stated in the decision.
2. Resolution of the dispute regarding the item of donations, based on the rationale stated in the decision.
3. Reject Zakat Payer's objection regarding the item of profits from subsidiaries, based on the rationale stated in the decision.
4. Reject Zakat Payer's objection regarding the item of carried-over Sharia Zakat provision, based on the rationale stated in the decision.
5. Reject Zakat Payer's objection by majority regarding the item of advance payments from customers, based on the rationale stated in the decision.
6. Reject Zakat Payer's objection regarding the item of dividend payables, based on the rationale stated in the decision.

Since this decision was not accepted by (... Company), it submitted a statement of appeal, summarized as follows:

1. The item of unrealized gains from investments, GAZT included unrealized gains reflecting the increase in the revaluation of our client's investments in invested companies, along with the cumulative balance of the investment revaluation. This



increase in the value of investments (unrealized gains) resulting from revaluation at year-end does not represent revenue or profit for the Company. Rather, it represents increase in the market value of the investments owned by the Appellant Company. Its appearance in the financial statements is for the purpose of informing the users of the financial statements that the Appellant Company has investments whose market value as of 31/12/2013 is higher than the acquisition cost of these investments at the time of purchase. The Appellant Company requests amendment of the assessment by presenting the investments at cost, after deducting the (unrealized gains) resulting from their revaluation at year-end.

2. Item of Profits from a Subsidiary Under Liquidation, The Appellant Company indicates that their 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 GAZT. To prevent double Zakat, the realized profits from these investments shall be deducted from Appellant Company's Zakat base.
3. Item of Carried-Forward Zakat Provision, the Appellant Company indicates that the carried-forward Zakat provision amounting to (10,690,457) SAR shall not be added to the Zakat base in accordance with the jurisprudential rule (Zakat funds are not subject to Zakat), This is because Zakat-liable profits are considered prior to deduction of Zakat.
4. Item of Shareholder Payables for the Years 2012 and 2013, and Dividend Payables for the Years 2012 and 2013, the Appellant Company indicates that GAZT did not verify the balance of dividend distributions that had not completed a full lunar year with the Company. GAZT 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. GAZT 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).

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

Since 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 answer to Zakat Payer's objections before the Primary Committee. Given that the appeal shall bring the case back to its original state existing at the time of consideration when hearing appeal. Since the Department received a supplementary 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) item (Creditors of Shares and Creditors of Dividends) item, without adding



new reasons to its arguments that had been previously submitted due to the fact that Appellant Company did not appeal them.

Grounds

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

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. Item of 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 GAZT'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 the Zakat base shall be offset by deducting the investments at their market value from the Zakat base. The disagreement, as stated, lies in the extent to which this principle was applied. Zakat Payer believes that GAZT did not deduct these amounts according to this principle and provided a comparison between the investment amounts deducted in GAZT'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 GAZT, 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 of Profits from a Subsidiary Under Liquidation, where the basis for Zakat Payer Company 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 GAZT and are assessed accordingly. Since the profits of Zakat Payer Company in the invested Company will result in a Zakat liability when GAZT 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 GAZT's assessment regarding this item. It is established that Saudi companies must submit their Zakat declarations to GAZT, and GAZT did not deny Appellant's claim of having endorsed those profits at the invested Company. This matter could have been easily addressed by GAZT confronting Zakat Payer Company with evidence proving that those profits were not endorsed in the invested Company based on the Zakat declarations submitted by Zakat Payer companies to GAZT, or by proving complete liquidation of the Company and absence of a Zakat file for the invested Company after its liquidation, along with fulfilling its obligations to GAZT 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 of Carried-Forward Zakat Provision, the Appellant, in its memorandum regarding this item, reiterated its previous objection to including the carried-forward Zakat provision in Zakat base, as stated in its arguments before the Primary Committee. Appellant's argument was based on the belief that the original amounts had already been subject to Zakat and that the jurisprudential rule in this matter states that: (Zakat money is not subject to zakat). Since these allocated amounts have completed a full year while still held by the Company. Since 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 of Shareholder Payables for the Years 2012 and 2013, and Dividend Payables for the Years 2012 and 2013, regarding this item, upon reviewing the Zakat assessment conducted by GAZT for the year ended 31/12/2013, it was observed that GAZT added the ending balance for both (Dividend Payables) and (Shareholder Payables – Capital Adjustments) to the 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 supplementary 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. GAZT's response, dated 20/01/1442 AH, to Department's inquiry regarding the disputed item indicated that the disagreement between GAZT and Zakat Payer is a documentation-related issue. Accordingly, GAZT 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 Zakat Payer'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. Reject Zakat Payer's Appeal regarding the item of unrealized gains from investments, and uphold the primary decision as per the conclusions stated therein, for the reasons and rationale outlined in this decision.
2. Accept Zakat Payer's Appeal regarding the item of profits from a subsidiary under liquidation, deduct the profit amount from Zakat Payer's Zakat base, and overturn the primary decision as per the conclusions stated therein, for the reasons and rationale outlined in this decision.
3. Reject Zakat Payer's Appeal regarding the item of carried-forward Zakat provision, and uphold the primary decision as per the conclusions stated therein, for the reasons and rationale outlined in this decision.
4. Accept Zakat Payer's Appeal regarding the item (Shareholder Payables for the years 2012 and 2013, and Dividend Payables for the years 2012 and 2013), by excluding these balances from being subject to Zakat, and overturn the primary decision as per the conclusions stated therein, for the reasons and rationale outlined in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 136

The 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. Therefore, limiting this deduction to specific thresholds has no legal or accounting basis.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to review the Appeal submitted on 12/01/1438 AH by/ ... Company, and the Appeal submitted by GAZT on 10/01/1438 AH, against the decision of the First Primary Committee for Zakat and Tax Objections in Jeddah, Decision No. (39/11) of 1437 AH, issued in Objection No. (29), filed by both parties Appealing the decision under review, which ruled as follows:

First: Accept, in form, 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 GAZT's circular No. (2574/9) dated 14/05/1426 AH.
2. Uphold GAZT'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. Address the item related to 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 the related parties item amounting to SAR 282,604 to Zakat Payer's Zakat base for the year 2013.
6. Add the item of performance guarantee amounting to SAR (723,148) to Zakat Payer's Zakat base for the year 2013.
7. Uphold GAZT's decision to add the payables amounting to SAR (10,416,450) to Zakat Payer's Zakat base for the year 2013.
8. Uphold GAZT's decision to add the Zakat provision – for which the full lunar year has been completed – to Zakat Payer's Zakat base for the year 2013.



9. Uphold GAZT's decision to add short-term loans amounting to SAR (35,000,000) to Zakat Payer's Zakat base for the year 2013.
10. Support 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 the General Authority of Zakat and Tax (GAZT), each submitted an Appeal memorandum 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 of Unrealized Gains from Investments), which Zakat Payer Company disputes. The committee supported the position of GAZT 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. GAZT shall not have added this increase and shall have adjusted by deducting the full value of investments and assets in exchange for it, or by deducting investments and fixed assets (or their equivalents) from the zakat base at cost value after excluding unrealized gains.
2. (Item of Investment Revenue amounting to SAR 30,239,523), which Zakat Payer Company disputes. While the Committee did not fully support GAZT'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 the invested 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 the ... Company a Saudi Company that submitted its declaration to GAZT for the year 2013, where the profits of that Company were included in the amounts subjected to zakat for that year, representing revenues generated from its investment in ... Company. Therefore, this amount shall not be subjected to zakat again within the zakat assessment of Zakat Payer Company to avoid duplication of zakat on the same revenue.
3. (Item of Short-term Loans amounting to SAR 35,000,000), which the Zakat Payer Company disputes regarding Committee's addition of two loan amounts from ... Bank. This amount represents the loans in question, which were added to the 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 primary decision's conclusion. Thus, the short-term loans shall not be added to zakat base.

As for GAZT's Appeal against the primary decision under Appeal regarding certain items included therein, it can be summarized as follows, based on the Appeal statement submitted by GAZT on 10/01/1438 AH: -

1. (Re-preparation of the Depreciation Schedule): GAZT 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, GAZT used the straight-line method and reached an agreement with the Zakat Payer to continue using this approach for calculating depreciation on fixed assets for the 2013 assessment year. Therefore, Zakat Payer shall 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), GAZT 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 invested 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 invested Company confirming that these profits were generated from the year 2013 earnings and are not related to the retained earnings of the invested Company.
3. (Treatment of Profits from the Sale of Fixed Assets amounting to SAR 175,993): GAZT requests that the provisions of the Tax Law and Implementing Regulations thereof not be applied when treating the sale of assets for disposal and the resulting profits or losses. Profit difference shall be added to zakat base without deduction, contrary to what was concluded in the primary decision and its treatment, which GAZT noted when examining the issue of depreciation differences and the method of their calculation.
4. (Net Fixed Assets Deducted from the Base): GAZT believes in the validity of its position when calculating the zakat base for Zakat Payer by subjecting the adjusted net profit to zakat, as GAZT 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 a treatment is used by Zakat Payers. This contradicts 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 GAZT 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 treatment 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 the 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 GAZT'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 GAZT, 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.

As for the substance of the matter, regarding Zakat Payer Company's Appeal, the Department reviewed and deliberated on its content as follows:

1. Item of 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 the 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 the 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 the zakat base as an independent item while deducting the related investments based on their values reflected in the year-end financial statements.

2. Item of 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 the invested 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 the 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 the 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 the 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 of 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 Riyadh Bank in 2013, as detailed in Zakat Payer's Appeal summary referenced in this decision. The Department found that the issuing committee 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's 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-end balance. The Committee did not find any evidence justifying the addition of the loan amount and deduction of an equivalent amount if used to purchase fixed assets. Furthermore, Committee did not verify Zakat Payer's 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's zakat base for that year. Consequently, the Department was convinced by Zakat Payer's argument and concluded to



exclude the short-term loans from 2013 zakat base, thereby accepting Zakat Payer's Appeal and rejecting the primary decision on this matter.

Regarding the Appeal submitted by the General Authority of Zakat and Tax, the Department reviewed and deliberated on its content as follows:

1. Item of Re-preparation of the Depreciation Schedule, GAZT's Appeal is essentially a request not to calculate depreciation according to Article (17) of the tax regulations. GAZT clarified that, when assessing Zakat Payer, it applied Circular No. (3299) dated 26/05/1434 AH, by using the net value of fixed assets and calculating depreciation based on the straight-line method, as agreed with Zakat Payer. Therefore, GAZT applied this method when calculating depreciation for fixed assets for the year 2013. GAZT's Appeal is merely a repetition of what it previously argued before the issuing committee 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's Appeal and uphold the primary decision regarding this item. The fact that GAZT mentioned that an agreement was reached with Zakat Payer to calculate depreciation using a method different 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 depreciation for Zakat Payer's base. Since GAZT did not provide evidence proving inaccuracy of the method used by Zakat Payer in calculating the depreciation 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's Appeal.
2. The Item of Adding Non-Zakatable Investment Revenues. Upon Department's consideration of the reasons provided by GAZT for Appealing 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 distributed profits from the companies in which investments were made. However, this conclusion is not entirely accurate, as the disputed amount represents Company's share in the profits of the invested companies, not a distribution of profits. This is because, according to Zakat Payer's accounting policy, it accounts for its subsidiaries and associates using the equity method, which requires recognizing Zakat Payer's share of the annual profit of 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 profit distributions, and given the above, GAZT's Appeal to justify the necessary result is not founded on a valid basis for acceptance. This is because profit distributions from those companies do not appear in the income statement, but rather directly reduce the amount of the investment, 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 concluded to reject GAZT's Appeal as it was based on an incorrect factual basis, and thus, upheld the primary decision in this regard.
3. Item of Handling Profits from the Sale of Fixed Assets Amounting to SAR (175,993). After Department's review of GAZT's Appeal regarding this item, it became evident that it disputes the conclusion reached by the Committee that issued the decision, which supported ... Company's position. The Company prepared its depreciation schedule for the year 2013 according to the new Tax Law, as stipulated to be applied for zakat payers by GAZT's Circular No. (2574/9) dated 14/05/1426 AH. As a result, the fixed assets are deducted accordingly, and whereas GAZT's request is to disallow deduction of profits 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 believes 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's Circular No. (2574/9) dated 14/5/1426 AH, which addressed application of some procedural provisions and accounting rules in the new Tax Law to sharia-based zakat payers to unify treatment, it was stated 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 25/6/1426 AH, corresponding to 31/07/2005, 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's right to the information mentioned in Article (61) of the Law." Upon reviewing Zakat Payer Company's 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, it was found that Zakat Payer Company included the item "Profit/Disposal of Fixed Assets" for the year 2013. As a result, it is evident that Committee's decision to treat the profits from the sale of fixed assets amounting to SAR (175,993) by deducting the amount from 2013 zakat base was correct. Accordingly, the Department decided to reject GAZT's Appeal, as it was not based on a valid legal reason, and to uphold the primary decision in this matter.

4. The Item of Net Fixed Assets Deducted from Zakat Base. Upon reviewing GAZT's Appeal concerning this item, the Department found that GAZT disputes Committee's decision to uphold Zakat Payer Company's position on deducting fixed assets and similar items from zakat base for the year 2013, 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's Appeal requested that the deduction of fixed assets be limited to the value of equity, as per GAZT's circular No. (2/8443/1) dated 08/08/1392 AH. However, upon examining the reasons for Appeal on this item, it became clear that GAZT's 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 religious institutions to support its conclusion on this matter. 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's 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's argument that this fatwa applies to a specific case is irrelevant, as the outcome of the fatwa aligns with the zakat calculation formula, which requires presence of zakat-eligible funds in the possession of Zakat Payer. This key element is absent in GAZT's 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 accumulated 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, limiting 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's Appeal and uphold the primary decision in this matter.

Decision

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

Second: On Merits:

1. Regarding the Appeal of Zakat Payer Company:

- a. Accept of Zakat Payer Company's Appeal regarding the item of 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's Appeal regarding the item of investment income 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's Appeal regarding the item of 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. Regarding the Appeal of GAZT:

- a. Reject GAZT's Appeal regarding 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's Appeal regarding 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's Appeal regarding the item of treatment of profits 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.
- c. Reject GAZT's Appeal regarding the item of 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 in Riyadh

Decision No. (IR-2021-132)
Issued in Appeal No. (ZIW-1646-2018)

Principle No. 137

For zakat purposes, if Zakat Payer's expenses are validated through the audited financial statements, they are regarded as deductible for zakat, unless there is evidence that challenges the accuracy of those statements and warrants a different conclusion.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no 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 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 ZATCA. The primary decision ruled as follows:

First: In from:

Accept, in form, the objection submitted by ... Company regarding zakat assessment for the years 2010 to 2012.

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 the zakat base for the years 2010 to 2012.
3. The dispute between ZATCA and Zakat Payer concerning provisions added to the 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 is 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 penalties on items upheld by ZATCA is rejected.

As this decision was not accepted by Zakat Payer (... Company), Zakat Payer submitted an 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 "School Expenses" item, ZATCA responded to Zakat Payer's Appeal by confirming that it had added the school expenses back to the profit due to Zakat Payer's failure to provide supporting documents for the item as required by Paragraph (7) of the Implementing Regulations of the Income Tax Law. Regarding the "Saudi Partner's Share in Retained Earnings" item, ZATCA explained that it had calculated the Saudi partner's share in retained earnings for the years 2011 and 2012 using the same method it applies to all Zakat Payers, where the amount used from the zakat provision was deducted from zakat balance at the beginning 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 AD, upon reviewing Appeal Memoranda and replies thereto, and after examining documents of the Case file, the Department decided that the Case was ready for adjudication and issuance of a decision.

