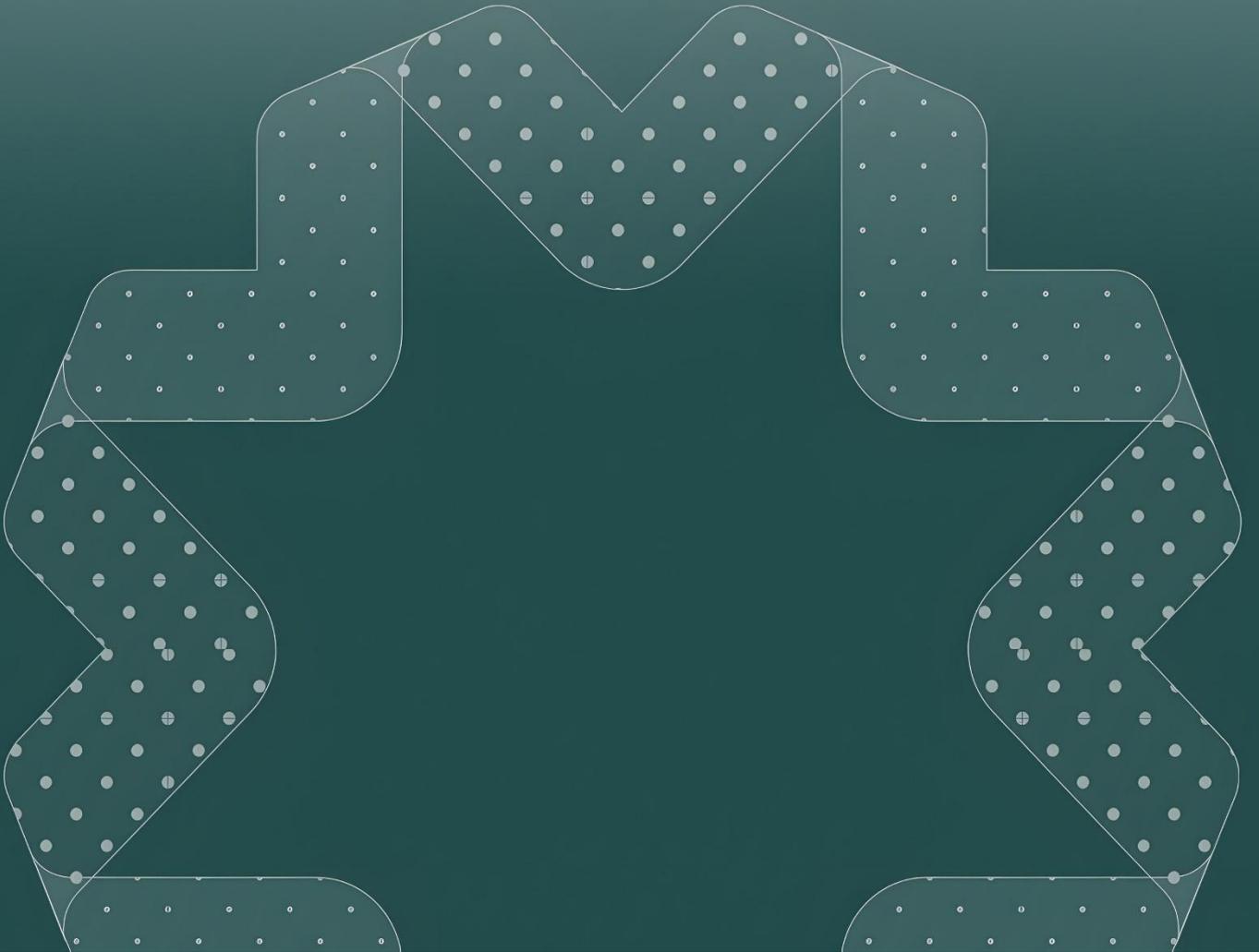




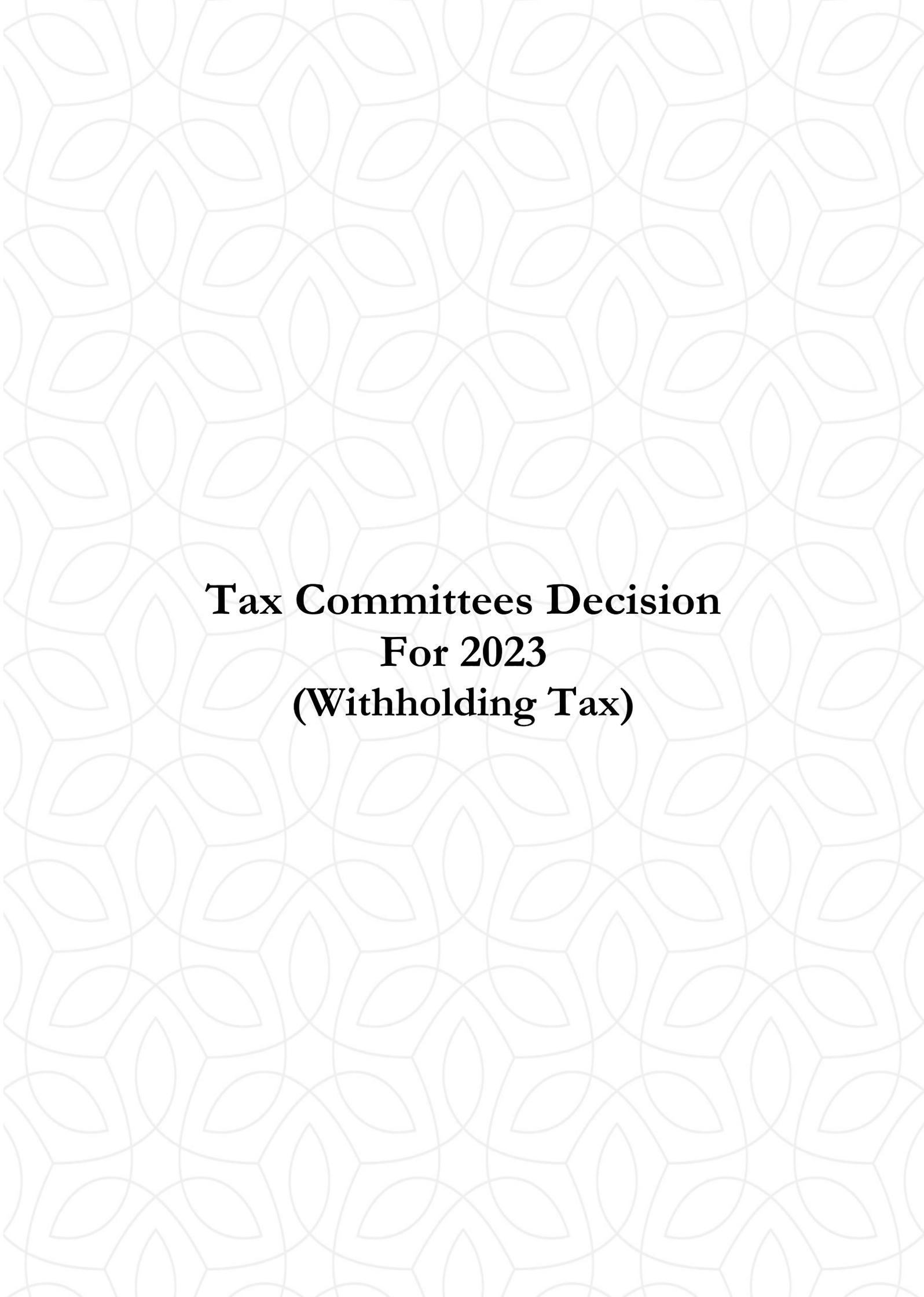
الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