Grounds

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

On merits, and concerning Zakat Payer's Appeal regarding the "Social Insurance" item, it became evident that the Appeal revolves around the deduction of the value of this item from zakat base, as Zakat Payer claims to have paid this amount to the General Organization for Social Insurance, supported by relevant documents. However, ZATCA added the difference between the amount recorded in Zakat Payer's accounts and the amount in the social insurance certificate to Zakat Payer's zakat base, due to the failure to provide supporting documents for this discrepancy. Additionally, Zakat Payer signed the field audit report, which included these amounts. Upon reviewing the matter of the dispute, and since ZATCA's action was based on the social insurance certificate, and Zakat Payer did not provide any justification for the difference between the amounts he acknowledged and those stated in the social insurance certificate, and since the field audit report did not contain any objection or reservation from Zakat Payer regarding its content, this Department finds that Committee's conclusion in the contested decision was correct. The arguments presented by Zakat Payer do not affect the outcome of the contested decision. Therefore, this Department concludes to reject Zakat Payer's Appeal and uphold the primary decision regarding this item, based on its reasons and the reasons stated in this decision. 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. Regarding the tax aspect of this item, the regulations require Zakat Payer to provide supporting documents proving the claimed expenses. Since Zakat Payer did not present the necessary documentation according to the Tax Law, the Department concludes to reject Zakat Payer's Appeal and uphold the primary decision concerning this item.

Regarding Zakat Payer's Appeal on the "Saudi Partner's Share in Retained Earnings" item, the Appeal is based on Zakat Payer's request to include the retained earnings as reported in the zakat declaration and to cancel ZATCA's action regarding this item. ZATCA, however, maintains that it calculated Saudi partner's share in retained earnings for the years 2011 and 2012 in the same manner it applies to all Zakat Payers, and that the amount used from the zakat provision was deducted from the zakat balance at the beginning of the year. Upon reviewing the matter, the Department notes that ZATCA did not provide a detailed explanation of how it calculated partner's share. Additionally, the balance of retained earnings is affected by any transfers made thereto, and the Department does not find any justification for ZATCA linking the zakat provision (which is recorded as a liability) with the retained earnings account (which is part of equity). As a result, the Department concludes to accept Zakat Payer's declaration, as no evidence has been



presented to contradict it. Accordingly, the Department decides to accept Zakat Payer's Appeal and overturn the primary decision on this matter.

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, 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. Upon reviewing the matter, the Department notes that imposition of the fine is contingent upon acceptance or rejection of the related item. Therefore, the Department decides to cancel the fines imposed on the items for which Zakat Payer's Appeal was accepted, as the fine is waived with dismissal of its underlying cause. On the other hand, the imposition of fines remains valid for the items where Zakat Payer's Appeal was not accepted. Consequently, the fine shall be applicable to the differences related to this item if Zakat Payer has not paid them, starting from the date of their legal due date.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, 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-2021-148)
Issued in Appeal No. (ZW-
1650-2018)

Principle No. 138

The statutory deposit is to be excluded from the zakat base since it is an amount retained by the Central Bank.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no 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 submitted by Zakat Payer/ ... Company 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's objection regarding the paid-up capital, based on the justifications provided in the decision.
2. Accept Zakat Payer's objection regarding transactions with related parties for the year 2008, based on the justifications provided in the decision.
3. Reject Zakat Payer's objection regarding investments, based on the justifications provided in the decision.
4. Reject Zakat Payer's objection regarding the statutory deposit with the Saudi Central Bank (SAMA), based on the justifications provided in the decision.
5. Reject Zakat Payer's objection regarding the solvency margin, based on the justifications provided in the decision.
6. Reject Zakat Payer's objection regarding the amended carried forward losses for the years 2009 to 2012, based on the justifications provided in the decision.
7. Reject Zakat Payer's objection regarding withholding taxes, based on the justifications provided in the decision.

Since this decision was not accepted by both parties, they submitted a statement of appeal, summarized as follows:

Regarding Zakat Payer's Appeal on the "Paid-Up Capital for the Years 2006 and 2007," Zakat Payer bases the Appeal on the argument that the paid amount shall not be subject



to zakat because a full year had not passed on it. Additionally, Zakat Payer argues that the date of the ministerial decision approving establishment of the Company is the date the Company gained its legal personality, and from that date onward, it shall be accountable for zakat. Prior to that date, the mentioned amount is subject to zakat in the liability 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 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 amount did not possess full ownership, as it could not be disposed of. Regarding Zakat Payer's Appeal on the "Non-Deduction of Investments According to Company's Financial Statements," Zakat Payer asserts that these investments are for the purpose of acquisition and not for trade. Therefore, the Company is legally entitled to deduct these investments from the zakat base. Regarding Zakat Payer's Appeal on the "Statutory Deposit Held According to the Insurance Companies Law and Regulations," Zakat Payer bases the Appeal on the argument that the legal basis for full ownership, which obligates zakat on the money, is founded on four principles: right, possession, disposal, and benefit. If the right is restricted until the liquidation of the Company, and possession, disposal, and benefit are absent, the statutory deposit cannot be considered fully owned property subject to zakat. In accordance with the Implementing Regulations of the Insurance Companies Law, insurance companies are prohibited from disposing of the statutory deposit. Furthermore, the returns generated from this deposit are not owned by the insurance companies but rather by the Saudi Central Bank. Consequently, it would be illogical for the state to claim the returns on this deposit while also imposing zakat on it. The Zakat Payer further contends that, in practice, the statutory deposit shall be excluded from the zakat base, as it functions similarly to fixed assets, which are used in business activities and contribute to the Company's operations. However, zakat is not required, so its net value is deducted from the zakat base in addition to the annual depreciation deduction from the adjusted profit. As for the statutory deposit, it is cash funds that have been deducted by force from the capital and are never benefited from its return, and thus it is obligated to deduct from the zakat base from the fixed assets. Accordingly, Zakat Payer requests cancellation of ZATCA's action and approval of deducting the statutory deposit from the zakat base for the years in dispute. Regarding Zakat Payer's Appeal on the "Solvency Margin" item, Zakat Payer clarifies that the solvency margin is considered purpose-specific funds, similar to tools of trade or acquired assets. Thus, the solvency margin falls under the ruling of Fatwa No. (12756) regarding funds that cannot be disposed of, which states: "If you are unable to access or manage the funds, zakat is not required until you gain the ability to control them. Once you have control, zakat will be due after a full zakat year has passed from the time you are able to manage the funds". Zakat Payer further argues that the solvency margin is essentially a restricted amount that cannot be disposed of, and that the returns from these investments are added to zakat base. Therefore, these investments shall be deducted as long-term assets. Zakat Payer requests cancellation of ZATCA's action and deduction of the solvency margin from zakat base.

Regarding Zakat Payer's Appeal on the "Adjusted Carried Forward Losses" item, Zakat Payer requests that the losses be recognized according to the financial statements, rather than according to the assessments issued by ZATCA. Concerning Zakat Payer's Appeal on the "Withholding Taxes" item, Zakat Payer argues that ZATCA calculated withholding tax on the total reinsurance premiums ceded externally. The Company, however, has paid withholding tax at a rate of 5% on the amounts paid, in accordance with the Tax Law. These amounts were paid to ZATCA within the specified deadlines. Zakat Payer requests that withholding tax not be applied to the total reinsurance installments



ceded externally and that the withholding tax paid be refunded, as these amounts paid to third parties are included in Company's income statement and are subject to zakat and tax. Regarding Zakat Payer's Appeal on the "Material Error in Calculating Withholding Differences for the Year 2011," Zakat Payer bases the Appeal on the fact that ZATCA calculated the withholding differences for 2011 at SAR (851,142), while the correct figure is SAR (581,142), resulting in an overstatement of SAR (270,000). Zakat Payer requests that the assessment be corrected and the excess amount refunded or adjusted.

As the decision was not accepted by ZATCA, it filed its appeal against the contested decision, as detailed in the following statement of appeal:

Regarding ZATCA's Appeal on the "Approval of Zakat Payer's Position on Related Party Transactions for the Year 2008," ZATCA clarified that it had added the balance of related party transactions for 2008 in the amount of SAR (2,560,000). Zakat Payer objected to the total amount without going into detail. The amount of SAR (315,000), which Zakat Payer referred to, was disclosed in its declaration submitted to ZATCA. However, the additional amount of SAR (2,245,000) was found in Note No. (10) of Company's financial statements, indicating that the amount was paid for assets purchased on behalf of ... Company by a related party, (Bahraini affiliate). Since these assets are deducted from zakat base, their sources of funding must be added, in accordance with fatwa No. (22665) of 1424 AH, in response to the second question, which states that all funds received from others shall be added to zakat base and then treated for zakat purposes based on whether they are subject to zakat or not, depending on their ultimate use. ZATCA also clarified that the Primary Committee did not base its decision on tangible facts and evidence that would support Zakat Payer's position. The Committee did not explain what was substantiated in its findings, whereas Note No. (10) in the financial statements supports the action taken by ZATCA. Therefore, we do not accept the reasoning provided by the Committee in its decision, as it contradicts the information stated in the financial statements.

The Department decided to reopen the proceedings, and on 10/04/1442 AH, corresponding to 25/11/2020 AD, ZATCA submitted a memorandum in response to Zakat Payer's appeal regarding the contested items. Regarding the "Paid-Up Capital for the Years 2006 and 2007," ZATCA responded that it conducted a field audit of Company's accounts, and upon reviewing Company's notarized Articles of Association, the date of notarization by the public notary is considered the official date of Company's establishment and its acquisition of legal personality. Since contract notarization by the public notary only occurs after the capital has been deposited, regardless of whether we rely on the date of deposit or the date of notarization, a full zakat year had passed on the capital. Therefore, ZATCA stands by the validity of its action. Regarding the item of "Investments for the Years 2008 to 2011," ZATCA responded that it did not deduct the investments because they consist of sukuk, a real estate fund, and an equity portfolio. Given the nature of these investments, they are considered tradable investments and cannot be deducted from zakat base. The duration of holding 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. Regarding the "Statutory Deposit Held According to Insurance Companies Law and Regulations," ZATCA responded that this item was added to the zakat base as it is considered pledged property that is subject to zakat. This deposit is a requirement for conducting business and is pledged property, the ownership of which has not been transferred. ZATCA supported its decision by referring to Article (4) of Zakat Collection Regulations, 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, are not deducted from zakat base." Regarding the "Solvency Margin" item, ZATCA responded that the capital is the primary basis for the



zakat obligation on the entity, based on the general principles of zakat collection, relevant religious rulings, and the regulations governing zakat on trade goods, as well as Ministerial Decision No. (393) dated 06/08/1430 AH, Circular No. (2/8443/1), and Article (4) of Zakat Collection Regulations. The claim that Company's control over these funds is restricted is incorrect; the Saudi Central Bank (SAMA) has merely specified certain investment channels and tools for these companies to safeguard shareholders' rights, build reserves to support Company's financial position, and achieve the required solvency margin in accordance with the Cooperative Insurance Law and Implementing Regulations thereof. Furthermore, the solvency margin does not only refer to capital but is one of three components defined by Article (66) of the mentioned Regulations. Therefore, ZATCA stands by the validity and correctness of its action. Regarding the "Adjusted Carried Forward Losses" item, ZATCA responded that the accepted adjusted carried forward losses are based on the applicable regulations and instructions that govern the situation, which apply to all Zakat Payers. These are detailed in Circular No. (148/3) dated 08/08/1408 AH, Circular No. (122/1) dated 19/08/1414 AH, and Circular No. (92/1) dated 19/07/1418 AH, which stipulate that the losses deductible from zakat base are the adjusted losses according to ZATCA's assessments, after adding the provisions and reserves that were previously added to the business results in previous years. This is further confirmed by Article (4), Paragraph (2) of Zakat Collection Regulations, which states that (the following shall be deducted from zakat base... the net adjusted carried forward loss is calculated according to ZATCA's assessments after adding only provisions or reserves that had previously reduced the loss in the year they were created. Therefore, ZATCA maintains the validity and correctness of its action. Regarding the "Withholding Taxes" item, ZATCA bases the correctness of its action on Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law, as amended by Ministerial Decision No. (1776) dated 18/05/1435 AH, which states that "a non-resident shall be subject to tax on any amount they receive from any source in the Kingdom, and the tax shall be withheld from the total amount according to the following rates:

rent for technical or consultancy services, airline tickets or air or sea freight, international telephone services, distributed profits, loan interest, insurance or reinsurance premiums: 5%.

Paragraph (8) states: "Withholding tax shall be imposed at the rates specified in Paragraph (1) of this Article on the total amount paid to a non-resident, regardless of any expenses incurred to generate this income, and irrespective of whether the expense, or part of it, shall be deemed a deductible expense, even if the amounts paid relate to contracts entered into prior to the enactment of the law". Regarding the "Material Error in Calculating Withholding Differences for the Year 2011," ZATCA responded that this item was not part of the original objection and is considered a new request by the Plaintiff. Therefore, ZATCA requests rejection of Plaintiff's request on 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 electronic pleading for a period of 10 days. This period would begin five days after the Parties were notified of Department's decision, and the specified period passed without any additional submissions from either party.

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 case file, it was noted that regarding the issue of non-deduction of investments according to Company's financial statements, Zakat Payer claimed that part of the disputed investments was made in local companies. Accordingly, the Department requested Zakat Payer to provide detailed information on the investment in local companies for each year under dispute, supported by financial statements and including the date of acquisition



and, if applicable, the date of sale. As for the "Solvency Margin" item, the Department requested that Zakat Payer specify the amount invested in shares of local companies within the solvency margin for each year under dispute, supported by financial statements, including the date of acquisition and, if applicable, the date of sale. Documents were to be submitted via the electronic portal within 30 days of this date.

On Tuesday, 05/11/1442 AH, corresponding to 15/06/2021 AD, and 27/10/1442 AH, corresponding to 08/06/2021 AD, after reviewing Appeal memoranda and responses thereto, as well as examining the documents and papers in case file, the Department concluded that the case was ready for adjudication and for issuing a decision on its merits.

Grounds

Having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer 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, concerning Zakat Payer's Appeal on the "Paid-Up Capital for the Years 2006 and 2007," the appeal revolves around Zakat Payer's view that the paid-up capital shall not be subject to zakat for the years 2006 and 2007. Zakat Payer argues that the funds used to establish the Company originally belonged to the investors, and that the Company could not take ownership of or utilize these funds to carry out its activities until the establishment procedures were fully completed. On the other hand, ZATCA believes that zakat is due on the amounts deposited as capital for the Company, as they were no longer in possession of original owners and became property of the Company once the Company gained its legal status after the contract was drafted and notarized. Upon Department's consideration of the dispute, and after reflecting on the provisions of Companies Law regarding the rules established by that Law, it is clear that a company's full legal existence does not occur until the completion of the incorporation procedures and its registration in the commercial registry. Since the Company, as a legal entity, assumes its obligations toward ZATCA only after achieving its full legal status, ownership of the funds transferred to Company's assets, and the establishment of full ownership, only occurs after the incorporation procedures are completed and the Company is formally established in accordance with the law. Drafting and notarizing the incorporation contract, as claimed by ZATCA, is insufficient by itself to establish Company's existence and independence. It is merely one of several steps required by law for the Company to gain full legal existence, which allows the Company to begin its activities and manage its funds. The dispute between ZATCA and the Company concerning zakat on those funds revolves around whether the Company was liable to pay zakat on these funds at a time when it did not yet have complete legal existence or control over the funds in the years under dispute. The responsibility for paying zakat on these funds during those years rests with the owners, the investors who established the Company, and whether zakat was obligatory for them. Since the Company had no role in the zakat liability for funds that it did not yet fully own or control, due to the incomplete incorporation procedures as previously explained, the Department, by majority, concludes to accept Zakat Payer's appeal, overturn the primary decision, and rule that the amounts of paid-up capital deposited at the time of Company's establishment shall be excluded from zakat base for the years 2006 and 2007.