Tax Committees Decision For 2023 (Withholding Tax)





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

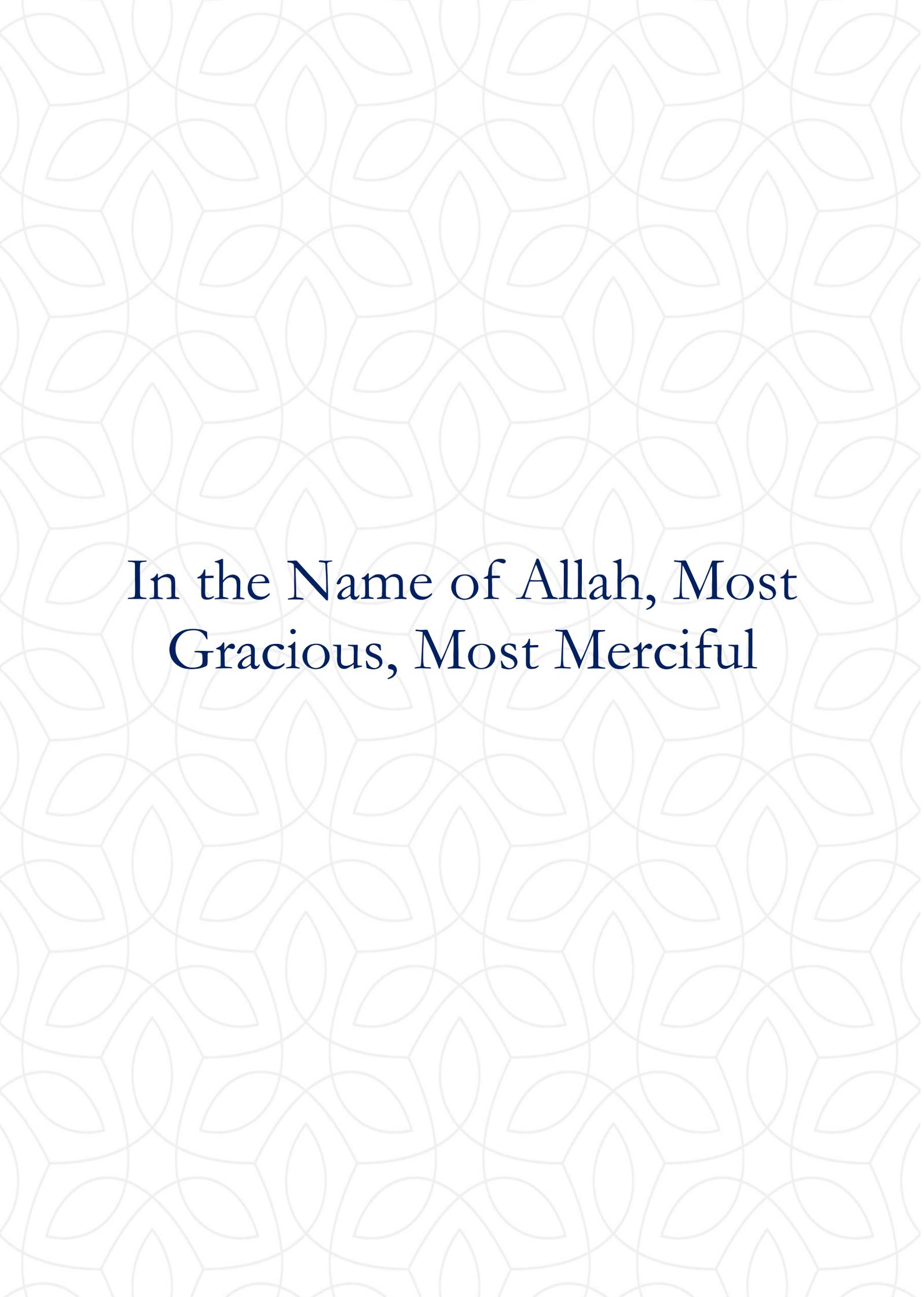
The background of the page is a repeating pattern of overlapping, stylized leaf or teardrop shapes. Each shape is defined by a thin, light gray outline. The shapes are arranged in a grid-like fashion, with each shape overlapping its neighbors, creating a dense, textured effect. The overall color scheme is light gray and white.

**Tax Committees Decision
For 2023
(Withholding Tax)**



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

Tax Committees Decision For 2023 (Withholding Tax)



In the Name of Allah, Most
Gracious, Most Merciful

Table of Contents

Foreword	14
Message of His Excellency the Secretary General of the Zakat, Tax and Customs Committees	15
Work Methodology:	16
First: Decisions Based on Formal Aspect	17
Withholding Tax - Tax Assessment - a case already determined cannot be brought before a court except if the judgment delivered is quashed or if the case remanded for reconsideration.	18
Withholding Tax - Opponency is a Basic Element of a Case - Dismissal of Case	20
Second: Decision Based on Substantial Aspect	22
5% Withholding Tax on Dividends - Fines - Amount of Fines payable as a result of ZATCA's adjustment- Delay in Payment of Fine	23
Withholding Tax – Withholding Tax on Paid Technical Services – Late Payment Fine– Substantive Acceptance.....	28
Withholding Tax – Late Payment Fine – Extinction of the Original Tax Liability – Substantive Acceptance.....	32
Withholding Tax - Tax Assessment - Unjustified Transfers to Companies - Late Payment Fine.....	36
Withholding Tax on Royalty Services – Late Payment Fine – Substantive Acceptance. ...	40
Withholding Tax - Adjustment letters do not clarify reasons and details of ZATCA's adjustments – Late Payment Fees – Substantive Rejection.	45
Withholding Tax on Dividends – Late Payment Fine – Substantive Acceptance.	50
Withholding Tax - Consulting services provided by employees outside the Kingdom - Payment to related parties for services - Late Payment Fines	54
Withholding Tax - Tax Assessment - Late Payment Fines- Failure to Submit Invoices or Customs Declaration.	59
Withholding Tax - Tax Assessment - Withholding Tax Difference - Late Payment Fines- Unpaid tax differences not settled by due date - Failure to submit detailed movement to the relevant parties - Rejection of Plaintiff's Objection.	71
Interest transfers with overseas shipping brokers - Subjecting commission transfers with overseas shipping brokers to a 15% withholding tax - Imposing a late payment fine on withholding tax - Burden of proof of correctness of information in the Taxpayer's return rests on the Taxpayer.....	75
Withholding Tax - Zakat Assessment - Undeclared Revenue Differences - Technical Services - Insurance premiums subject to withholding tax - Double Taxation - Confirmation.....	79
Withholding Tax (Rentals) - Zakat Assessment - Sale of Shares - Capital Gains Tax - Provision for Employee Severance Pay - Book Value - Installment paid upon acquisition of shares - Late Payment Fine - Retained Earnings.....	84
Withholding Tax on Purchased Software – Late Payment Fine – Failure to Provide Sales Agreement and Evidence on Including Amount within Sales – Unpaid Tax Variances by Statutory Deadline – Failure to Provide an Approved Statement Showing Software Entry as Part of Inventory – Dismissing Plaintiff's Objection.	95
withholding Tax - Late Payment Fine - Accepting Plaintiff's Objection.....	99
Withholding Tax – Statute of Limitations – Late Payment Fine – Amending Defendant's Decision.....	103
Withholding Tax - Fines - Dismissing Plaintiff's Objection.	108
Withholding Tax – Paying Capital Gains Tax Due – Late Payment Fine	112
Withholding Tax - The burden of proof of the accuracy of Taxpayer's return lies with Taxpayer – ZATCA is entitled to disallow expense not substantiated by Taxpayer or to	