Regarding Zakat Payer's Appeal on the item of "Non-Deduction of Investments According to Company's Financial Statements," the Appeal is based on Zakat Payer's request to deduct the investments from the zakat base, as they are considered for acquisition purposes. However, ZATCA believes that these investments are not eligible for deduction, as they consist of sukuk, a real estate fund, and an equity portfolio. Upon reviewing the dispute, and after the Department requested detailed information from Zakat Payer regarding the investments in those companies, no response was provided by Zakat Payer to support their claim. ZATCA based its actions on the



disclosures in the audited financial statements, which showed that the investments consisted of sukuk, a real estate fund, and an equity portfolio, with no indication of direct contributions to Saudi companies registered with ZATCA. Since Zakat Payer did not provide any evidence that would justify deviating from ZATCA's conclusions, which were based on the audited financial statements, the Department finds that Committee's decision being appealed was correct. Therefore, the Department concludes to reject Zakat Payer's Appeal and uphold the primary decision regarding this item.

Regarding Zakat Payer's Appeal on the "Statutory Deposit Held According to the Insurance Companies Law and Regulations," the Appeal is based on Zakat Payer's request to deduct the statutory deposit from zakat base, arguing that it is an amount held by the Saudi Central Bank, and the Company has no right to dispose of it in any way. However, ZATCA believes that the deposit shall not be deducted, as it is considered pledged property subject to zakat and is a requirement for conducting business activities. Upon reviewing the matter under dispute, the Appellate Department, in its settled jurisprudence, has ruled that the nature of the statutory deposit shall be characterized as a form of guarantee required by the official supervisory authority overseeing the activity, intended to secure the rights of clients. It is also considered a mandatory obligation, not voluntary. Consequently, it must be concluded that the company cannot dispose of the deposit amounts except in the event of Company's liquidation. This is because Company's control over the deposited funds is restricted by the supervisory authority, which has retained the funds as a requirement for issuing the license to conduct business. Furthermore, the regulatory provisions governing cooperative insurance activities stipulate that the supervisory authority responsible for regulating the activity, which mandated the retention of amounts from Company's capital, is the entity entitled to the returns generated by those deposited funds. Therefore, it follows that the statutory deposit shall not be added to zakat base of Zakat Payer. As a result, the Department decided to accept Zakat Payer's appeal and overturn the primary decision regarding this matter.

Regarding Zakat Payer's Appeal on the "Solvency Margin" item, the appeal is based on Zakat Payer's request to deduct the solvency margin from the zakat base, arguing that it is akin to restricted funds that cannot be disposed of. However, ZATCA maintains that the capital is the primary basis for the zakat obligation on the entity, based on the general rules for zakat collection, relevant religious rulings, and the regulations governing zakat on trade goods and interpretive circulars. ZATCA also contends that Zakat Payer's claim of restricted control over these funds is inaccurate, as the Saudi Central Bank (SAMA) has simply designated specific investment channels and tools for these companies to safeguard shareholders' rights. Upon reviewing the matter in question, the Department finds that the solvency margin is a legal requirement to maintain financial investments in order to meet Company's future obligations. Zakat treatment depends on the assets that comprise the solvency margin, whether they are investments in equity of other companies intended for trading or retention, or whether they are debt instruments. The Department had 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, but Zakat Payer did not provide the requested information to support their claim. It was established that the components of the solvency margin consist of deposits with local banks, which are subject to zakat according to their nature. As a result, the Department concludes that the information provided does not affect the outcome of the primary decision regarding this item. Therefore, the Department decided to reject the Appeal and uphold the primary decision on this matter.

Regarding Zakat Payer's Appeal on the "Adjusted Carried Forward Losses" item, the appeal is based on Zakat Payer's request to recognize the losses as reflected in their financial statements. However, ZATCA maintains that the losses deducted from zakat base are the carried forward losses as per the assessments issued by ZATCA. Upon reviewing the matter in dispute, the Department notes that Article (188) of the 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 ...".

Since Zakat Payer's Appeal regarding this item was not substantiated with reasons, the Department concludes that the submitted information does not affect the outcome of the primary decision regarding this item. Therefore, the Department has decided to reject the Appeal and uphold the primary decision on this matter.

Regarding Zakat Payer's Appeal on the "Withholding Taxes" item, the appeal is based on Zakat Payer's request not to impose withholding tax on the total reinsurance premiums ceded externally and to refund the taxes already paid. Zakat Payer argues that these amounts paid to third parties are included in Company's income statement and are subject to zakat and tax, which results in duplication of zakat. However, ZATCA maintains that Zakat Payer objects to subjecting the total value of the premiums transferred to non-resident companies, which appear in the income statement as a direct cost of the activity. Zakat Payer is requesting that only the net amount owed to the reinsurers from the reinsurance premiums ceded to non-resident companies be subject to withholding tax, as Zakat Payer settles 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 reviewing the dispute, it is legally established that withholding tax must be imposed on the total amount paid to the non-resident, according to the specified rates, as per Paragraph (1) of Article (63) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/6/1425 AH. This provision states: "A non-resident shall subject to tax on any amount they receive from any source within the Kingdom, and the tax shall be withheld from the total amount according to the following rates: Technical or consultancy services, or international telephone services other than payments made to the head office or an affiliated company, rent, airline tickets or air or sea freight, distributed profits, loan interest, insurance or reinsurance premiums. 5%. As stated in Paragraph (8) of the same Article mentioned above: "Withholding tax shall be imposed at the rates specified in Paragraph (1) of this Article on the total amount paid to the non-resident, regardless of any expenses incurred to generate this income, and irrespective of whether all or part of it is considered a deductible expense, even if the amounts paid relate to contracts entered into prior to the enactment of the law". Accordingly, the Department concludes to reject Zakat Payer's Appeal and uphold the primary decision regarding this item.

Regarding Zakat Payer's Appeal on the "Material Error in Calculating Withholding Differences for the Year 2011," the Appeal centers on Zakat Payer's request to adjust the assessment and refund or settle the excess withholding tax calculated. However, ZATCA maintains that the appealed item was not part of the original objection and is considered a new request from Zakat Payer. Upon reviewing the dispute, the Department notes that Zakat Payer confirmed existence of a material error in calculating the withholding differences for 2011. Material errors, when proven, are not typically considered substantive disputes to be contested in court. Therefore, Zakat Payer is entitled to approach ZATCA to correct the errors mentioned in the appeal. Since this issue was not raised in the original objection before the Primary Committee, the Appellate Department does not have jurisdiction to address it substantively. As a result, the Department has decided to dismiss this Appeal on the Grounds of lack of subject-matter jurisdiction.

Regarding ZATCA's Appeal concerning the item "Approval of Zakat Payer's Position on Related Party Transactions for the Year 2008," the Appeal revolves around ZATCA's objection to Committee's decision to support Zakat Payer's objection on this item. ZATCA claims that the Primary Committee did not base its decision on concrete facts and evidence to support Zakat Payer's position and did not clarify what was proven to it. In fact, Note No. (10) of the financial statements supports the action taken by ZATCA. Upon reviewing the dispute, the Department finds that ZATCA did not prove the disputed amount as a liability in the statement of financial position, did not demonstrate that a full year had passed on that amount, nor did it establish a link between the amount and any specific asset deducted from zakat base. The Department sees no



reason to modify or comment on ZATCA's arguments regarding this item. Therefore, the Department concludes to reject ZATCA's Appeal and uphold the primary decision on this matter.

Decision

First: Accept, in form, the Appeal submitted by/ Company and the Appeal submitted by ZATCA against decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (35) of 1437 AH.

Second: On Merits:

1. Accept, by majority, Zakat Payer's Appeal regarding the "Paid-Up Capital for the Years 2006 and 2007", and overturn the primary decision based on the reasons and justifications stated in this decision.
2. Reject Zakat Payer's Appeal regarding the "Non-Deduction of Investments According to Company's Financial Statements", and uphold the primary decision based on the reasons and justifications stated in this decision.
3. Accept Zakat Payer's Appeal regarding the "Statutory Deposit Held According to the Insurance Companies Law and Regulations", and overturn the primary decision based on the reasons and justifications stated in this decision.
4. Reject Zakat Payer's Appeal regarding the "Solvency Margin", and uphold the primary decision based on the reasons and justifications stated in this decision.
5. Reject Zakat Payer's Appeal regarding the "Adjusted Carried Forward Losses", and uphold the primary decision based on the reasons and justifications stated in this decision.
6. Reject Zakat Payer's Appeal regarding the "Withholding Taxes", and uphold the primary decision based on the reasons and justifications stated in this decision.
7. Dismiss Zakat Payer's Appeal regarding the "Material Error in Calculating Withholding Differences for the Year 2011" based on the reasons and justifications stated in this decision.
8. Reject ZATCA's Appeal regarding the "Approval of Zakat Payer's Position on Related Party Transactions for the Year 2008", and uphold the primary decision based on the reasons and justifications stated in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IAR-2020-125)
Issued in Appeal No. (Z-1712-
2018)

Principle No. 139

The sponsorship status of workers not being with the company does not invalidate the expense, regardless of whether employing non-sponsored workers constitutes a regulatory violation.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Saturday, 13/04/1442 AH, corresponding to 28/11/2020 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 Paragraph (B) of Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/10/1425 AH and amended by Royal Decree No. (M/113) dated 20/11/1438 AH, convened at its headquarters in Riyadh, to review the Appeal submitted on 15/04/1437 AH by/ ... Company on the decision of the Second Primary Committee for Zakat and Tax Objections in Jeddah, Decision No. (5) of 1437 AH, issued in Objection No. (59) and Objection No. (266), 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 / Company ..., to the Zakat assessment made by GAZT for the years from 2007 to 2009.

Second: On Merits:

1. Uphold GAZT's decision not to accept Zakat Payer's claim to deduct the value of machinery and equipment from the zakat base for the years under objection, according to decision's reasoning.
2. Uphold GAZT's decision not to accept the salaries of workers for the period before the start of operations as deductible expenses from Zakat Payer's zakat base, according to decision's reasoning.
3. GAZT is required to recalculate depreciation for the subsequent years to account for the difference related to the year 2001, according to decision's reasoning.
4. Uphold GAZT's decision not to accept vehicle expenses as deductible from Zakat Payer's zakat and tax base for the years 2001 to 2004, according to decision's reasoning.
5. Uphold GAZT's decision not to accept computer expenses as deductible from Zakat Payer's zakat and tax base for the year 2001, according to decision's reasoning.
6. Since GAZT accepted Zakat Payer's position regarding currency differences, the dispute between the two parties over this item is no longer present.
7. Since GAZT accepted Zakat Payer's position regarding miscellaneous expenses, the dispute between the two parties over this item is resolved.



8. Uphold GAZT's decision not to accept worker's salary (salary of ...) 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 GAZT'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 GAZT's decision to add accounts payable to Zakat Payer's zakat base for the years 2005 to 2008, according to decision's reasoning.
11. Uphold GAZT's decision to add the zakat provision to Zakat Payer's zakat base for the years 2002, 2006, and 2007, according to decision's reasoning.

Since some provisions of this decision were not accepted by (... Factory Company), it submitted an Appeal to the Department, summarized as follows:

1. (Item of depreciation differences 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. (Item of Car Expenses in the amount of 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. (Item of Computer expenses in the amount of 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. (Item of Salary): The Committee upheld GAZT's decision to reject inclusion of ... salaries in the zakat and tax base for the years 2001 to 2006, as the employee was not under Company's sponsorship. However, the Company insists on its previous defenses, asserting that the mentioned employee is indeed under Company's sponsorship and works for it. The Company has previously attached a copy of his residency permit issued by Jeddah Passports Office under No. (...), which shows that his legal sponsor (employer) is ... Factory Company). and ... Therefore, it is not legally



correct to add his salary to zakat base as such a procedure and the case mentioned is irregular.

5. (Item of import differences and profits from import differences 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. (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. (Item of zakat payable 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. (Item of fixed assets with a total amount of 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 to transfer these machines to the Company, including all details of the machines. Thus, there is no legal justification to uphold ZATCA in excluding these machines, especially since they are the only machines used in production and there cannot be a factory without machines. ZATCA has added the corresponding funding for these machines, represented in the rights of shareholders, to zakat base, which necessitates deducting the same from the base according to the system applied by ZATCA, which stipulates deducting acquisition assets from zakat base, as they are not subject to zakat according to Shariah.
9. (Item of establishment expenses amounting to SAR (1,473,637): The Committee that issued the decision upheld GAZT's rejection of some of establishment expenses, specifically the salaries of certain employees during the period before commencement of operations. The contested assessment indicated that these expenses were duplicated under general and administrative expenses. The Company objects to this procedure, asserting that GAZT's conclusion is incorrect. Additionally, establishment expenses are intangible assets that shall be deducted from the zakat base according to the Law applied by GAZT in this regard.



The response of ZATCA to statement of appeal submitted by Zakat Payer pursuant to reply dated 02/08/1439 AH, which included ZATCA's point of view on items of the appeal as follows:

1. (Item of depreciation differences for all years): ZATCA confirms that these differences are due to the non-approval of equipment and establishment expenses, as no equipment or machinery has been proved in the first place, and that the reason for non-reliance on these assets will be stated when addressing the eighth and ninth items of the memorandum submitted by it.
2. (Item of vehicle expenses for the years 2001 to 2004): ZATCA confirms that this provision is not approved because there are no cars in the Company's assets, as indicated in Item (1), and what will be indicated in this Note concerning Items (8) and (9) thereof.
3. (Item of computer expenses for 2001): ZATCA did not approve this item due to the absence of computers among the fixed assets.
4. (Item of ... salary for (...) for the Period 2001-2006): ZATCA emphasizes that the employee is not on Company sponsorship and the name stated in the payroll is and not Ambalat..., as the name listed in the payroll is employee's first name, not their surname. Additionally, the name of the employee provided by the Company is not included in the passport report attached to the file, nor in the residency permit submitted with copy No. (3), which expires on 30/12/1434 AH. This indicates that copy No. (1), which represents the first issuance of residency permit, was in the 1431 AH, corresponding to 2010, and the employee had no connection with the Company during the previous years from 2001 to 2008.
5. (Item of import differences for all years): ZATCA confirms that the declarations explain the value of internal purchases and the value of external purchases, and are signed and certified by the Company's auditor. This means that these declarations have been reviewed and audited before certification. Therefore, ZATCA's procedure is correct in holding Zakat Payer accountable for import differences resulting from review and comparison.
6. (Item of accounts payable for the years 2005 to 2008): ZATCA confirms that the amounts of this item are fixed and there is no movement thereon according to analysis provided by the Company, as indicated in 2005 and 2006, noting that amounts included in the assessment are SAR (950) and SAR (250), not SAR (484), SAR (836), and SAR (220), as included in the objection. The amounts were added in accordance with Fatwa (22656) of 1424 AH.
7. (Item of zakat provision for the years 2002, 2006, 2007): ZATCA affirms that these amounts withheld by the Company for the benefit of ZATCA have not been paid and a year has passed thereon, so they must be added to the base in accordance with ZATCA's Circular No. (8843) of 1392 AH, as stipulated in Clause (1), paragraph (4) of that circular.
8. (Item of fixed assets for all years): ZATCA confirms that, in accordance with the articles of association, the in-kind share provided by the institution did not appear to contain machinery, in addition to the fact that the invoice provided by the Company did not contain modified equipment.
9. (Item of establishment expenses for all years): ZATCA confirms that the non-approval of salaries included in the establishment expenses item was due to the fact that, according to documents provided by the Company, there is a duplication in charging, as these salaries are included in the general expenses payroll of 2001, which shows the existence of this duplication, in addition to labor that is not sponsored by the Company, and the Company provided two different analyzes of the same item.