impose an estimate assessment - The dispute over the nature of payment subject to withholding tax is governed by the documents that clarify its nature – Failure to Provide Supporting Documents – Dismissing Plaintiff’s Objection.	116
Withholding Tax – Royalties – Franchise Rights – Trademark – Unclear Payment Date – Tax Rate.....	119
Withholding tax on dividends to a non-resident shareholder – Disallowing deduction of income tax paid on non-resident shareholder’s share - Late Payment Fine – Applying additional withholding tax on tax variances unpaid by the statutory deadline – Withholding tax is imposed on undistributed dividends.....	122
Withholding Tax – Lack of Knowledge of Reasons for Amendment – Canceling Withholding Tax Imposition – Imposing Withholding Tax on Related Parties – Late Payment Fine.....	126
Withholding Tax – Paid Software Licenses Abroad – Training Programs – Failure to Provide Supporting Documents – Dismissing Plaintiff’s Objection.	131
Withholding Tax – Tax Assessment – Use of Group Statement – Depreciation Variances – Maintenance and Repair Variances – Import Variances – Operational Supplies – Carried Forward Loss Balance – External Services.	134
Withholding Tax - External Purchases - Imposing Withholding Tax as Royalties or Rent - Late Payment Fines - Dismissing Plaintiff’s Objection.....	141
Withholding Tax – Tax Assessment – Related Parties – Loan Interests – Financial Statements – Late Payment Fine – Annuling ZATCA Decision.....	145
Withholding Tax – Tax Assessment – Late Payment Fine – Other Payments.....	150
Withholding Tax – Late Payment Fine – Reinsurance – Tax Variance – Due Date.	154
Withholding Tax – Tax Assessment – Expiry of Five-Year Statutory Period for Assessment – Overstated Basic Salaries and Housing Allowance Over Social Insurance Contributions – Profits on External Purchases – Life Insurance Expenses – Net Book Loss and Royalty Expenses – Overstated Social Insurance Contributions – Carried Forward Tax Losses – Loan Interest Exceeding Permissible Limit – Reversal of Inventory Provisions – Late Payment Fines.....	158
Withholding Tax – Tax Dispute – Double Taxation – Failure to Provide Supporting Documents for Objection.....	166
Withholding Tax – Remaining Dividends Transferred Abroad – Failure to Provide Evidence Contradicting Settlement between Accounts.	169
Withholding Tax – International Shipping – Refunding Amounts Transferred by Agent – Plaintiff Provided Supporting Documents for its Position – Annuling Defendant’s Procedure.	172
Withholding Tax - Consulting, Technical and Technological Services - Foreign Transactions.....	177
Tax Assessment – Amounts Paid to Foreign Company for Purchasing Goods – Sales and Purchase Contracts for Resale Purposes – Adjustment Rights on Purchased Software Fall Within The Concept of Royalties – Income Subject to Withholding Tax at a Rate of (15%) – Dismissal of Objection.	181
Tax Assessment – Imposition of Withholding Tax at a Rate of (15%) on Transactions with Related Parties and Loan Returns – Late Payment Fine – Unpaid Tax – Abolishment of Defendant’s Decision.....	185
Tax Assessment – Imposition of Withholding Tax on Offshore Procurement – Goods Pending Resale – Integral Devices and Software – Procurement of Software for Resale in Local Market – Documentary Dispute – Dismissal of Objection.	190
Tax Assessment – Late Payment Fine - Other Payments – Remittances Not For Any Commercial Transactions or Delivery of Services – Current Account of Head Office –	

Loans for Business Continuity – Documentary Dispute Not Arising From Significant Difference in Interpretation of Legal Provisions.	194
Tax Assessment – Late Payment Fine – Imposition of Withholding Tax on Dividends – Imposition of Estimated Tax – Failure to Provide Proof of Payment or Existence of Dividends.....	199
Tax Assessment – Late Payment Fine – Lapse of Statutory Period for Assessment – Imposition of Withholding Tax on Salaries of Temporary Personnel – Documentary Dispute Not Arising From Significant Difference in Interpretation of Legal Provisions – Failure to Submit Financial Statements or an Extract from Accounting System to Verify Payment.....	205
Tax Assessment of Withholding Tax – Late Payment Fine – Lack of Supporting Documents – Documentary Dispute Not Arising From Significant Difference in Interpretation of Legal Provisions – Dismissal of Plaintiff’s Objection.	211
Withholding Tax on Administrative Charges – Withholding Tax on Amounts Paid – Payments of Escrow Fees – Payments Not Made By Plaintiff and Duplication in Addition of Amounts by Defendant – End of Service Gratuity.....	215
Estimated Assessment and Disregard of Accounts – Date Factory – Submission of Declarations As Per Financial Statements – Audited Financial Statements by Certified Public Accountant – Estimated Charge for Failure to Submit Financial Statements – Documentary Dispute – Acceptance of Case in Form and Dismissal on Merits.	223
Withholding Tax Difference of (10%) – Late Payment Fine on Tax Difference – Submission of Tax Returns within Prescribed Statutory Deadlines – Absence of Intentional Non-Payment of Tax on Statutory Deadline – Existence of a Beneficial Relationship – Resolution of Dispute.	227
Additional Withholding Tax – Late Payment Fine – Related Parties – “Affiliate Should Follow Its Origin.”.....	231
Withholding Tax – Capital Gains Tax – Fines – Exit of Some Partners – Death of a Partner – Effects of Transfer of Shares.	235
Withholding Tax – Late Payment Fine – Dismissal of Plaintiff’s Objection.	240
Withholding Tax – Imposition of Withholding tax of (15%) on Services Delivered by Related Parties – Double Taxation.	244
Withholding Tax – Late Payment Fine – Dividends Paid to Non-Resident Partner – Dismissal of Case.	248
Withholding Tax – Capital Gains Tax – Calculation of Capital Gains Resulting from Exit of Foreign Partner – Amendment of Defendant’s Decision.....	252
Withholding Tax – Withholding Tax on Dividends – Defendant’s Failure to Provide Proof of Payment or Settlement – Late Payment Fine – Acceptance of Case.	256
Withholding Tax – Defendant’s Non-Compliance with Examination and Assessment Requirements – Withholding Tax Amendments – Notice of Partial Acceptance of Objection – Late Payment Fines – Acceptance of Case.....	261
Withholding Tax – Withholding Tax Differences – Late Payment Fines – Acceptance of Case.	266
Withholding Tax on Dividends – Considering Taxpayer a Tax Evader – Taxpayer’s Failure to Pay The Tax Due for Years Subject to Assessment is Tax Evasion – Considering Taxpayer Subject to Income Tax as for Being a Resident Company – Late Payment Fine – Difference in Application of Approved Rates.	271
Tax Assessment – Imposition of Withholding Tax on Amounts for Technical and Consultancy Services Delivered by Third Parties – Late Payment Fine – Tax Returns – Statutory Period – Activity of Payables – Activity of Transactions – Acceptance of Plaintiff’s Objection in Form and Dismissal on Merits.	278

Tax Assessment – Income Tax – Withholding Tax – Foreign Remittances – Customs Duties – Supply of Steel Structures – Installation of Steel Panels.	283
Tax Assessment - Estimated Profit Rate - Calculating Net Profit Rate - Withholding Tax - Fines - Bank Account.....	289
Withholding Tax - Seconded Workers - Workers' Salaries - Workers' Insurance - dividends - Late Fines - Income Tax.....	295
Tax Assessment - Letter of Amendment Does not Conform to Legal Procedure for Issuing Assessment - Amounts Paid for Technical and Consulting Services to Related Third Parties - Late Payment Fine - Documentary Dispute that Did not Arise from Significant Difference in Interpretation of Legal Texts.	301
Withholding Tax on Capital Increase - Late Payment Fine - Filing Tax Returns on Legal Dates - Difference of Viewpoints - Non-Payment of Tax on Legal Date - Retained Earnings (Bonus Shares) - Audited Financial Statements - Transfer of Retained Earnings and Reserves to Capital - Capitalization of Profits is not Considered as Set-Off Between Accounts - Reclassification of an Accounting Account.....	306
Withholding Tax on Salaries - Withholding Tax on Loan Interest - Withholding Tax on Insurance - Withholding Tax on Travel Tickets - Withholding Tax on Communications - Withholding Tax on Marketing Services - Withholding Tax on Technical, Consulting and Administrative Services - Withholding Tax on Other Matters - Documentary Dispute not Arising from Significant Difference in Interpretation of Legal Texts - Taxpayer Bears the Burden of Proving Validity of it Return.	311
Withholding Tax - Late Payment Fine - Double Taxation - Resulting Occurrence Shall Take the Same Effect.....	321
Withholding Tax - Salaries and Wages Paid to Seafarers - Late Payment Fine - Resulting Occurrence Shall Take the Same Effect - Overturn Defendant's Decision.....	325
Withholding Tax - Capital Gains Tax Item - Statute of Limitation Item - Late Payment Fine Item.	329
Imposing 20% Withholding Tax - Invalidity of the Capital Gains Tax Assessment Issued as a Withholding Tax Assessment - Management Fee Represented by Capital Gains Tax Resulting from Foreign Partner Restructuring - Capital Gains Tax Resulting from Foreign Partner's Exit by 20% - Restructuring of Company Owned by Foreign Partner - Late Payment Fine - Mention the Legal Ground - Amendment Based on Capital Gains Tax Rather Than Withholding Tax - the Assessment Fulfills its Formal Elements- Lack of benefit to the New Partner - Restructuring Without a Real Sale of Shares.	333
Withholding Tax Assessment - Late Payment Fine Item - Overturn Defendant's Decision.	340
Withholding Tax Assessment - Non-Acceptance of Plaintiff's Refund of Withholding Tax Item - Overturn Defendant's Decision.	344
Withholding Tax – Late Payment Fine – Overturn Defendant's Decision	347
Withholding Tax - Late Payment Fine - Failure to Provide Required Data within the Statutory Period - External Transfers - Accept Plaintiff's Objection.	351
Withholding Tax Assessment - Imposing Withholding Tax on Amounts Related to Dubai Branch - Imposing Withholding Tax on Amounts Paid to the Company's Branch in KSA - Material Error in Calculating Amounts Paid to Relevant Parties - Late Payment Fines.....	354
Withholding Tax Assessment - Withholding Tax Paid under Declarations Item - Letter of Amendment Does not Conform to Legal Procedure for Issuing Assessment - Late Payment Fines Item - “Onus of Proof Lies with the Plaintiff”	361
Withholding Tax - Financial Statements - Tax Differences - Late Payment Fine - Tax Due - Income Tax.....	369

Withholding Tax - Tax Year - Residency Conditions - Partner Residency - Dividends.	373
Withholding Tax Assessment - Other Payments - Late Payment Fine.	377
Withholding Tax - Dividends - Request for Corporate Financing - Loss Carryover - Settlement of Banking Liabilities - Late Payment Fine - Tax Obligation Imposed on Taxpayer - Financial Statements - Amendment of ZATCA's Action.	383
Withholding Tax - Late Payment Fine - Acceptance of Taxpayer's Objection.	389
Tax Assessment - Withholding Taxes - Discrepancies Between the Revised Return by ZATCA and Adjustment Notices- Late Payment Fine - Acceptance of Taxpayer's Objection.	394
Appeal – Tax Assessment – Withholding Tax Differences – Late Payment Fine – No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance.	400
Appeal - Withholding Tax Differences - Salaries and Wages - Late Payment Fine - No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance -A taxpayer cannot be held liable for fines unless they are aware of the relevant assessment.	406
Appeal - Tax Assessment - Additional Capital Gains - Late Payment Fine - Appeal Dismissal.	412
Appeal – Withholding Tax on Dividends – Withholding Tax Form – Dividends Paid to the Non-Saudi Partner – Statutory Accounts Allowing for Payment Tracking – Late Payment Fines – Tax Difference Arising from Estimated Assessment – Acceptance of Taxpayer's Appeal on Merits and Dismissal of the Primary Decision.	415
Appeal – Imposition of Withholding Tax – Capitalization and distribution of profits as bonus shares to non-resident shareholders – Late Payment Fine– Lack of mechanism for withholding on free shares – Absence of the cash payment principle required for imposing withholding tax – Bonus shares do not represent a cash distribution, either de facto or de jure.	420
Appeal - Manual Submission of the Case via Email - Technical Issue in the Case Filing System - Escalation to the Relevant Department.	424
Appeal - Estimated Assessment - Statutory Period (Obsolescence) - Late Payment Fine - Withholding tax on assumed unrealized dividends - Estimated Net profit calculation at 25% of total expenses - Estimation of taxable revenue based on branch's total expenses - Failure to submit required data in due time- Lack of credible evidence to prove incorrectness of the return with the intent of tax evasion.	426
Appeal - Obsolescence on Tax Assessment - ZATCA's calculation of capital gains - Late Payment Fine - Lack of credible evidence to prove incorrectness of the return with the intent of tax evasion - Amendments resulting from errors in the application of instructions and procedures.	436
Appeal - Capital Gains Tax - Late Payment Fine - Adjustment of the shares' base cost to include retained earnings - Documentary dispute not resulting in a significant difference in the interpretation of statutory provisions - Related matters follow the same legal ruling.	440
Appeal - Withholding Tax Assessment - Non-Imposition of withholding tax on payments made to local entities - Department's lack of jurisdiction to settle the dispute - Acceptance of the appeal both in form and on merits.	444
Appeal - Withholding Tax Assessment - Department's lack of jurisdiction to settle the dispute - Acceptance of the appeal both in form and on merits.	446
Appeal - Payments made to employees in KSA - Payments made to recruiters outside KSA - Withholding tax on payments made for support services to related non-resident parties - Late Payment Fine - If a matter ceases to exist, that which is incidental to it	

shall also cease to exist - Withholding tax on other miscellaneous payments - Submission of employee contracts and a sample of the bank statement.....	448
Appeal - Tax Assessment - Use of a higher percentage than cost plus profit margin - Imposition of estimated profits - Imposition of withholding tax on net income at a rate of 5% - Late payment fine - Related matters follow the same legal ruling - Acceptance of Taxpayer's appeal.	453
Appeal - Withholding Tax Assessment - Filing the objection within the prescribed statutory period - Acceptance of Taxpayer's appeal and reversal of the primary decision.	458
Appeal - Tax Assessment - Imposition of withholding tax on salaries of employees residing under a business visit visa - Underwater inspection, repair, and maintenance services using divers, equipment, and vessels - Late Payment Fines - Genuine difference in viewpoints- Submission of employment contracts and invitation letters with a (90)-day residence period for contracted divers - Taxpayer providing evidence supporting their view - Invalidity of the tax basis.....	460
Appeal - Withholding Tax - Late Payment Fine - Services provided by third parties - The burden of proof of correctness of information in the Taxpayer's return rests with Taxpayer - Taxpayer (Resident) is the third party liable and responsible for withholding tax from amounts paid to non-residents.	465
Appeal - Withholding Tax - Late Payment Fine for Non-Payment of the Tax Difference - Technical Dispute Regarding Items Giving rise to the Fine.	468
Appeal - Calculating Withholding Tax on Reinsurance Premiums at a Rate of (5%) - Late Payment Fine - Fines Due to Different Views in Applying the Law - Party that Transferred the Amounts to the Non-resident Bears Withholding Tax.	471



Foreword

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.