ZATCA concluded its memorandum requesting that it uphold its procedure with respect to the items on appeal and their response to statement of appeal.

After the Department decided to open up court proceedings, it asked both parties for any additions they might have regarding what was submitted on the statement of appeal filed by Zakat Payer, and what was included in the reply submitted by ZATCA in response to the statement of appeal. Since the Department did not receive any addition from Zakat Payer after it was proven that he had been contacted via email on 09/11/1441 AH, and ZATCA's response to the Department included a reply on the statement of appeal submitted by Zakat Payer.

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 reviewed case documents and statement of appeal submitted by Zakat Payer Company, the Department found that the requirements for the appeal to be heard have been met in terms of form, in accordance with the relevant laws, regulations, and decision, and thus the appeal is acceptable in form for being submitted by a person with capacity and within the period prescribed by law.

On merits, having perused the case file, and papers included therein, as well as the statement of appeal. The Department, when examining subject of the appeal and the items it included, and arrangement and classification of the contested items in the primary decision, concluded that the proper sequence of zakat treatment associated with the fixed assets item, establishment expenses and depreciation differences are linked to each other. Therefore, adjudication on the dispute between Zakat Payer and ZATCA requires taking into account the completeness and arrangement of zakat treatment for it in order to arrive at what may be calculated within Zakat Payer's zakat base, and what may be deducted from it.

Regarding the item on fixed assets, it was found that the Appeal revolves around the request by the Appellant Company to deduct full amount of the fixed assets reflected in the financial statements, as these machines were acquired in 2001, and therefore there is no legal justification to prevent the deduction of these assets. However, GAZT argues that, according to the Articles of Association, the in-kind contributions provided by the establishment do not include machinery. Additionally, the invoice submitted by the Company does not include modified equipment. Since Zakat Payer is demanding deduction of the net fixed assets according to the financial statements that they have submitted, and since the Committee that issued the decision based its ruling on what it concluded from the Articles of Association, which indicate that the in-kind contributions amount to SAR (8,275,000), and these contributions consist of (...) amounted to SAR (6,000,000) for equipment, SAR (2,000,000) for buildings, and SAR (275,000) for building services and parking, the Articles of Association did not include any other assets. Upon reviewing the first audited financial statements issued for the Appellant Company at its founding in 2001, and all subsequent years under dispute, it is clarified in note (1) that Company's capital was set at SAR (13,150,000), divided into in-kind contributions amounting to SAR (8,275,000) and cash contributions amounting to SAR (4,875,000). Furthermore, in note (5) "Fixed Assets," it is stated that the Company added equipment during the year amounting to SAR (4,716,000), as well as tools and instruments amounting to SAR (5,289), and furniture and decor amounting to SAR (3,644) during the year 2001. This is further confirmed by the cash flow statement, which indicates a cash outflow from investment activities amounting to SAR (12,999,993), including in-kind contributions and other assets. Additionally, Company's current assets (cash and inventory) only amount to SAR (429,357), which confirms that cash contributions were used to purchase fixed assets. Given the circumstances as mentioned, it is not sufficient to rely solely on the valuation of in-kind contributions in the Articles of Association to verify the existence of fixed assets, without



considering the value of cash contributions, which were used by the Company to acquire the disputed fixed assets through its financial resources and expenditures. This leads the Department to confirm that the basis for calculating the fixed assets shall be as stated in Appellant's declaration, which is supported by the evidence mentioned in the details of this item. Therefore, GAZT's conclusion is not based on a valid factual basis. Consequently, the Department has decided to accept Zakat Payer's Appeal and overturn the primary decision regarding the item under consideration.

Regarding the item on establishment expenses, the Appeal focuses on Appellant's request to approve the deduction of all establishment expenses from the zakat base, which includes the salaries of certain employees during the period preceding the start of operations. However, GAZT believes, based on the documents submitted by the Company, that there is a duplication in the charges, as these salaries are included within the general expenses salaries for the year 2001. Additionally, some of the employees were not under Company's sponsorship. It is clear from the facts of the decision under Appeal as well as Appeal statement that the nature of dispute lies in the expenses rejected by GAZT, which consist of the salaries of workers that the Appellant Company claims were paid during the period prior to Company's establishment. According to the Articles of Association, it is confirmed that the Appellant Company was originally a branch of ... Agriculture and Industry Establishment and was converted into a Company. Such a situation does not require preparatory activities to be carried out by several employees before the actual operation of the entity, as the business was already active and ongoing. GAZT deducted the necessary expenses for converting the establishment into a Company, such as licensing fees, incorporation fees, and commercial registration fees. The Appellant did not provide documents to support their claim of no duplication between the wages of workers added as administrative expenses and the wages of workers listed as establishment expenses. Therefore, the Department concluded to reject Zakat Payer's Appeal and upheld the primary decision. However, regarding salaries of the workers employed by the Company, which GAZT objected to deducting, arguing that these salaries were listed under administrative expenses, specifically the salaries included in general expenses for the year 2001, in addition to the workers who were not under Company's sponsorship, the Department found that relying solely on workers' status as not being under Company's sponsorship without tracking those expenses and verifying them in those years was insufficient. Merely considering that the workers were not under Company's sponsorship does not negate the fact that the expenses were incurred, regardless of whether there was a legal violation in employing workers not under Company's sponsorship. In light of the above, the Department concluded to amend the primary decision to allow the deduction of expenses related to the salaries of the workers not under Company's sponsorship for the year 2001, and to reject Zakat Payer's Appeal regarding the remaining amounts alleged to be part of establishment expenses.

Regarding the item of depreciation differences amounting to SAR (2,734,652), after the Department carefully considered Zakat Payer's Appeal on this item and GAZT's response as outlined in Appellant's statement and the response memorandum submitted by GAZT, it became clear that the Appeal revolves around Appellant Company's request not to add depreciation differences for all the disputed years. The Company argues that these depreciations are related to machinery that GAZT excluded from the fixed assets, as if the factory did not exist. GAZT, however, contends that these differences are due to non-approval of the equipment and establishment expenses, as there was no proof of the existence of any machinery or equipment. According to the in-kind contributions submitted by the establishment, they did not include any machinery, tools, or equipment, and the invoice submitted by the Company did not include any machinery. GAZT stands by the validity of its procedure. Since the decision of this Department, as previously discussed, was based on accepting Zakat Payer's Appeal regarding the deduction of fixed assets and rejecting Zakat Payer's Appeal regarding the deduction of establishment expenses as detailed in the discussion of that item, and since the outcome of the depreciation differences item depends on Department's decision on the other two aforementioned items, and the



Department has concluded to confirm existence of the assets within the Company, it is necessary to approve the deduction of depreciation amounts related to those assets. However, the Department will not grant Appellant's request to deduct depreciation related to establishment expenses, based on Department's ruling on the issue of establishment expenses as previously explained. Therefore, the Department has decided to amend the primary decision by approving deduction of depreciations related to the fixed assets item and rejecting the depreciation related to the establishment expenses item.

Regarding the item of Car Expenses in the amount of SAR (28,497) of 2001 to 2004, 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, it was 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 necessary for activity and supported by supporting documents, while ZATCA considers that such expenses should not be deducted, as there are no assets in the Company's budget by which the adoption of these expenses is achieved as claimed by the Appellant. Since the dispute between the parties was based on the existence of proof that such expenses were realized in order to consider whether they were deducted or not, and since subject of such expenses is not necessarily related to presence of cars with Zakat Payer. It is customary for establishments to pay their employees transportation and car use allowances in the form of allowances given to them or calculated as part of their wages, and since result of this was that the dispute between both parties was based on the existence of documents supporting realization 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 cars held by him, which led the Department to decide that ZATCA's acceptance of that expense was not based on a valid reason. Therefore, the Department concluded to accept Zakat Payer's appeal to deduct car expenses, as stated in his declaration, and to overturn the primary decision on that 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, it was 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.

Regarding the item of ... salary (last-named ...), after considering the content of Zakat Payer's Appeal on this item and GAZT's response, and after the Department reviewed conclusions of the primary decision, it was found that the core of the dispute lies in Appellant's request to deduct salaries of the mentioned employee from the zakat and tax base for the years 2001 to 2006. GAZT's rejection of these salary deductions, as stated in their response to Zakat Payer's Appeal and the supporting argument in the Appealed decision, is based on the fact that the employee was not under Company's sponsorship during the disputed years. Thus, the employee had no affiliation



with the Company during those years, which consequently led to rejection of salary deductions from Zakat Payer's zakat and tax base. However, the absence of Company's sponsorship for its employees, and whether this violation is established or not, does not negate the fact that the salaries paid to the employee shall be considered deductible expenses when calculating Zakat Payer's base. GAZT did not present any evidence to refute the fact that Zakat Payer incurred these expenses, relying solely on the claim that the employee in question was not under Company's sponsorship. Therefore, the Department concludes that GAZT's rejection of this expense is not based on a valid factual reason. As a result, the Department has decided to accept Zakat Payer's Appeal regarding deduction of the salaries as stated in their declaration and to overturn the primary decision regarding 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, in form, the Appeal submitted by Zakat Payer/ Factory, Commercial Register No. (...), against Decision No. (5) of 1437 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Jeddah.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the fixed assets item amounting to SAR (24,323,370) for all years, and the reversal of the primary decision concerning the outcome on this matter. The fixed assets shall be calculated as stated in Appellant's declaration, based on the reasons and Grounds mentioned in this decision.
2. Amend the primary decision by the majority concerning the establishment expenses item amounting to SAR (1,473,637) for all years, by approving deduction of expenses related to the salaries of workers who were not under Company's sponsorship for the year 2001, excluding other expenses, based on the reasons and Grounds mentioned in this decision.
3. Amend the primary decision regarding the depreciation differences item amounting to SAR (2,734,652) for all years, by approving deduction of depreciations related to the fixed assets item, excluding depreciations related to the establishment expenses item, based on the reasons and Grounds mentioned in this decision.
4. Accept Zakat Payer's Appeal regarding the vehicle expenses item amounting to SAR (28,497) for the years 2001 to 2004, approve deduction of vehicle expenses as stated in Appellant's declaration, and reverse of the primary decision concerning the outcome on this matter, based on the reasons and Grounds mentioned in this decision.
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 by majority regarding the item of salary, 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. Reject Zakat Payer's Appeal regarding the item on import differences and profits from import differences amounting to SAR (6,229,063) for all years, and uphold the primary decision concerning the outcome on this matter, based on the reasons and Grounds mentioned in this decision.
8. Reject Zakat Payer's Appeal regarding the item of accounts payable amounting to SAR (2,376) for the years 2005 to 2008, and uphold the primary decision concerning the outcome on this matter, based on the reasons and Grounds mentioned in this decision.
9. Reject Zakat Payer's Appeal regarding the item of zakat payable amounting to SAR (34,906) for the years 2002, 2006, and 2007, and uphold the primary decision concerning the outcome on this matter, based on the reasons and Grounds mentioned in this decision.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

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

Principle No. 140

Expenses and costs that are confirmed and will definitely be incurred by Zakat Payer, with no chance of future non-payment and are essential for business activity, may be deducted from Zakat Payer's profits to calculate the profit subject to zakat. Additionally, any related credit balances appearing in the opening financial position and linked to these expenses should be added to the zakat base at the end of the financial year.

Principle No. 141

Under established accounting principles, expenses must be aligned with income when calculating the zakat liability, with the net result of this matching representing the amount subject to zakat. It is not permissible to consider income in isolation without accounting for the expenses incurred in its generation.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Tuesday, 16/11/1441 AH, corresponding to 07/07/2020, the First Appellate Department for Income Tax Violations and Disputes, formed in accordance with Royal Order No. (65474) dated 23/12/1439 AH, based on 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 19/09/1439 AH, corresponding to 04/06/2018, by/.... , against the decision of the Second Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (23) of 1439 AH, issued in case No. (1467-2018-Z) filed by the Appellant against the General Authority of Zakat and Tax (GAZT). The primary decision in the case was as follows:

First: Accept, in form, the objection submitted by Zakat Payer/ ... regarding zakat assessment for the years 2008 to 2013.

Second: On Merits:

Adjustments to Net Profit:

Dismiss Zakat Payer's objection to (Provisions) item.

Resolution of dispute over (Bad Debts) item.

Resolution of dispute over (Gifts for 2012 and 2013) item.

Resolution of dispute over (Undisclosed Contracts for 2013) item.

Amendments to Zakat Base:

Dismiss Zakat Payer's objection to (Provisions) item.

Resolution of dispute over (Accounts Payable and Accrued Expenses) item.

Resolution of dispute over (Assets) item.



Resolution of dispute over (Increased Value of Contract Invoices) item.

Since this decision was not accepted by the Plaintiff (...), regarding the items for which Zakat Payer's objection was rejected, the Plaintiff submitted an Appeal to the Department, which included the following summary:

1- Regarding the item (reversing vacation, ticket, and bonus expenses to the adjusted profit and calculating zakat on the opening balances for the years 2008 to 2013), Zakat Payer disagrees with Committee's decision supporting GAZT's view that those opening balances represent provisions for potential, uncertain expenses. Thus, the opening balance must be included in zakat base. Zakat Payer argues that these balances represent confirmed expenses that Zakat Payer will bear, as they are recorded on an accrual basis rather than a cash basis. Accordingly, they are considered expenses aligned with Zakat Payer's obligations under labor laws in the Kingdom and are treated accordingly in accounting based on the applicable accounting standards and rules in the Kingdom. Therefore, these expenses represent costs incurred by Zakat Payer and shall be deductible as per the proper calculation of zakat, as there is no future possibility of non-payment. This is the basis of Appellant's defense of their position. GAZT's response to Zakat Payer's memorandum reaffirmed GAZT's viewpoint, as presented in its memorandum before the Committee that issued the decision regarding the contested items. Committee's decision in Zakat Payer's Appeal confirmed the correctness and validity of GAZT's approach in handling the contested item, and the Appellant did not introduce any new arguments beyond those that were previously presented to the Committee that issued the decision.