There is no doubt that the efforts made by the courts and judicial commission, and the rulings and decisions delivered by them are in their entirety a priceless jurisprudential and judicial wealth, and a product that should be taken care of, and in the context of the commercial and industrial revolution that the Kingdom is going through under the Saudi Vision 2030, many zakat and tax controversies have arisen affecting many people. Therefore, and based on the social responsibility of the General Secretariat of the Zakat, Tax and Customs Committees, the Secretariat has sought to create a solid foundation and reference for the committee members, taxpayers and interested parties by publishing the final decisions issued by the tax committees in 2023, thus contributing to effective settlement of zakat and tax disputes, and limiting the time taken for deciding upon case. This record clarifies the decisions that the 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.

We ask Allah Almighty that this book be a sincere endeavor for the sake of Allah, to reward our efforts and guide us to the goodness. He is indeed the most generous.



Message of His Excellency the Secretary General of the Zakat, Tax and Customs Committees

Praise be to Allah almighty,

General Secretariat of Zakat, Tax and Customs Committees vision and values has been committed to excel in resolving zakat, tax and customs disputes, adopt innovative and effective approaches, enhance transparency and neutrality, develop cooperation between parties of zakat, tax and customs ecosystem, and play an effective role in raising efficiency of legal consideration. This is intended to enable zakat, tax and customs committees to successfully resolve disputes before them, and provide support and assistance to committees at all stages by conducting studies and research, as well as also helping zakat payers by clarifying laws, decisions and judicial precedents, and updating them periodically. General Secretariat has attached special importance to final decisions issued by committees, being the final product of well-established judicial jurisprudence, and can be developed and updated to reflect changes. Recording such precedents help decide on similar disputes heard by judicial committees.

Knowing these decisions also eliminate disagreements and disputes and supports litigants' position before committees. This effort includes the project of classification and categorization of final decisions issued by tax committees.

This priceless value of appellate decisions necessitated that they be assembled and published for public to achieve principle of transparency, consolidate existing efforts, and enrich scientific arena to be a fertile field for scholars, specialists and research centers.

Publication of these final decisions is a noble effort by General Secretariat, which comes in line with its mandate, and demonstrates its resolute commitment to promoting justice according to 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 employees of 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 field.

Secretary General
Abdullah bin Abdulrahman Al-Suhaibani

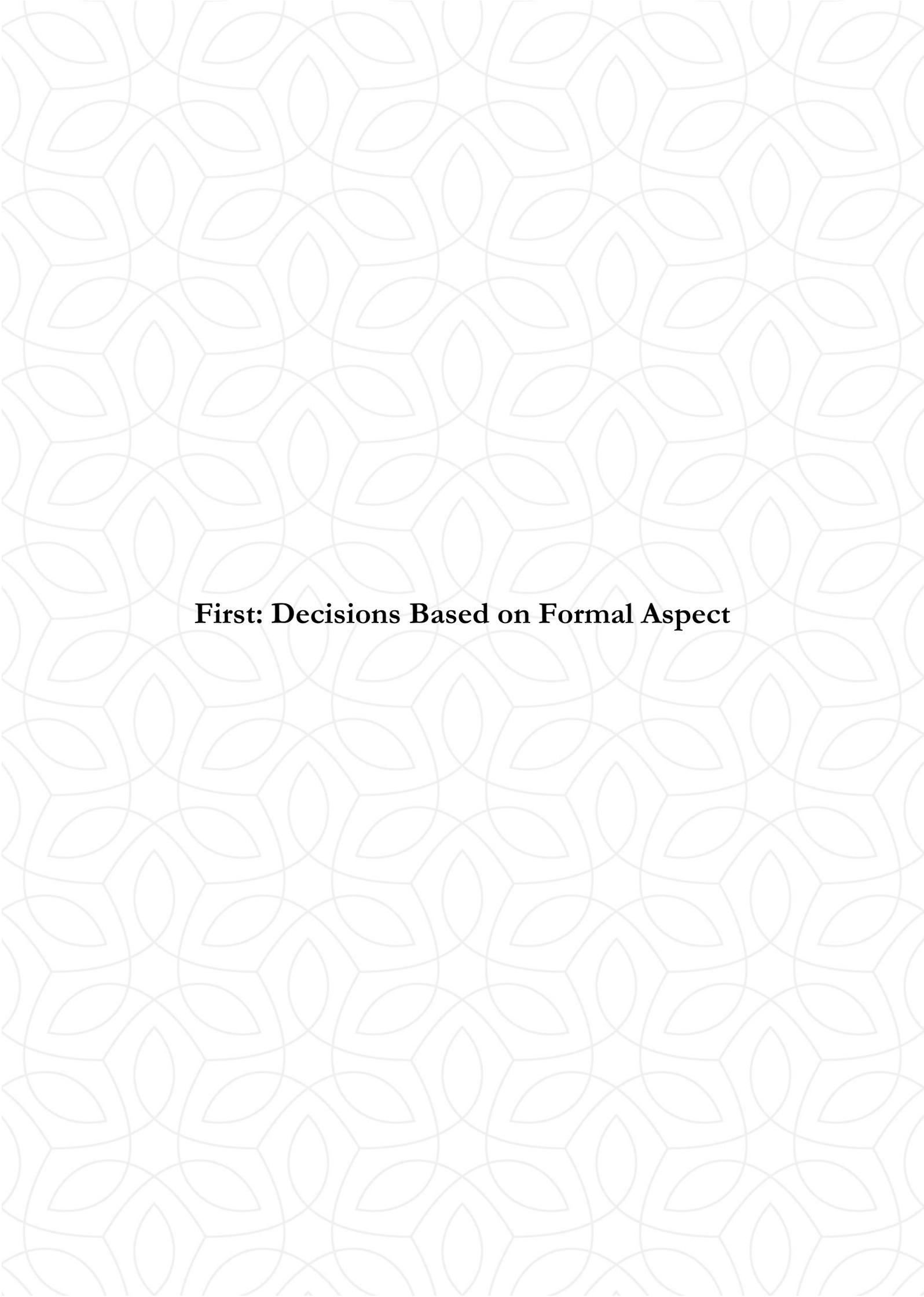


Work Methodology:

To achieve the desired benefit, General Secretariat was keen to select and publish judgments with comprehensive and general nature. Given the importance of appropriate description of case before committees and its impact on inference and reaching the decision, which is the outcome sought by parties to case, and given the diverse facts and circumstances of tax and zakat cases, there has been a need to sort and classify committees' decisions for easy reference for litigants and interested parties.

Based on General Secretariat of Zakat, Tax and Customs Committees role in adopting and applying principles of continuous improvement and development in management of zakat, tax and customs disputes, to enable conclusive settlement of these disputes, care and attention were given to classifying and publishing final decisions issued by Committees. Accordingly, a well-thought-out was developed to come up with an easy and accessible product. Work was divided into several stages according to the following:

- Inventorying the final decisions issued by the zakat, tax and customs committees in relation to zakat during 2023.
- Setting keywords to facilitate search process.
- Providing Abstract of decision outlining key points.
- Listing evidence on which Department relied for delivering its judgment.
- Classifying decisions objectively as appropriate and placing each decision under its relevant classification.
- Indicating name of Department delivering decision, decision number, case number, decision issue date, and assessment period.
- Ensuring anonymity of litigants and other involved parties without affecting decision.
- Checking decisions to ensure they are free from any linguistic and spelling errors.
- Decision classification and indexing was based on Law, meaning that decisions were classified as per order of corresponding topic within the law.
- The Secretariat excluded replicate decisions. Replication criterion is when clauses of decisions, requests of parties and rulings are similar, even if parties are not the same.
- Adhering to exact text of decision including its facts, grounds and operative part, without any addition or amendment except for spelling and grammatical errors.



First: Decisions Based on Formal Aspect



Case

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1745)

Issued in Case No. (W-87510-2021)

Keywords:

Withholding Tax - Tax Assessment - a case already determined cannot be brought before a court except if the judgment delivered is quashed or if the case remanded for reconsideration.

Abstract

The Plaintiff instituted this case moving to cancel the decision of the Zakat, Tax and Customs Authority (ZATCA) regarding the objection to the tax assessment for the month of July 2011 AD. Since the law provides that a matter finally decided cannot be re-brought before a court, and where the Department established that the subject of the case was previously adjudicated by a final judgment, Therefore, the Department ruled to dismiss this case for being already decided and this decision is final and enforceable.

Instruments:

- Article (76) of the [Law of Civil Procedures promulgated by Royal Decree No. \(M/1\) dated 22/01/5 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday, 01/09/2, the First Department for Determination of Income Tax Violations and Disputes in Dammam formed pursuant to Article 67 of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended and Royal Order No. (65474) of 23/12/1439 AH and reconstituted by Royal Order No. (26760) of 14/05/1442 AH.

Held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number on 22/12/2021 AD.

The facts of this case are summed up in that Mr....., Iqama No....., in his capacity as the attorney for the Plaintiff....., Commercial Registration No....filed an objection to the tax assessment for July 2011 issued by ZATCA.

On Thursday 01/09/2022, the Department held its remote session to hear the case. At that session, the Plaintiff was represented by Mr....., Iqama No., in his capacity as the Plaintiff's representative as per the attached articles of association. For the Defendant appeared Mr....., National ID No. ..., in his capacity as ZATCA's representative under Authorization No. Dated 18/10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs.



Having asked the Plaintiff's attorney about his claims, he replied that his claims are the same as stated in the statement of claims previously filed with the General Secretariat of the Tax Committees. Having asked the Defendant's representative about his reply to the Plaintiff's claims, he replied that he maintains the statements contained in the reply submitted to the General Secretariat requesting that no further documents be accepted from the Plaintiff that hadn't been submitted during the objection and examination stages. Having asked the two parties if they had any other statements, they answered "No". Then, the Department, having taken a look at its decision in Case No. (W-2021-87465), decided to close the pleading and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

Since the determination of jurisdiction to hear this case is one of the preliminary matters that should be decided proceeding to the subject matter of case, where the Department should determine if it has jurisdiction to hear the case or not, and if not, to rule that it should not hear the case for lack of jurisdiction. Also, Article 76 of the Law of Civil Procedure provided that: "The plea to dismiss the case for being previously decided may be entered at any stage of litigation which the court shall decide on its own....". Since it has been established that the subject matter of the case was previously decided in case No. (W-2021-87465), in which all items and years of dispute have been determined; and since it is legally and judicially established that a case that has been previously decided by a final ruling cannot be brought before any court of law except if such ruling is refuted or required to be reconsidered under the law. This is to avoid undermining the force and stability of judicial rulings, and entering into endless loop of objections, and also to preserve the status of the judiciary before the public, in addition to avoiding differences and chaos upon enforcement. Not hearing a case for being previously decided is the negative effect of res judicata force that prevents hearing the same dispute after being settled by a final ruling by any other court in a first instance case. For a res judicata force to be validated, the case should have the same litigants, subject matter and grounds. As such, the Department has reached the conclusion in the operative part of decision.

Decision

Dismiss the case filed by the Plaintiff..., C.R. No..... For being already decided.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Case

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-1885)

Issued in Case No. (W-46151-2021)

Keywords:

Withholding Tax - Opponency is a Basic Element of a Case - Dismissal of Case

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding the withholding tax for the month of October 2018. Since the legal provisions stipulate that opponency is a basic element for a case to be heard, and whenever this element ceases to exist for any reason at any stage of litigation, that case should be dismissed. Since the Plaintiff's attorney in the session held on 18/08/2022 submitted a request to drop the case pursuant to the ruling delivered. Therefore, the Department ruled to Dismiss the case with the approval of the Plaintiff's attorney and this decision is final and enforceable.

Instruments:

- Article (70) [of the Law of Civil Procedures promulgated by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Article (70/1) [of the implementing Regulations of the Law of Civil Procedures promulgated by the Minister of Justice's Decision No.:\(39933\) of 19/05/1435 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday 18/08/2022 AD, the Department formed pursuant to the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (65474) of 23/12/1439 AH convened to her the case.

The facts of this case are summarized as follows: The Plaintiff's bankruptcy trustee, national ID No appointed by judgment No. dated ... filed an objection to the withholding tax assessment for the month of October 2018 AD, issued by ZATCA. Having presented the statement of claims to the Defendant, it argued that its procedure regarding the withholding tax for the month of October 2018 was valid. On Thursday 18/08/2022, the Department held its remote session to hear the case. For the Plaintiff appeared its bankruptcy trustee, national ID No appointed by judgment No. dated ..., delivered by the Commercial Court in Riyadh (attached to the case file). For the Defendant ZATCA appeared its representative Mr....., National ID no....., under Authorization No..... dated 06/04/1442 AH issued by ZATCA's Deputy Governor for Legal Affairs. Having asked the parties to the case if they had any further statements to add, the Plaintiff's attorney responded that he requested that the case



be dismissed pursuant to the delivered judgment. Accordingly, the Department decided to adjourn the session for deliberation.

Grounds:



Having perused the relevant laws and regulations; since it is legally established that opponency is a basic element for a case to be heard, and whenever this element ceases to exist for any reason at any stage of litigation, that case should be dismissed; and since 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 acknowledgment, settlement, or the alike in the case record, and the court shall issue a deed to that effect", and Article 70.1 of the Implementing Regulations of the Law of Civil Procedures promulgated by the Minister of Justice Decision No. (39933) of 19/05/1435 AH, stipulates 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"; and Where the Plaintiff's attorney submitted a request in the session held on 18/08/2022 to drop the case pursuant to the judgment delivered, therefore, the Department concludes to dismiss the case with the approval of the Plaintiff's attorney.