2- Regarding the contested item related to: (Reversal of project cost provisions and their addition to zakat base), Zakat Payer's agent argued in the Appeal that Office's internal policy states that if the project completion percentage exceeds 90% and the value of these projects does not exceed SAR (5,000,000), the remaining expenses are recognized within the results of the current year, along with the corresponding revenues for the same year. Additionally, these expenses are incurred for the projects, but full documentation supporting their registration has not been completed. The Office applies its accounting policy in handling revenues because its activity is based on providing engineering consultancy services, aiming to minimize the risk of errors in recording profits and losses at the end of the year. This aligns with the principle of matching expenses with revenues for the same period, and the principle of accounting consistency. Therefore, GAZT's approach to subject the project cost provision to zakat without deducting the corresponding revenues would result in distorting zakat calculation. To avoid this, GAZT shall have deducted the value of the revenues subject to zakat corresponding to these costs. This would demonstrate that the recording of project cost provision and the corresponding revenues will appear within Office's net accounting profit, meaning zakat would be paid on these projects.

ZATCA replies to Zakat Payer's arguments stated in its memorandums, by reaffirming adoption of ZATCA stance through its memorandums submitted to the Primary Committee that rendered the decision regarding the contested items. In addition, Primary Committee's decision regarding the item appealed by Zakat Payer affirmed validity and soundness of ZATCA procedure in handling contested item. Furthermore, Appellant's arguments do not differ from such arguments raised before the Primary Committee.

Grounds

Having reviewed the case documents and the statement of appeal submitted by the Appellant Company, the Department found that the formal requirements for accepting the appeal are met as stipulated in the relevant laws, regulations and decisions. Accordingly, this appeal is accepted in form for being submitted by a person with a capacity and within the period prescribed by law.

On merits, after reviewing case file and its contents, as well as Appeal statement, and having considered Appellant's overall arguments concerning the item (reversing vacation, ticket, and bonus expenses to the adjusted profit and calculating zakat on the opening balances for the years 2008 to 2013), the Department has determined that the amounts in dispute do not meet the



accounting definition of provisions. A provision represents an obligation on the entity that is uncertain in either its value, timing of payment, or both. As for the amounts in dispute, such amounts essentially outline ordinary and necessary expenses related to business activity, which Zakat Payer is entitled to deduct from the profit in order to come up with the profit subject to Zakat. Therefore, the Department accepts Zakat Payer's appeal regarding such expenses, considering them as deductible expenses, and decides not to add back such expenses to the net profit. As for the credit opening balances shown in the financial position statement and related to those expenses, GAZT has the right to add the full amount of those balances at the end of the financial year to zakat base, as they represent funds still in the possession of the Company. Therefore, they are considered elements that must be included in zakat base, upon which zakat shall be calculated. Thus, the Department decided to uphold the primary decision regarding those opening balances.

Regarding the item (reversal of project cost provisions and their addition to the zakat base), Appellant's objection lies in disputing the validity of GAZT's procedure in adding project cost provision expenses without deducting the corresponding revenues. It has been established that the principle of matching revenue with expenses is a fundamental accounting principle. The Department has determined that Zakat Payer's accounting policy concerning this provision aligns with this principle. Therefore, the correct calculation of zakat due requires matching revenue with expenses, and the result of this matching shall be considered the amount subject to zakat. It is not permissible to consider revenue alone without accounting for the expenses that contributed to its generation. Consequently, the Department decided to accept Zakat Payer's Appeal and not to adjust the net profit by the impact of disputed project cost provision expenses.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/, Commercial Register No. (...) against Decision No. (23) of 1439 AH, issued by the Second Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

As for adjustments to net Profit:

Accept Zakat Payer's appeal, overturn primary decision and uphold Zakat Payer's entitlement to deduct leave, ticket and remuneration expenses in question to come up with net profit added to zakat base according to reasons and Grounds stated herein.

Accept Zakat Payer's appeal, overturn primary decision and uphold Zakat Payer's entitlement to deduct project expenses in question to come up with net profit added to zakat base according to reasons and Grounds stated herein.

As for amendments to zakat base:

Reject Zakat Payer's Appeal and uphold the primary decision regarding the conclusion reached on the credit opening balances in the financial position statement resulting from vacation, ticket, and bonus expenses in dispute, for the reasons and Grounds mentioned in this decision. according to reasons and Grounds stated herein.

Reject Zakat Payer's Appeal and uphold the primary decision regarding the conclusion reached on the credit opening balances in the financial position statement resulting from project expenses in dispute. according to reasons and Grounds stated herein.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-30)
Issued in Appeal No. (ZIW-
2018-1582)

Principle No. 142

If capital was increased in a year prior to zakat assessment year, the increase shall be subject to zakat after one lunar year has passed.

Facts:

First: Accept the objection in form.

Second: On Merits:

1. Uphold GAZT's view of not deducting investments from zakat base for the years 2000 and 2001.
2. The dispute regarding this item has been settled, with GAZT accepting the Zakat Payer's position.
3. Uphold GAZT's position that the increase in capital is subject to zakat for the year 2004.
4. Uphold GAZT's view that insurance premium payments are subject to withholding tax.
5. Uphold GAZT's position in rejecting the request for refund of zakat and tax resulting from not accounting for the portfolio transfer losses for the year 2008.

Since this decision was not accepted by the Plaintiff (... Company), they submitted an Appeal to the Department, which included the following summary:

Zakat Payer objects to Primary Committee's rejection of their objection to the tax portion on formal Grounds, stating that they paid the withholding tax via certified check No. (...), and asserts that they had previously overpaid the amounts and are therefore requesting differences from GAZT, not the other way around. Regarding the item of "non-deduction of investments from zakat base for the years 2000 and 2001," the Committee supported GAZT's decision not to deduct investments from zakat base for the years 2000 and 2001. Zakat Payer based their argument on the fact that these investments are long-term. They are for acquisition purposes and not for trading, as the holding period exceeds one year. Zakat Payer added that the invested Company pays zakat on these investments and requests that they be deducted from zakat base. Regarding the item "subjecting the capital increase to zakat for the year 2004," Zakat Payer's objection is based on the fact that this increase of \$10,762,500 was not used in Company's capital to finance working capital or operations in the Kingdom of Saudi Arabia. Instead, the increase was intended to pay Company's share as a founding member of ... Company. He added that this increase was stated in the financial statements of Company as investments in government treasury bonds in the financial year ending December 31, 2005, and was then invested in term deposits in the commercial activities Company until 2007, when a bank account was opened under the name of, and the amount was deposited in that account. GAZT applied zakat assessment on these amounts in ... Company. Regarding the item "subjecting insurance premiums to withholding tax", the Committee supported GAZT's decision to subject the total amount of insurance premiums paid to both resident and Gulf-based companies to withholding tax. Zakat Payer argued that withholding tax



shall not be imposed on the total reinsurance premiums but only on the amounts paid to non-resident entities. As for the item “rejecting the request for a refund of zakat and tax resulting from not accounting for portfolio transfer losses for the year 2008”, the objection is based on the fact that the Company incurred losses estimated at SAR (30) million due to the transfer of its insurance portfolio on January 1, 2009. The Company is requesting a refund of the zakat and tax amounts related to this, as the revised financial statements were submitted to GAZT along with ... Company's zakat and tax declaration. The Department decided to reopen the case, and Zakat Payer was addressed on 03/11/1441 AH, corresponding to 24/06/2020, to submit any additional information regarding the Appeal under review within the time granted by the Department or to rely on what was already submitted in Appeal memorandum. The period passed without any further submission beyond what was presented in Appeal memorandum. Zakat Payer was also addressed on 18/01/2021, corresponding to 23/05/1442 AH, requesting provision of documents detailing the amounts paid to local reinsurers, which would support their claim regarding payment of insurance premiums to resident companies in the Kingdom, and to submit the revised financial statements within the granted time period. However, the deadline passed without any documents being submitted on this matter. Additionally, the Department received a response memorandum from GAZT on 15/05/1442 AH, corresponding to 30/12/2020, addressing the subject of Appeal. GAZT reaffirmed the validity and accuracy of its procedures in handling the contested items and thus supported Committee's decision, which GAZT upholds along with the reasoning provided in support of the correctness of GAZT's assessment of the Appellant. The points raised by Zakat Payer did not present anything new beyond what had been previously submitted before the Committee that issued the decision.

Grounds

Upon reviewing case documents and Appeal memorandum submitted by the Appellant Company, the Department found that the Appeal met the formal requirements for consideration in accordance with the relevant regulations, bylaws, and decisions. Therefore, Appeal request is formally accepted, as it was submitted by a party with standing and within the legal time frame prescribed for filing.

On merits, and concerning Zakat Payer's Appeal regarding the item (objection on formal Grounds before the Primary Committee concerning the tax portion of Zakat Payer's objection), after reviewing case file, its documents, as well as Appeal memorandum, Zakat Payer stated that they had paid the withholding tax via certified check No. (...), and argued that they had overpaid the amounts and are therefore the one requesting differences from GAZT, not the other way around. As the matter stands, the primary decision did not provide any reasoning regarding the items not objected to or the taxes that had not been paid, which makes these justifications unsupported and unreliable for issuing a formal rejection of Zakat Payer's objection regarding the tax portion. Accordingly, the Committee that issued the decision did not fully exercise its authority in resolving the subject of dispute. Therefore, the Department concluded to annul Primary Committee's decision rejecting the formal aspect of Zakat Payer's objection and to return the case to the First Department for Income Tax Violations and Disputes in Riyadh for consideration of Zakat Payer's objection regarding tax items on substantive Grounds.

Regarding Zakat Payer's Appeal on the item (non-deduction of investments from zakat base for the years 2000 and 2001), after reviewing case file, its documents, and Appeal memorandum, it became clear that Zakat Payer objects to non-deduction of these investments from zakat base because they are long-term investments, for acquisition purposes and not for trading. Zakat Payer also stated that the invested Company pays zakat on these investments. However, GAZT contended that Zakat Payer had previously objected to this item for the years 1998 and 1999, and the Tax Appellate Committee issued Decision No. (576) of 1425 AH, which defined the non-deductible investments. Accordingly, GAZT made an assessment for the disputed years based on the conclusions of the Appellate decision. GAZT also confirmed that for investments to be



deductible from zakat base, they must be proven to be acquisition assets, which was not confirmed to ZAGT or the Department that issued the contested decision. The Primary Committee based its decision on the absence of proof that disputed investments were acquisition assets and did not explain in its reasoning how it reached that conclusion. Zakat Payer indicated in their Appeal memorandum that these investments were held for more than one year and were investments in local companies subject to zakat, with their revenues being included in Zakat Payer Company's profit, which is also subject to zakat. Zakat Payer's Appeal was presented to GAZT, and it did not dispute Zakat Payer's claims regarding the nature of these investments, merely reiterating its previous arguments made before the Primary Committee. Therefore, the Department decided to accept Zakat Payer's Appeal, as the primary decision was not based on valid Grounds, and to overturn the primary decision concerning this matter.

Regarding Zakat Payer's Appeal concerning the item of "subjecting the increase in capital to Sharia Zakat for 2004", after reviewing case file and associated documents thereof, as well as Appeal Memorandum, it became clear that Zakat Payer objects to adding this increase to the Zakat base, arguing that it was not used to finance working capital or Company's operations in the Kingdom of Saudi Arabia. However, GAZT believes it added the amount based on the audited financial statements of Zakat Payer, specifically "Note No. (12) for the years 2003 and 2004." The Committee that issued the decision referred to the audited financial statements and found that the capital increase occurred in 2003, confirming that a full lunar year had passed during 2004. Upon referring to Note No. (12) in Zakat Payer's 2003 financial statements regarding the capital, it was evident that Zakat Payer increased the capital during 2003, thereby proving that the full lunar year had passed on it during 2004. The Department may adopt the reasons of the decision under appeal regarding the matter in question without adding to them if it determines that those reasons suffice without the need for further elaboration. Since the decision being contested is in agreement with the reasonable Grounds on which it was based, and those Grounds are sufficient to support its judgment, the committee that issued the decision thoroughly examined the core of the dispute and reached the conclusion stated in its ruling. As the Department finds no reason to amend or comment on the decision based on the evidence presented before it, the Department concludes that the submitted arguments do not affect the outcome of the primary decision regarding this matter. Accordingly, the Department decided to reject Zakat Payer's Appeal and affirm the decision concerning this issue.

Regarding Zakat Payer's Appeal concerning the issue of "subjecting insurance premium payments to withholding tax," after reviewing case file and its documents, as well as Appeal Memorandum, it became evident that Zakat Payer objects to imposing withholding tax on these premiums. Zakat Payer argues that withholding tax shall not be imposed on the total amount of reinsurance premiums but only on the amounts paid to non-resident entities. Furthermore, Zakat Payer asserts that part of the disputed amounts was paid to resident companies and provided a statement detailing the amounts paid to these resident companies, which they believe shall not be subject to withholding tax. Additionally, Zakat Payer claims that some of these premiums were paid to Gulf companies owned by Gulf nationals, arguing that their activities in the Kingdom shall not be taxed, as they are treated similarly to Saudi nationals. GAZT, however, insists that Zakat Payer did not provide supporting documents for these paid amounts. Upon reviewing the reasoning behind the primary decision, the Department found that the primary committee issued its decision regarding the paid premiums based on Zakat Payer's failure to provide supporting documents. Zakat Payer was contacted to submit the required supporting documents for the payments, but they did not provide what was requested. Therefore, the Department concludes by rejecting Zakat Payer's Appeal regarding imposition of withholding tax on the payments and affirms the primary decision in this matter.

As for Zakat Payer's Appeal regarding the request to apply withholding tax on the amounts paid rather than on total amounts, and since the Primary Committee did not address this request, the Department has decided to return the case to the First Department for Determination of Income



Tax Violations and Disputes in Riyadh for reconsideration. This is because the original request of Zakat Payer was not addressed in the contested decision, meaning that the Committee did not fully exercise its jurisdiction in resolving the dispute, which leaves the case unresolved.

Regarding Zakat Payer's Appeal concerning the item of "rejecting the request to refund Zakat and tax amounts resulting from not accounting for the losses from the transfer of insurance portfolio for the year 2008," after reviewing case file and its documents, as well as Appeal Memorandum, it became clear that Zakat Payer objects to the refusal to refund the paid Zakat and tax amounts, based on the revised financial statements, as the Company incurred losses estimated at SAR thirty (30) million due to the transfer of its insurance portfolio on January 1, 2009. GAZT, however, insists that Zakat Payer did not submit the revised financial statements, despite being granted several extensions to do so. Upon reviewing the reasoning of the primary decision, the Department found that the Primary Committee based its decision on Zakat Payer's failure to submit the revised financial statements approved by the Saudi Central Bank. The Department may adopt the reasons provided in the decision under Appeal without adding further explanations if it deems those reasons sufficient. Since the appealed decision aligns with the reasonable Grounds on which it was based, and these Grounds are sufficient to support the judgment, the Committee thoroughly examined the core of the dispute and reached the conclusion stated in its ruling. 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 Zakat Payer's Appeal and affirm the decision regarding this issue.