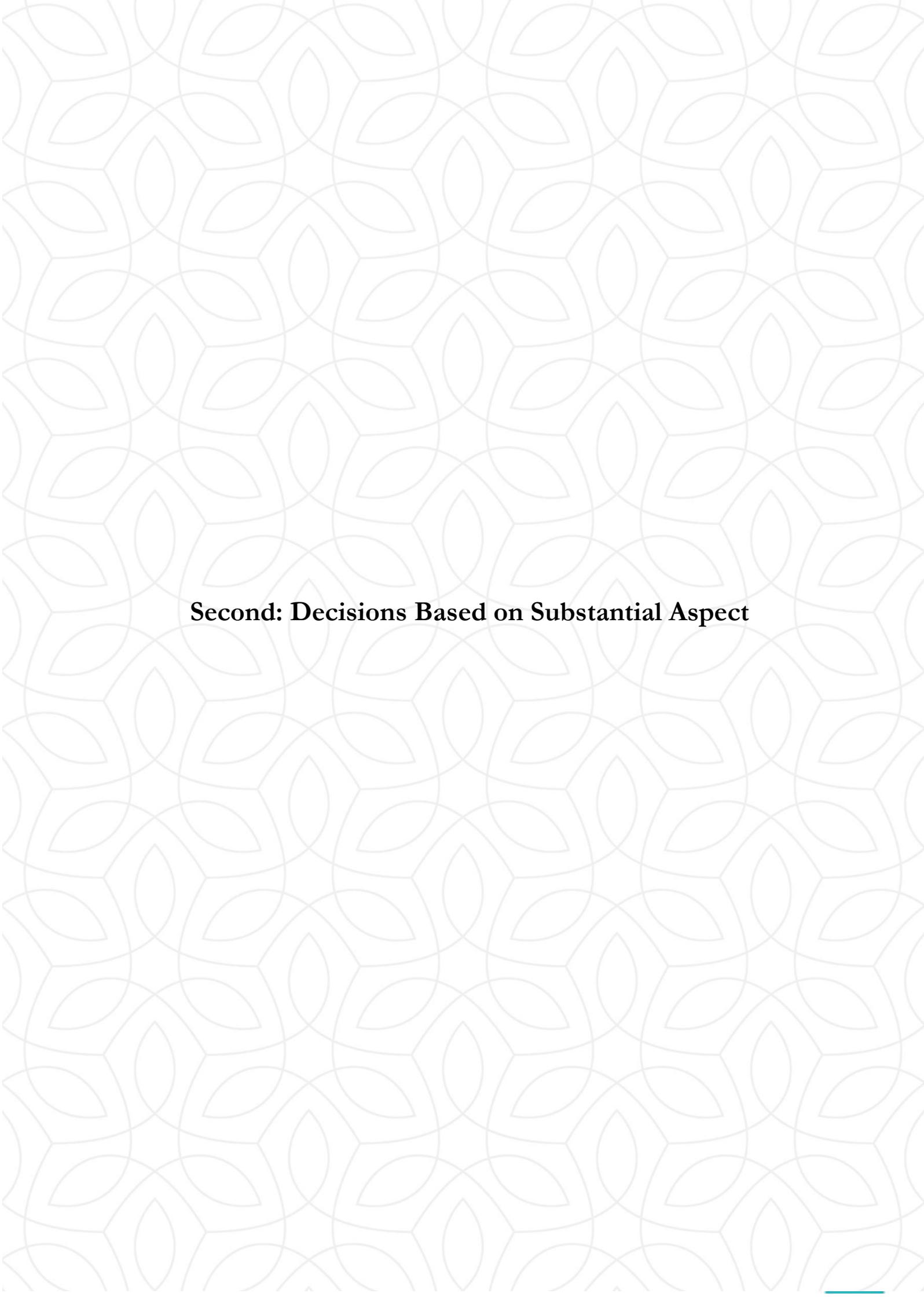
Decision

- Dismiss the case with the approval of the Plaintiff's attorney.

This decision was issued in the presence of both parties, and the Department set thirty days for receiving a copy of the decision via the General Secretariat's website. This decision is final and enforceable according to Article (42) of Tax Dispute and Violation Committee Procedures.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Second: Decisions Based on Substantial Aspect



(Withholding Tax)

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-
2049)

Issued in Case No. (W-
52007-2021)

Keywords:

5% Withholding Tax on Dividends - Fines - Amount of Fines payable as a result of ZATCA's adjustment- Delay in Payment of Fine

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding the tax assessment for the years 2015 to 2018. Since it was found that the case was filed within the period prescribed by law and by a person with a legal capacity, therefore, this case is admissible in form. As for merits of the case, it was found that the Plaintiff's objection is related to two items: Item First: 5% Withholding Tax on Dividends. The Plaintiff objects to the Defendant's decision to charge withholding tax at 5% on the dividends claiming that it owns previous regular accounts, based on which the financial statements were issued, and disapproving ZATCA's action to rely on the revenue only to reach a net profit of 40%, which is not right as it didn't reach that percentage. The Plaintiff also requested that the withholding tax be charged based on the distribution of dividends as stated in the financial statements or that the net profit is estimated as stated in the other side at a rate of (10%) of the contract value. The Defendant however argued that the Plaintiff admitted in the mail sent to ZATCA that it hadn't kept books in its branch in the Kingdom of Saudi Arabia, therefore the Plaintiff's accounts were disregarded and a net profit of 40% was calculated and a withholding tax of 5% was charged on dividends. Based on the above, and since the Plaintiff's accounts were disregarded and the withholding tax has been charged on an estimate basis, the estimated profits are considered dividends and revenues realized from a source within the Kingdom, and therefore they are subject to withholding tax at a rate of (5%). Item Second: Amount of fines payable as a result of ZATCA's adjustment: The Plaintiff objects to the Defendant's decision to add the amount of fines resulting from ZATCA's adjustment. The Defendant however argued that it imposed a late payment fine on the overdue and unpaid tax as the tax was imposed pursuant to clear provisions stated in the Income Tax Law and its Implementing Regulations. Based on the foregoing, the Department decided to reject the Plaintiff's objection to the withholding tax, and where the fine is linked to the same item that was rejected, Therefore, the Department ruled to Reject the objection filed by the Plaintiff regarding the 5% withholding tax on dividends and fines payable as a result of ZATCA's adjustment items.

Instruments:

- Articles (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)



- Article (63.1&6) of [Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 09/08/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, formed pursuant to Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended and Royal Order No. (65474) of 23/12/1439 AH, held its session via video conference to consider the above-mentioned Case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number on 26/05/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), ID No. (...), in his capacity as Attorney for, CR. No. (...), pursuant to foreign POA, filed its objection to ZATCA's tax assessment for the period from 2015 to 2018 AD. The Plaintiff's objection is limited to two items. Regarding the first item: 5% Withholding Tax on Dividends: The Plaintiff objects to the Defendant's decision to charge withholding tax at 5% on the dividends stating in its statement of claim that ZATCA was provided with computer-generated records, accompanied by sales and purchase invoices, administrative and general expenses, and operating expenses, indicating that it possesses systematic accounts. These data were extracted from the computer in previous years and relied upon by the chartered accountant to prepare the financial statements. Consequently, the financial statements were issued based on such data (Financial statements for 2015 were issued on 19/05/2016, for 2016 on 07/04/2018, for 2017 on 26/04/2018, and for 2018 on 23/04/2019, with copies of the audited financial statements attached). These financial statements were submitted with the tax returns certified by the chartered accountant to ZATCA. Only the revenue data in the financial statements was considered, and a net profit margin of 40% was calculated. However, the Plaintiff argues that this percentage is significantly inflated as a net profit margin, as the net profit margin for the activity for 2015 was 23.30%, for 2016 was 17.31%, for 2017 was 14.42%, and for 2018 was 16.58%. In other words, under no circumstances would the net profit margin reach 40%. The Plaintiff also stated that all expenses listed in the financial statements are expenses related to the branch of... Company, and that these expenses are sometimes paid by the Head Office. Accounting-wise, this procedure is classified as transactions with related parties, and these expenses are not considered to belong to the Head Office merely because it paid them on behalf of the Saudi Arabian branch, as stated in the notice of rejection of the objection sent by ZATCA. Furthermore, the Plaintiff requested that the withholding tax be charged based on the distribution of dividends as stated in the financial statements or that the net profit is estimated as stated in the other side at a rate of (10%) of the contract value. This is because the contract involves the supply and installation, and Article (16.4) of the Implementing Regulations is fully applicable if their accounts are considered to be wasted. Therefore, the withholding tax should be calculated based on the estimated profit according to the percentages stipulated in the Regulations. Regarding the second item: Amount of fines payable as a result of ZATCA's adjustment: The Plaintiff objects to the Defendant's decision to add the amount of fines resulting from ZATCA's adjustment. The Plaintiff stated that according to Article (67.3) of the Implementing Regulations of the Income Tax Law, the unpaid tax means the difference between what the Taxpayer paid at due date and the tax due for payment under the provisions of the Law, including amendments made by ZATCA that have become final as stated in Article (71.2) of the Implementing Regulations of the Income Tax Law, including disputed cases. The fine is calculated from the due date for