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 ... Company Commercial Register No. (...), TIN (...), against decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (0) of 1436 AH.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding the "objection on formal Grounds before the Primary Committee concerning the tax-related aspect of Zakat Payer's objection," and annul Primary Committee's decision rejecting the formal aspect of Zakat Payer's objection. The case is referred back to the First Department for Determination of Income Tax Violations and Disputes in Riyadh to review Zakat Payer's objection to the tax-related items on substantive Grounds.
2. Accept Zakat Payer's Appeal regarding the item of "failure to deduct investments from Zakat base for the years 2000 and 2001", and overturn the primary decision on this matter in accordance with the reasons and rationale mentioned in this ruling.
3. Reject Zakat Payer's Appeal concerning the items of "subjecting the capital increase to Sharia Zakat for the year 2004"
 - b. and affirm the primary decision on this matter, based on the reasons and rationale mentioned in this ruling.
4. Regarding the item of "subjecting the value of insurance premiums to withholding tax":
 - a. Reject Zakat Payer's Appeal concerning imposition of withholding tax on payments made to local reinsurers, and affirming the primary decision on this matter in line with the reasons and rationale stated in this ruling.
 - b. Referring the case back to the First Department for Determination of Income Tax Violations and Disputes in Riyadh to reconsider Zakat Payer's Appeal regarding the request to impose withholding tax on the amounts paid to reinsurers, rather than on the total amounts, based on the reasons and rationale mentioned in this ruling.



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2021-45)
Issued in Appeal No. (I-1751-2018)

Principle No. 143

Investments in local companies are not deducted if there is proven buying and trading activity on these investments, as they are no longer considered fixed assets.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

On Sunday 06/09/1442 AH, corresponding to 18/04/2021 AD, First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Decree No. (65474) dated 23/12/1439 AH, convened in its headquarters in Riyadh to consider the appeal filed on 24/03/1436 AH, by/ ... Company, against the Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (3) for the year 1436 AH, issued with regard to Objection No. (35/22) to the tax assessment for the Period (2007-2011 AD), filed by Appellant against GAZT, in which the primary decision ruled as follows:

First: In Form:

Accept objection filed by Zakat Payer/..... Company due to submission within the legal time frame and by an authorized party.

Second: On Merits:

- Settlement of the dispute concerning Zakat Payer objection with regard to Item (payments for technical service fees for the year 2011) based on the merits mentioned in the decision.
- Reject Zakat Payer objection with regard to Item (exempted income not excluded for tax purposes the year 2011 AD) based on the merits mentioned in the decision.
- Reject Zakat Payer objection with regard to Item (deduct investments for the period 2008 - 2011 AD) based on the merits mentioned in the decision.
- Reject Zakat Payer objection with regard to Item (actual incurred losses) based on the merits 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 of "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 8/8/1392 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 15/4/1424 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.

Regarding the Appeal on the item of "excluding the losses incurred in 2008 amounting to SAR (8,790,712)", Zakat Payer objects to Primary Committee's decision rejecting his objection to the exclusion of losses under appeal. Zakat Payer asserts his right to deduct the value of these losses, as they represent losses the Company incurred in 2008 from the sale of shares of Saudi companies, which were traded through Saudi Exchange (Tadawul). Zakat Payer explains that these securities pertain to publicly traded companies in the Kingdom, and that the loss/profit was calculated based on the difference between the purchase cost of the securities and their selling price. The cost price was determined as the average cost of the securities purchased at different times, and the selling price reflects the actual selling price at which these securities were traded on Saudi Exchange (Tadawul).

Regarding the Appeal on the item of "excluding the losses incurred in 2008 amounting to SAR (8,790,712)", Zakat Payer objects to Primary Committee's decision rejecting his objection to the exclusion of losses under appeal. Zakat Payer asserts his right to deduct the value of these losses, as they represent losses the Company incurred in 2008 from the sale of shares of Saudi companies, which were traded through Saudi Exchange (Tadawul). Zakat Payer explains that these securities pertain to publicly traded companies in the Kingdom, and that the loss/profit was calculated based on the difference between the purchase cost of securities and their selling price. The cost price was determined as the average cost of the securities purchased at different times, and the selling price reflects the actual selling price at which these securities were traded on Saudi Exchange (Tadawul).

As the Department decided to reopen the hearing, Zakat Payer was asked on 25/02/1442 AH, corresponding to 15/11/2020, to submit any additional information he wished to provide regarding his Appeal on the contested decision within the timeframe granted by the Department, or to confirm that he would rely on what was already submitted in Appeal Memorandum. The specified period passed without any further submission beyond the original Appeal Memorandum. Additionally, the Department received a response memorandum from GAZT on 10/07/1442 AH, corresponding to 21/02/2021, which addressed the points raised in the Appeal concerning the contested items. Regarding the item of "long-term investments for the years 2008 to 2011," GAZT stated, after reviewing Zakat Payer's financial statements, that these investments consisted of securities, investment funds, sukuk, and deposits. It was also noted that there had been trading activity involving the shares, indicating that the purpose was trading, buying, and selling rather than long-term holding, which means these investments shall not be deducted from Zakat base. This is in accordance with Ministerial Letter No. (4/8676) dated 24/12/1410 AH and Ministerial Decision No. (1005) dated 28/4/1428 AH, as they do not represent direct investments in companies for holding purposes, and the holding period alone is not the sole criterion for classifying assets as long-term holdings. Regarding Zakat Payer's Appeal on "excluding the losses incurred in 2008," GAZT responded that it did not agree to exclude the losses as requested by Zakat Payer, as the documents provided by Zakat Payer were incorrect and insufficient to justify excluding these losses. As for Zakat Payer's Appeal concerning "the non-exclusion of tax-exempt



income for the year 2011," GAZT affirmed that its actions were correct and in accordance with the relevant regulations, as Zakat Payer did not provide supporting documents for the requested exclusion.

In 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 papers and 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 appeal Brief submitted by Zakat Payer, the Department found that conditions for hearing the appeal are fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law.

On merit: with regard to Item (long-term investments for the period 2008-2011 AD), after reviewing Case file and all papers included therein side by side with the appeal brief submitted by Zakat Payer, it turned out that Zakat Payer filed its appeal to call for deduction of long-term investments with the value of (SAR 750,199.587) from zakat base. Zakat Payer mentioned that such investments included in investments in shares in Saudi companies, investments in investments in ... Market Fund, ... Fund in Kuwait, long-term Islamic deposits in ... Bank and ... Bank in Qatar, and investments in sukuk from Company Zakat Payer argues that these investments are for holding purposes and not for trading, which would make them exempt from Zakat. On the other hand, GAZT views these investments as consisting of shares in a Company outside the Kingdom, investments in ... Market Fund, and ... in Kuwait, Islamic Murabaha deposits in banks outside the Kingdom, and sukuk in ... Company which were rejected subject to Ministerial Resolution No. (1005). As for the investment in shares and stakes of various Saudi companies, there has been trading activity, which indicates that the purpose was not to hold them, and they are not considered long-term holdings. After reviewing the components of disputed investments, and since Zakat Payer provided the financial statements of ... Company, and as the default position is to rely on Zakat Payer's financial statements unless contradicted by valid evidence, the Department concludes to accept Zakat Payer's Appeal and approve the deduction of these investments from the Zakat base based on the financial statements provided. Regarding the investments in the ... Market Fund and ... Fund in Kuwait, since these funds are not subject to Zakat in the Kingdom and Zakat Payer did not provide evidence of their Zakat payment in the country of investment, nor did they submit the financial statements of these funds that would allow for calculating Zakat on them, the Department has decided that Zakat Payer is not entitled to deduct them from Zakat base. As for the investments in sukuk from ... 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 of "excluding the losses incurred in 2008, amounting to SAR (8,790,712)", the Appeal is based on his request to deduct the value of these losses from Zakat base, as they represent losses resulting from the sale of shares in 2008, and to overturn primary decision's conclusion on this matter. GAZT, however, believes that Zakat Payer did not provide sufficient documents to justify excluding these losses. Upon Department's review of the dispute, it was found that Zakat Payer submits his declarations based on audited financial statements that reflect these losses. Rejecting such losses cannot be justified without tracking each purchase of a security and its subsequent sale, which GAZT did not do. The default is to rely on Zakat Payer's accounting system information when determining the deduction of these losses,



meaning that the provision of a specific document is unfeasible under the circumstances described. Therefore, the Department decided to accept Zakat Payer's Appeal and overturn the primary decision regarding this matter. The fact that the primary decision referenced the insufficiency of Zakat Payer's submitted documents does not invalidate the Appeal, as rejecting Zakat Payer's actions on this item would require a field audit examining the details of purchase and sale of each security.

Regarding Zakat Payer's Appeal on the item of "tax-exempt income not excluded for tax purposes for the year 2011 amounting to (SAR 559,897)", the Appeal centers on Zakat Payer's request to exclude the profits generated from the sale of securities in 2011, totaling SAR (559,897), as they are not subject to income tax. Zakat Payer bases this on Article (7) of the Implementing Regulations of Income Tax Law, which states that "capital gains resulting from the disposal of traded securities shall be exempted from tax according to the following conditions:

1- If the sale is conducted in accordance with the Capital Market Law in the Kingdom. 2- The investments disposed of must not have been in existence before the effective date of the Law specified in Article (74) hereof".

GAZT, however, argues that Zakat Payer did not provide supporting documents to justify excluding this income. Upon the Department's review of the dispute, it was found that Zakat Payer submits his declarations based on audited financial statements that reflect these profits. GAZT's rejection of excluding these profits from Zakat Payer's base, as stipulated by the regulations, was solely based on the claim that Zakat Payer did not provide sufficient supporting documentation. Since determining such profits can only be achieved by tracking each purchase and subsequent sale of securities, which GAZT did not do, the default is to rely on Zakat Payer's accounting system in determining the exclusion of these profits from the taxable base. Therefore, the provision of a specific document in this case is impractical under the circumstances. Consequently, the Department has decided to accept Zakat Payer's Appeal and overturn the primary decision regarding this matter. Primary decision's reference to the insufficiency of Zakat Payer's submitted documents does not invalidate the Appeal, as rejecting Zakat Payer's actions on this item would require a field audit examining the details of each sale and purchase transaction for every security.

Decision

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. (3) of 1436 AH.

Second: On Merits:

4. With regard to Item (long-term investments for the period 2008-2011 AD):

- Unanimously accept Zakat Payer appeal with regard to Item (deducting investment in ... Company) based on the financial statements, and overturn the primary decision regarding this matter, in accordance with the reasons and justifications stated in this ruling.
- Reject, unanimously, Zakat Payer's Appeal regarding the investments in (... Fund and ... Fund in Kuwait), and uphold the primary decision in accordance with the reasons and justifications stated in this decision.
- Reject, unanimously, 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 justifications stated in this ruling.
- Reject, unanimously, Zakat Payer's Appeal regarding (investments in Saudi companies), and uphold the primary decision in accordance with the reasons and justifications stated in this ruling.



5. Accept, unanimously, Zakat Payer's Appeal regarding the item of "excluding the losses incurred in 2008, amounting to SAR (8,790,712)", and overturn the primary decision in accordance with the reasons and justifications stated in this ruling.
6. Accept, unanimously, Zakat Payer's Appeal regarding the item of "tax-exempt income not excluded for tax purposes for the year 2011", and overturn the primary decision in accordance with the reasons and justifications stated in this ruling.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2020-70)
Issued in Appeal No. (Z-1728-
2018)

Principle No. 144

If it is established that Zakat Payer has used and gained from partner contributions, the item shall become liable for Zakat and is included in Zakat Payer's Zakat base.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

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 23/12/1439 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 15/06/1437 AH, corresponding to 24/03/2024 by/ ... Company against decision of the Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (1) of 1437 AH, issued in Case No. (21), 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 Company ..., to the Zakat assessment made by GAZT for the years from 2007 to 2009.

Second: On Merits:

1. Uphold GAZT's decision to include partner contributions in Zakat base for the year 2007.
2. Add the remaining value of the group amounting to SAR (594,217) to the result of the year, and deduct the profit from asset disposals amounting to SAR (7,115,426) from the result of 2007.
3. Support GAZT's decision to add depreciation expenses to the results for the years 2007 to 2009.
4. Support GAZT's decision not to deduct fixed assets from Zakat base for the years 2007 to 2009.

As this decision was not accepted by the Plaintiff (... Company), the Company submitted an Appeal to the Department. Upon review, the Department found that the Appeal can be summarized as follows:

Regarding the first item, related to partner contributions for 2007, Company's objection is based on the claim that these funds were held in trust, as indicated in the financial statements. However, the Department noted that Company's Appeal on this matter is a repetition of what was previously presented before the Primary Committee.

Regarding the second contested item, which relates to fixed assets for the years 2007 to 2009, Zakat Payer Company objects on the Grounds that the action taken by GAZT contradicts the rules exempting long-term holdings and their equivalents from Zakat. Company's objection is



based on GAZT's instructions, which applied the Zakat calculation method for fixed asset depreciation in accordance with Article (17) of the Law, as specified in GAZT's circular No. (9/2574) dated 14/05/1426 AH, as well as circular No. (9/1724) dated 24/03/1427 AH. The Company argues that GAZT's circulars and instructions emphasize canceling the effects of adjustments made to fixed asset balances (whether additions or deductions) from the remaining value of the group, so that the amount to be deducted aligns with the book balance, except for depreciation differences, which are applied in accordance with Article (17) of the Law. Furthermore, the unified declaration forms related to fixed assets confirmed the return of depreciation differences to the fixed assets, meaning that the effects of these differences on the Zakat base shall be adjusted accordingly. The Appellant Company concluded its demand on this item by requesting that the net book balances of fixed assets be deducted from Zakat base, after adjusting them for the added depreciation differences, as outlined in Appeal Memorandum.

It was established from case records, as reviewed during the Appellate Hearing by the Appellate Committee on 17/03/1439 AH, that GAZT's representatives adhere to the primary decision, representing GAZT's stance regarding Zakat Payer's Appeal on the two items under consideration. After reviewing Appeal Memoranda and the statements made before the Primary Committee, and having examined case file and its documents, the Department has determined that the case is now ready for a ruling and for issuing a decision on the matter.

Grounds

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

On merits, after reviewing case file and its documents, as well as Appeal Memorandum, and upon considering Zakat Payer's overall arguments, it is clear that the objections are focused on two items:

1. The item regarding partner contributions for the year 2007. The Department finds no fault in adopting the reasons provided in the decision under appeal for this item without adding further explanations, as it deems these reasons sufficient and comprehensive. Supporting these reasons ensures that the Department found no valid Grounds in the objections that require additional response beyond what has already been addressed. Since the contested decision concerning the disputed item is aligned with sound reasoning and is sufficient to support its judgment, the issuing committee thoroughly examined the core of dispute and reached the conclusion stated in its ruling. The Appellate Department found no need for amendments or further comments in light of the arguments presented thereto. Therefore, the Department concludes that these arguments do not affect decision's outcome. Appellant Company's claim that these funds were entrusted as a deposit does not hold. The facts outlined in the primary decision indicate that these amounts were invested, which contradicts Company's claim in the Appeal. Therefore, it cannot be said that these funds were simply held as a deposit exempt from Zakat, as it has been proven that they were utilized and benefited from, as detailed in decision's reasoning. Since Company's Appeal merely reiterates previous objections without challenging the validity of primary decision's conclusion, the Department concludes that Company's Appeal shall be rejected and the primary decision upheld based on its original reasoning.
2. The item regarding non-deduction of fixed assets from Zakat base for the years 2007 to 2009 revolves around Appellant's request to deduct the net book balances of fixed assets from Zakat base after adjusting them for depreciation differences added to the adjusted profit. On the other hand, GAZT maintains its position of rejecting the deduction of fixed assets from Zakat base while adding the depreciation difference to the adjusted profit.



3. The first paragraph of Circular No. (329/16/1434) dated 26/5/1434 AH issued by the Director General of the General Authority of Zakat and Tax states: "For the purpose of calculating depreciation and determining the net book value of fixed assets to be deducted from Zakat base, Zakat-paying entities, including mixed companies that maintain official books and records, may follow the depreciation rules that were in place prior to issuance of Circular No. (2574/9) dated 14/5/1426H, which are based on the straight-line method, while taking into consideration the use of asset groups and the depreciation rates specified in Article (17) of the Tax Law. Additionally, paragraph (14) of Article (7) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) of 1438 AH, states: "If a mixed Company uses the depreciation method specified in the Income Tax Law when determining its Zakat base, it shall be entitled to calculate the net book value of fixed assets to be deducted from Zakat base as follows: (The remaining value of the group at the end of the year, according to what is determined under paragraphs A to E of Article (17) of the Income Tax Law, after adjusting for any unapproved depreciation differences, adding the 50% deferred portion of the value of assets added during the year, and subtracting the 50% deferred portion of compensation for assets disposed of during the year.) Since Zakat Payer is requesting in this Appeal to deduct the net fixed assets according to the financial statements submitted by them, and since GAZT did not indicate any error by Zakat Payer in calculating the depreciation of the assets included in their declaration, which is the subject of the dispute with GAZT, in light of Zakat Payer being given the option on how to calculate the depreciation of those assets. It is unreasonable for GAZT to conclude that the result of calculating such depreciation would render the value of those assets zero without providing clarification for such a result. This leads GAZT to affirm that the default method for calculating the depreciation of these assets shall be based on Zakat Payer's declaration, in the absence of valid evidence or strong indication to deviate from Zakat Payer's declared method of calculating depreciation for these assets. Accordingly, the Department has concluded to accept Zakat Payer's Appeal and overturn the primary decision regarding the item under consideration.

Decision

First: Accept, in form, the Appeal submitted by Zakat Payer/ Company, Commercial Register No. (...), against Decision No. (1) of 1437 AH, issued by the Primary Committee for Zakat and Tax Objections in Dammam.

Second: On Merits:

1. Reject Zakat Payer's Appeal regarding the item of "Partner Contributions for the year 2007", and uphold the primary decision for the reasons stated in relation to this item.
2. Accept Zakat Payer's Appeal regarding the item of "non-deduction of fixed assets from Zakat base for the years 2007 to 2009", uphold Appellant's claim to deduct the net book balances of the fixed assets from Zakat base after adjusting for depreciation differences added to the adjusted profit, 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-2021-30)
Issued in Appeal No. (ZIW-
2018-1582)

Principle No. 145

Investments that have been subject to Zakat in the local companies in which investments are made are deducted from Zakat base of the investing Company in those companies.

Facts:

First: Accept the objection in form.

Second: On Merits:

1. Uphold GAZT's position of not deducting investments from zakat base for the years 2000 and 2001.
2. The dispute regarding this item has been settled, with GAZT accepting the Zakat Payer's position.
3. Uphold GAZT's position that the increase in capital is subject to zakat for the year 2004.
4. Uphold GAZT's view that insurance premium payments are subject to withholding tax.
5. Uphold GAZT's position in rejecting the request for refund of zakat and tax resulting from not accounting for the portfolio transfer losses for the year 2008.

Since this decision was not accepted by the Plaintiff (... Company), they filed an Appeal with the Department, providing the following summary:

Zakat Payer objects to Primary Committee's rejection of their objection to the tax portion on formal Grounds, stating that they paid the withholding tax via certified check No. (...), It argues that he has already paid the amounts in excess, and therefore, it is he who is demanding the differences from GAZT, not the other way around. Regarding the item of “non-deduction of investments from Zakat base for the years 2000 and 2001”, the Committee upheld GAZT's decision not to deduct investments from Zakat base for those years. Zakat Payer based his argument on the fact that these investments are long-term and for acquisition purposes, not for trade, as the holding period exceeds one year. He added that the invested Company pays Zakat on them, and he requests their deduction from Zakat base. Concerning the item of “Subjecting the increase in capital to Zakat for the year 2004”, its objection is based on the fact that this increase, amounting to \$ (10,762,500), was not used as Company's capital to finance working capital or Company operations in Saudi Arabia. Instead, this increase was intended to cover Company's share as a founder in Company, and it added that this increase appeared in the financial statements of ... Company as investments in government treasury bonds for the fiscal year ending December 31, 2005, these funds were subsequently invested in term deposits with ... Company until 2007, when a bank account was opened in the name of ..., and the amount was deposited into that account. GAZT imposed a Zakat assessment on these amounts in representing the Activity Company. Regarding the item of “Subjecting the value of insurance premiums to withholding tax”, the Committee upheld GAZT's decision to subject the total value of insurance premiums paid to both resident and Gulf companies to withholding tax. Zakat Payer's argument regarding this item



was that withholding tax shall not be imposed on the total reinsurance premiums, but only on the amounts paid to non-resident entities. As for the item of “Rejection of the request for a refund of Zakat and tax resulting from not accounting for losses incurred from transferring the insurance portfolio for the year 2008”, the objection was based on the fact that the Company incurred losses amounting to SAR (30) million due to the transfer of its insurance portfolio on January 1, 2009, and Zakat Payer is requesting a refund of Zakat and tax amounts related thereto. The revised financial statements were submitted to GAZT along with Zakat and tax return for ... Company. The Department decided to reopen the case, and Zakat Payer was addressed on 03/11/1441 AH, corresponding to 24/06/2020, to submit any additional information regarding the Appeal under review within the time granted by the Department or to rely on what was already submitted in Appeal Memorandum. The period passed without any further submission beyond what was presented in Appeal Memorandum. Zakat Payer was also addressed on 18/01/2021, corresponding to 23/05/1442 AH, requesting provision of documents detailing the amounts paid to local reinsurers, which would support their claim regarding payment of insurance premiums to resident companies in the Kingdom, and to submit the revised financial statements within the granted time period. However, the deadline passed without any documents being submitted on this matter. Additionally, the Department received a response memorandum from GAZT on 15/05/1442 AH, corresponding to 30/12/2020, addressing the subject of appeal. GAZT reaffirmed the validity and accuracy of its procedures in handling the contested items and thus supported Committee’s decision, which GAZT upholds along with the reasoning provided in support of the correctness of GAZT’s assessment of the Appellant. The points raised by Zakat Payer did not present anything new beyond what had been previously submitted before the Committee that issued the decision.

Grounds

Upon reviewing case documents and the Appeal submitted by the Appellant Company, the Department found that the conditions for considering the Appeal procedurally have been met in accordance with the relevant regulations, bylaws, and decisions. Thus, the Appeal is procedurally admissible, as it was submitted by an authorized party within the legally prescribed time frame for such actions. Regarding the subject matter, concerning Zakat Payer's Appeal on the item of “objection to the procedural aspect before the Primary Committee regarding the tax-related portion of Zakat Payer's objection”, after examining case file and its documents, as well as the Appeal Memorandum, Zakat Payer stated that they had paid the withholding tax via certified check No. (...), and that they had already overpaid the amounts, thereby making it Zakat Payer who is demanding the differences from GAZT, not the other way around. Since this is the case as mentioned, and the primary decision did not mention in its rationale the items that were not objected to, nor those for which the tax had not been paid, this renders the rationale baseless for rejecting Zakat Payer's procedural objection concerning the tax-related portion of the objection. Accordingly, the Committee that issued the decision did not exhaust its jurisdiction in resolving the subject of the dispute. Thus, the Department concluded to annul Primary Committee's decision rejecting the formal aspect of Zakat Payer's objection and to return the case to the First Department for Determination of Income Tax Violations and Disputes in Riyadh to review Zakat Payer's objection to the tax-related items on substantive Grounds.

Regarding Zakat Payer’s Appeal on the item of “non-deduction of investments from zakat base for the years 2000 and 2001”, after reviewing case file, its documents, and Appeal Memorandum, it became clear that Zakat Payer objects to non-deduction of these investments from zakat base because they are long-term investments, for acquisition purposes and not for trading. Zakat Payer also stated that the invested Company pays zakat on these investments. However, GAZT contended that Zakat Payer had previously objected to this item for the years 1998 and 1999, and the Tax Appellate Committee issued Decision No. (576) of 1425 AH, which defined the non-deductible investments. Accordingly, GAZT made an assessment for the disputed years based on



the conclusions of the Appel decision. GAZT also confirmed that for investments to be deductible from zakat base, they must be proven to be acquisition assets, which was not confirmed to ZAGT or the Department that issued the contested decision. The Primary Committee based its decision on the absence of proof that disputed investments were acquisition assets and did not explain in its reasoning how it reached that conclusion. Zakat Payer indicated in their Appeal Memorandum that these investments were held for more than one year and were investments in local companies subject to zakat, with their revenues being included in Zakat Payer Company's profit, which is also subject to zakat. Zakat Payer's Appeal was presented to GAZT, and it did not dispute Zakat Payer's claims regarding the nature of these investments, merely reiterating its previous arguments made before the Primary Committee. Therefore, the Department decided to accept Zakat Payer's Appeal, as the primary decision was not based on valid Grounds, and to overturn the primary decision concerning this matter.

Regarding Zakat Payer's Appeal on the item of "subjecting the increase in capital to Zakat for the year 2004", after reviewing case file and its documents, as well as the Appeal Memorandum, it became clear that Zakat Payer objects to adding this increase to Zakat base because it was not used to finance working capital or Company operations in the Kingdom of Saudi Arabia. However, GAZT believes it added the increase based on what was shown in Zakat Payer's audited financial statements, "Note No. (12) for the years 2003 and 2004". The Committee that issued the decision referred back to the audited financial statements and found that the capital increase occurred in 2003, confirming that Zakat year had passed during 2004. Upon reviewing Note No. (12) of Zakat Payer's 2003 financial statements regarding capital, the Department confirmed that Zakat Payer increased their capital in 2003, proving that the Zakat year had passed on it during 2004. The Department decided to uphold the reasons provided in the decision under Appeal regarding the item in question without adding any further details, as it deemed those reasons sufficient and did not require any new information. The decision under appeal aligns with the sound reasoning upon which it was based and is sufficient to support its ruling. The Committee that issued the decision thoroughly examined the point of dispute and reached the conclusion stated in its ruling. Since the Department found nothing warranting correction or further comment based on the information presented, the Department concludes that the submissions do not affect the outcome of the primary decision regarding this item. Therefore, the Department decided to reject Zakat Payer's Appeal and uphold the decision regarding this item.

Regarding Zakat Payer's Appeal on the item of "subjecting the value of insurance premiums to withholding tax", after reviewing case file and its documents, as well as the Appeal Memorandum, it became clear that Zakat Payer objects to imposing withholding tax on these premiums, arguing that withholding tax shall not be imposed on the total reinsurance premiums but only on amounts paid to non-resident entities. Additionally, Zakat Payer claims that part of the disputed amounts was paid to resident companies and provided a statement of the amounts paid to those resident companies, which it believes shall not be subject to withholding tax. Furthermore, some of these premiums were paid to Gulf companies owned by Gulf nationals, who shall not be taxed for their business in the Kingdom as they are treated as Saudi nationals. However, GAZT asserts that Zakat Payer did not provide supporting documents for these amounts paid. Upon reviewing the rationale of the primary decision, the Department found that the Primary Committee issued its decision regarding the premiums paid based on Zakat Payer's failure to provide supporting documents. Zakat Payer was contacted to submit the required supporting documents for the payments, but they did not provide what was requested. Therefore, the Department concludes by rejecting Zakat Payer's Appeal regarding imposition of withholding tax on the payments and affirms the primary decision in this matter.

As for his Appeal regarding his request to impose withholding tax on the amounts paid... rather than on total amounts, and since the Primary Committee did not address this request, the Department has decided to return the case to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for reconsideration. This is because the original request of



Zakat Payer was not addressed in the contested decision, meaning that the Committee did not fully exercise its jurisdiction in resolving the dispute, which leaves the case unresolved.

Regarding Zakat Payer's Appeal on the item of "rejection of the request for a refund of Zakat and tax resulting from not accounting for losses from the transfer of the insurance portfolio in 2008", after reviewing case file and its documents, as well as the Appeal Memorandum, it became clear that Zakat Payer objects to the rejection of the refund of Zakat and tax amounts paid according to the revised financial statements, as the Company incurred losses estimated at SAR thirty (30) million due to the transfer of its insurance portfolio on January 1, 2009. GAZT, however, asserts that Zakat Payer did not submit the revised financial statements, despite being granted multiple extensions to provide them. Upon reviewing the rationale of the primary decision, the Department found that the Primary Committee had based its decision regarding this item on Zakat Payer's failure to submit the revised financial statements and their approval by the Saudi Central Bank. The Department decided to uphold the reasons provided in the Appealed decision regarding this item without adding anything further, as it deemed those reasons sufficient and did not require new information. The decision under Appeal was consistent with the sound reasoning upon which it was based, and the committee that issued the decision thoroughly examined the point of dispute and reached its conclusion as stated in the ruling. Since the Department found nothing warranting correction or further comment based on the information presented, the Department concludes that the submissions do not affect the outcome of the primary decision regarding this item. Therefore, the Department decided to reject Zakat Payer's Appeal and uphold the decision regarding this item.

Decision

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

First: Accept, in form, the Appeal in form submitted by Zakat Payer ... Company Commercial Register No. (...), TIN (...), against decision of the First Primary Committee for Zakat and Tax Objections in Riyadh, Decision No. (0) of 1436 AH.

Second: On Merits:

1. Accept Zakat Payer's Appeal regarding "the objection to the procedural aspect before the primary committee concerning the tax-related portion of Zakat Payer's objection", annul Primary Committee's decision rejecting the formal aspect of Zakat Payer's objection, and remand the case to the First Department for Determination of Income Tax Violations and Disputes in Riyadh to consider Zakat Payer's objection to the tax items on merits.
2. Accept Zakat Payer's Appeal regarding the item of "non-deduction of investments from the Zakat base for the year 2000".
 - a. and 2001", and overturn the primary decision on this matter in accordance with the reasons and rationale mentioned in this ruling.
3. Reject Zakat Payer's Appeal regarding the item of "subjecting the capital increase to Zakat for the year 2004".
 - b. and affirm the primary decision on this matter, based on the reasons and rationale mentioned in this ruling.
4. Regarding the item of "subjecting the value of insurance premiums to withholding tax":
 - a. Reject Zakat Payer's Appeal concerning imposition of withholding tax on payments made to local reinsurers, and affirming the primary decision on this matter in line with the reasons and rationale stated in this ruling.
 - b. Referring the case back to the First Department for Determination of Income Tax Violations and Disputes in Riyadh to reconsider Zakat Payer's Appeal regarding the request to impose withholding tax on the amounts paid to reinsurers, rather than on the total amounts, based on the reasons and rationale mentioned in this ruling.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2021-45)
Issued in Appeal No. (I-1751-
2018)

Principle No. 146

Investments in foreign funds are deducted if Zakat Payer provides evidence of Zakat payment in the country of investment or submits the financial statements.

Facts:

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet:

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 24/3/1436 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 for the years 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 objection filed by Zakat Payer/..... Company due to submission within the legal time frame and by an authorized party.

Second: On Merits:

- Settlement of the dispute concerning Zakat Payer objection with regard to Item (payments for technical service fees for the year 2011) based on the merits mentioned in the decision.
- Reject Zakat Payer objection with regard to Item (exempted income not excluded for tax purposes the year 2011 AD) based on the merits mentioned in the decision.
- Reject Zakat Payer objection with regard to Item (deduct investments for the period 2008 - 2011 AD) based on the merits mentioned in the decision.
- Reject Zakat Payer objection with regard to Item (actual incurred losses) based on the merits 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 of "long-term investments for the years 2008 to 2011", Zakat Payer objects to Primary Committee's decision rejecting his objection to the item of long-term investments for the years 2008 to 2011, amounting to SAR (750,199,587). Zakat Payer affirms its 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, as well as investments held until maturity. This investment, as mentioned, was made from Company's capital and reserves. Zakat Payer also stated that management's intention was to hold these investments



for the long term and not for trading purposes. Additionally, the income generated from these investments was part of Company's income statement. Zakat Payer asserts that these investments shall be deducted in accordance with Ministerial Decision No. (2/8443/2/1) dated 08/08/1392 AH, which specifies conditions that Zakat Payer claims apply to his case. These conditions include that the investments be financed from capital and reserves, be long-term, with the intent to hold them for extended periods, not be acquired for trading or resale purposes, and that the income generated from them has been subject to Zakat. All these conditions, Zakat Payer argues, apply to the investments in question. Zakat Payer also based its objection on the content of Fatwa No. (22665) dated 15/04/1424 AH, which differentiates between those who speculate in stocks by buying and selling, and shareholders who acquire these stocks with the intent of receiving profits. Zakat is obligatory in the first case but not in the second. Zakat Payer believes he falls under the second 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 Item (excluding actual incurred losses for the year 2008 AD with the amount of SAR 8,790.712), Zakat Payer filed its appeal to challenge the Primary Committee decision rejecting its objection to excluding actual incurred losses covered by the appealed item. Zakat Payer 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. Zakat Payer 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 for the year 2011 - SAR (559,897)", Zakat Payer objects to Primary Committee's decision to reject his objection to exclude the exempt income for tax purposes for the year 2011, amounting to SAR (559,897). He affirms his right to deduct this amount from zakat 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 the Capital Market Law of the Kingdom and the shares sold were purchased after the tax law came into effect. Zakat Payer 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 for the year 2011.

The Department decided to reopen the proceedings, and on 25/02/1442 AH corresponding to 15/11/2020, it requested Zakat Payer to submit any additional information regarding his Appeal of the decision under review, within the time granted by the Department, or to rely on what was already submitted in Appeal Memorandum. The specified time passed without any additional submissions beyond what was included in Appeal Memorandum. The Department received a reply memorandum from GAZT on 10/07/1442 AH corresponding to 21/02/2021, which included responses to the items under Appeal. Regarding the item of "long-term investments for the years 2008 to 2011", GAZT stated that, after reviewing Zakat Payer's financial statements, it was found that these investments consisted of securities, investment funds, sukuk, and deposits. There were sales transactions involving stocks, indicating that the purpose was trading, not long-term holding, which precludes the deduction of these investments from the Zakat base. This is in accordance with Ministerial Letter No. (4/8676) dated 24/12/1410 AH, and Ministerial Decision No. (1005) dated 28/04/1428 AH, which state that such investments do not represent direct investments in companies for long-term holding. Furthermore, the duration of holding is not the sole criterion for determining whether an asset is for long-term retention. Regarding Zakat Payer's Appeal on the item of "exclusion of losses incurred in 2008", GAZT responded that it did not agree to exclude the losses claimed by Zakat Payer because the documents provided by Zakat Payer were



incorrect and insufficient to justify excluding those losses. Regarding Zakat Payer's Appeal on the item of “exempt income not excluded for tax purposes for the year 2011”, GAZT responded that its actions were correct and in compliance with the relevant regulations, as Zakat Payer did not provide supporting documents for the claims made.

In 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 papers and 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 appeal Brief submitted by Zakat Payer, the Department found that conditions for hearing the appeal are fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal was accepted in form for being submitted by a person with legal capacity and within the term prescribed by law.

On merits, Regarding Zakat Payer's Appeal on the item of “long-term investments for the years 2008 to 2011”, after reviewing case file and its documents, as well as the Appeal Memorandum submitted by Zakat Payer, it became clear that the Appeal centers on Zakat Payer's request to deduct the amount of long-term investments, totaling SAR (750,199,587), from Zakat base. Zakat Payer claims that these investments consist of shares in Saudi companies, shares in ... Investment Company, investments in ... Fund and ... Fund in Kuwait, long-term investments in Islamic deposits in ... Bank and ... Bank in Qatar, and investments in sukuk issued by ... Electricity Company. Zakat Payer argues that these investments are for long-term retention and not for trading, which makes them not subject to Zakat. However, GAZT contends that these investments include investments in a Company outside the Kingdom, investments in the ... and ... funds in Kuwait, Islamic Murabaha deposits in banks outside the Kingdom, and sukuk in ... Company, which were rejected in accordance with Ministerial Decision No. (1005). As for the investment in shares and stakes of various Saudi companies, there has been trading activity on them, which indicates that the purpose is not long-term retention and that they do not fall under long-term holdings. Upon examining components of the investment in dispute, and as Zakat Payer has submitted the financial statements of ... Company, and since the default is to rely on Zakat Payer's financial statements unless contradicted by credible evidence, the Department concludes to accept Zakat Payer's Appeal and allow the deduction of these investments from Zakat base, to calculate Zakat based on these financial statements. Regarding the investment in ... Fund and ... Fund in Kuwait, since these funds are not subject to Zakat in the Kingdom, and Zakat Payer has not provided proof of Zakat being paid in the country of investment or submitted the financial statements of those funds to enable Zakat calculation, the Department has decided that Zakat Payer is not entitled to deduct them from Zakat base. As for the investment in sukuk issued by ... Company and the investment in Islamic deposits abroad, since such investments are classified as debt instruments and are subject to the Zakat rules on debts, and based on the relevant fatwas confirming that these investments are subject to Zakat, it is concluded 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 of “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, and to overturn the primary decision regarding this matter. GAZT, however, contends that Zakat Payer did not provide sufficient documentation to allow the exclusion of these losses. Upon reviewing the 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, it is assumed that



Zakat Payer's accounting system provides reliable information for determining the deduction of these losses. This 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 regarding this matter. Primary decision's reliance on the absence of specific documents provided by Zakat Payer does not invalidate Zakat Payer's action, as such a rejection can only be made following a field examination that reviews the details of each sale and purchase transaction for every security.

Regarding Zakat Payer's Appeal on the item of "exempt income not excluded for tax purposes for the year 2011 - 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- The investments disposed of must not have been in existence before the effective date of the system as specified in Article (74) hereof". Meanwhile, GAZT argues that Zakat Payer did not provide supporting documents to justify excluding this income. Upon reviewing the subject of the dispute, and since Zakat Payer 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 Zakat Payer'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 assumed that Zakat Payer's accounting system provides reliable information for determining the deduction of these gains from zakat base. Therefore, providing a specific document in this case is impractical, given the circumstances. Thus, the Department concludes to accept Zakat Payer's Appeal and overturn the primary decision regarding this matter. Primary decision's reference to the lack of reliance on the documents provided by Zakat Payer is not sufficient Grounds for rejecting Zakat Payer's claim on this item, as such a rejection can only be justified by a field examination that reviews the details of each sale and purchase transaction for every security.

Decision

First: Accept the appeal filed by Zakat Payer/ ... Company, CR. No. (...), against Second Primary Committee for Zakat and Tax Objections in Riyadh Decision No. (3) of 1439 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 appeal with regard to Item (deducting investment in ... Company) based on the financial statements, and overturn the primary decision regarding this matter, in accordance with the reasons and justifications stated in this ruling.
3. Reject, unanimously, Zakat Payer's Appeal regarding the investments in (... Fund and ... Fund in Kuwait), and uphold the primary decision in accordance with the reasons and justifications stated in this decision.
4. Reject, unanimously, 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 justifications stated in this ruling.
5. Reject, unanimously, Zakat Payer's Appeal regarding (investments in Saudi companies), and uphold the primary decision in accordance with the reasons and justifications stated in this ruling.
6. Accept, unanimously, Zakat Payer's Appeal regarding the item of "exclusion of losses incurred in 2008, amounting to SAR (8,790,712 SAR)", and overturn the primary decision with respect to the outcome on this matter, in accordance with the reasons and considerations outlined in this decision.



7. Accept, unanimously, Zakat Payer's Appeal regarding the item of "tax-exempt income not excluded for tax purposes for the year 2011", and overturn the primary decision in accordance with the reasons and justifications stated in this ruling.



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IZD-2021-260)
Issued in Appeal No. (Z-10010-
2019)

Principle No. 147

It is established that a Company's purchases of real estate and vehicles for use are not subject to Zakat, while what the Company purchases for trading is subject to Zakat.

Facts:

The facts of this case are summarized as follows: ... (National ID No.....) In his capacity as Director of the Plaintiff ... C.R. No. (...), under the Articles of Association, submitted an objection to the Zakat assessment for the year 2013 issued by the General Authority of Zakat and Tax. The objection is limited to the following items: Item (1): Undeclared revenues of SAR (5,405,243): It claims that it maintains formal accounts, which are prepared, supervised, and audited by a certified public accountant, and that all amounts have been duly reported. 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 the registration of the assets in its name. Item (3): Amounts not deducted from the Zakat base related to the investment item, amounting to SAR (5,95,260): It claims that the investment is not for profit-making purposes but rather low-risk investments held with a local bank as part of the collateral provided to the bank against the 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 (200,000) on 15/05/2014, receipt No. (1735987).

When the statement of claim was presented to the Defendant, they responded as follows; regarding the item: Creditors subject to Zakat: They accepted Plaintiff's objection. Regarding the item: Net Fixed Assets: They did not deduct the net fixed assets from Zakat base because they are not registered in Plaintiff's name, relying on Clause (Second) of Article (4) of Zakat Collection Regulations. Regarding the item: Investments for the year 2013: It stated that the financial statement notes indicate that this investment is in a portfolio for profit-making purposes, and thus it is considered part of the trade goods to be added to Zakat base. This action was based on Clause (Second) of Article (4) of Zakat Collection Regulations. Regarding the item: Paid Payments: It upholds the validity of its action. Regarding the item: Undeclared Revenues: Plaintiff's objection was rejected due to its failure to provide supporting documents for its claim, and the action was based on Paragraph (3) of Zakat Collection Regulations.

On Sunday 14/04/1442 AH, the Department held its session remotely to hear the case. For the Defendant appeared Mr..... National ID No....., in his capacity as the representative of the Defendant GAZT. 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 the General Secretariat of the Tax Committees, thereby abandoning its right to appear and plead. 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 hear the case. For the Plaintiff appeared Mr....., National ID No., in his capacity as the Company's director under its articles of association. For the Defendant appeared Mr....., National ID No., in his capacity as the representative of the Defendant GAZT. Having asked the Plaintiff's attorney about his claims, he answered that they are the same claims as contained in his statement of claims submitted to the General Secretariat of Tax Committees. Having referred to the Defendant's representative, he also maintained his replies contained in the plea submitted to the General Secretariat of Tax Committees requesting that no further documents be accepted from the Plaintiff. When the parties were asked if they had any other statements to add, they replied "No.". Accordingly, the Department decided to close the pleadings and deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (17/28/577) of 14/03/1376 AH, as amended, and the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 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 related laws and regulations; and

In form, since the Plaintiff instituted this case aiming to cancel GAZT's decision regarding the zakat assessment for the year 2013 AD, and since this dispute is considered one of the 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; and since the hearing of such cases is conditional upon an objection being initially filed with the authority issuing the decision within 60 days from the date of notification according to Article 22.1 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, stipulates that: "The Taxpayer may object to the Authority'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"; and 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.

As on merits, the Department, having examined the case papers and documents as well as the requests, defenses and pleas presented by its parties, found that the Plaintiff disputes the zakat assessment issued by the Defendant for the year 2013, which is limited to the following items:

Item (1): Creditors subject to Zakat:

Article 70 of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) of 22/01/1435 AH stipulates that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect". Moreover, Article 70.1 of the Implementing Regulations of the Law of Civil Procedures issued by the Minister of Justice's Decision No. (39933) of 19/05/1435 AH provides that: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Accordingly, and given that the Defendant accepted the Plaintiff's request as stated in the Plea No. 1 submitted by the Defendant to the General Secretariat of the Tax Committees, which included that: "The taxpayer's objection was accepted for submitting a detailed statement of the creditors' accounts showing the beginning of year balance, the additions and payments, and accordingly, the balance to be added to the zakat



base over which a year has passed is SAR 2,681,272 for the year 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 the net assets, while the Defendant argued that the net fixed assets were not deducted from the zakat base after excluding the lands not owned by the Plaintiff because they were not registered in its name. Based on Fatwa No. (22644) dated 09/03/1424 AH, which 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, cars 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 Implementing Regulations for Zakat Collection of Zakat issued by Ministerial Resolution No. (2082) of 01/06/1438 AH provides that: "The following shall be deducted from the Zakat base: 1- Fixed assets, which include the following: The 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 the Taxpayer 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 the Zakat base, which is: "The Authority shall decide to continue implementing the instructions related to the deduction of the value of lands registered in the names of partners from the 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 the Zakat base. B. If the partner's current credit account covers the full value of the registered 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". Also, Article 20.3 of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) of 01/06/1438 AH stipulates that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". 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 the zakat base, while the Defendant argued that, having reviewed the notes of the financial statements, they have been found to be portfolio investments for the purpose of Murabaha and therefore are considered trade assets that are added to the zakat base; and where Fatwa No. (19382) dated 20/01/1418 AH stated that "The 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 over them". Moreover, Paragraph (4/c) of Article (4) of the Implementing Regulations for Zakat Collection 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) of 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 the Taxpayer'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) of 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 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 most important forms of them are government bonds, bonds issued by companies, and other debt instruments to which the previous definition of securities applies. This definition however 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 above, and by referring to the Plaintiff's financial statements, it is established that the 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, this Department hereby decides to dismiss the Plaintiff's objection.

Item (4): Paid Payments:

The Plaintiff objects to the Defendant's decision to not deduct the 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 Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) of 01/06/1438 AH provides that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Accordingly, and 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, this Department decides to dismiss the Plaintiff's objection regarding this item.

Item Fifth: Undeclared Revenues:

The Plaintiff objects to the Defendant's decision to add undisclosed revenues of the year 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 Commercial Books Law 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 the correspondence and documents referred to in Article 16 for a period of at least ten years". Moreover, Article 20.3 of the Implementing Regulations for Zakat Collection issued by Minister of Finance Resolution No. (2082) of 01/06/1438 AH stipulates that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Accordingly, and since the Plaintiff did not submit the documents that it was supposed to keep based on Article 9 of the Commercial Books Law, which is specified for ten years, the Department hereby dismisses the Plaintiff's objection regarding this item.

Decision



For those Grounds and after deliberation, the Department unanimously decided as follows:

- End dispute regarding the item “creditors accounts that have a year passed over them for the year 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 receipt of the decision, whereafter, the decision will be final and enforceable.

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