filing the return and payment. According to Article (71.2) of the Implementing Regulations of the Income Tax Law, due amounts are final in the following cases: (Taxpayer's approval of the assessment. Lapse of the due date without the taxpayer's payment of the due amount pursuant to its return. Expiration of the due date for objection to a reassessment made by ZATCA. Issuance of a final ruling from the Preliminary Objection Committee, the Appeals Committee or the Board of Grievances). The Company has always paid the taxes due on it in good faith and in accordance with the Regulations as they were applied and interpreted at that time and within the time limits specified by the Law. The matters discussed above are the subject of various disputes between the Taxpayer and ZATCA. As a result, it is not permissible to impose a late payment fine on any additional taxes arising therefrom pursuant to Article (15) of the Implementing Regulations of the Income Tax Law, and Circulars No. (3) of 1379 AH and No. (5) of 1393 AH. As stated above, the point of contention with ZATCA stems from a difference in viewpoints, not from a failure to apply clear provisions in the Tax Law. Therefore, the resulting differences are not subject to any fines, which has been confirmed in the decisions of the Primary and Appeals Committees. On the one hand, the Tax Appeals Committee ruled in its decision No. (119) of 1434 AH that a late payment fine should not be imposed on the Taxpayer if the dispute resulted from a difference in viewpoints, especially if the objection was resolved outside the scope of any initiative proposed by ZATCA.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: 5% Withholding Tax on Dividends: Upon examining the Plaintiff's tax returns from 2015 to 2018 AD, the Plaintiff acknowledged, in a letter sent to ZATCA dated 03/12/.../AD, that it had not maintained proper books of account for the Saudi Arabian branch. Consequently, the accounts were deemed to be wasted, and the revenues were estimated at a rate of 40%. The estimated profits were then subjected to a 5% withholding tax on dividends. Upon reviewing the discussions between ZATCA and the Plaintiff, it is clear that all financial transactions and record-keeping were conducted at the main branch in the UAE. Given that the Plaintiff was assessed on an estimated basis due to the wasting of its accounts, the estimated profits are considered to be distributed profits. Distributed profits or profits deemed to be distributed (estimated profits) constitute income derived from a source in the Kingdom and are therefore subject to a 5% withholding tax. This is in accordance with Article (68) of the Income Tax Law, which stipulates that payments made by a natural person are subject to the withholding tax provisions of this Article. This is also in accordance with Article (63.1&6). As such, ZATCA maintains the validity of its action. Regarding the Second Item: Amount of fines payable as a result of ZATCA's adjustment: ZATCA imposed a late payment fine on the unpaid tax resulting from its adjustment. This fine is in accordance with the clear provisions of the Income Tax Law and its Implementing Regulations. Specifically, Article (77.a) of the law states that "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." As such, ZATCA maintains the validity of its action.

On Tuesday, corresponding to 09/08/2022 AD, the Department held a remote session to hear the Case. However, the Plaintiff's Representative was not present, despite being duly notified. Mr. (...), ID No. (...), was present, Pursuant to the attached foreign POA which could not be verified by the Department. The Defendant's Representative, ..., ID No. (...), was present, under Authorization No. (...), issued by ZATCA's Vice Governor for Legal Affairs, dated: 04/06/1442 AH. The Defendant's Representative submitted a request to dismiss the Case and uphold ZATCA's decision. As such, since the Case was ripe for adjudication as per Article (20) of the Tax Dispute and Violation Committee Procedures,



the Department decided to adjourn the session for deliberation in preparation for delivering its decision.

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, related laws and regulations,

In Form: The Plaintiff is moving this case to cancel ZATCA's decision regarding tax assessment for the years 2015 to 2018 AD, and since this dispute is considered one of the tax 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 given that the Case was filed with valid grounds, by an eligible party, and within the legally prescribed period, the case is to be accepted in form.

On Merits: Upon reviewing the documents included in the Case file, as well as the requests, defenses, and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of tax assessment for the years 2015 to 2018 AD. The Plaintiff's objection is limited to two specific items.

Regarding the First Item: 5% Withholding Tax on Dividends: The Plaintiff objects to the Defendant's decision to charge withholding tax at 5% on the dividends claiming that it owns previous regular accounts, based on which the financial statements were issued, and disapproving ZATCA's action to rely on the revenue only to reach a net profit of 40%, which is not right as it didn't reach that percentage. The Plaintiff also requested that the withholding tax be charged based on the distribution of dividends as stated in the financial statements or that the net profit is estimated as stated in the other side at a rate of (10%) of the contract value. The Plaintiff also stated that all expenses listed in the financial statements are expenses related to the Company branch, and that these expenses are sometimes paid by the Head Office. Accounting-wise, this procedure is classified as transactions with related parties, and these expenses are not considered to belong to the Head Office merely because it paid them on behalf of the Saudi Arabian branch. The Defendant however argued that the Plaintiff admitted in the mail sent to ZATCA that it hadn't kept books in its branch in the Kingdom of Saudi Arabia, therefore the Plaintiff's accounts were disregarded and a net profit of 40% was calculated and a withholding tax of 5% was charged on dividends. Based on the above, and since the Plaintiff's accounts were disregarded and the withholding tax has been charged on an estimate basis, the estimated profits are considered dividends and revenues realized from a source within the Kingdom, and therefore they are subject to withholding tax at a rate of (5%). Therefore, and based on Article (63.1&6) of the Implementing Regulations, and considering that the opinion in study no.(51171-2021-I) concluded, regarding item (1) related to the estimated assessment, to reject the Plaintiff's objection to that item, the Department therefore sees fit to reject the Plaintiff's objection to the 5% withholding tax on dividends.

Regarding the Second Item: Amount of fines payable as a result of ZATCA's adjustment: The Plaintiff objects to the Defendant's decision to add the amount of fines resulting from ZATCA's adjustment. The Defendant however argued that it imposed a late payment fine on the overdue and unpaid tax; as the tax was imposed pursuant to clear provisions stated in the Income Tax Law in Article (77.a) of the Law, as well as its Implementing Regulations. Based on the foregoing, the Department decided to reject the



Plaintiff's objection to the amount of fines payable as a result of ZATCA's adjustment item.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Reject the Plaintiff's objection to item (5% Withholding Tax on Dividends).

Second: Reject the Plaintiff's objection to item (Amount of fines payable as a result of ZATCA's adjustment).

This decision was delivered in presence of the parties according to Article (56) of the Law of Civil Procedures. The Department set 30-day period for receiving a copy of the decision through the website of the General Secretariat of Zakat, Tax, and Customs Committees. Either party to the Case may appeal against the decision within thirty 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1558)

Issued in Case No. (W-73957-2021)

Keywords:

Withholding Tax – Withholding Tax on Paid Technical Services – Late Payment Fine– Substantive Acceptance.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax assessment for 2015 AD - The Plaintiff based its objection on the following items: Item (Withholding Tax on Paid Technical Services to the Head Office). ZATCA applied a (15%) withholding tax for October 2015. Item (Late payment fine). ZATCA charged a late payment fine. In item (Withholding tax on paid technical services to the head office), ZATCA stated that a Saudi Company, located in KSA is affiliated with A Kuwaiti Company located in Kuwait, as they are members of (Network group), which includes (Group of companies) Therefore, a 15% withholding tax is applicable to any payments made for technical and consulting services. And, Item (Late payment fine) the Taxpayer's objection was rejected based on Article (77) of the Income Tax Law. Regarding item (Withholding tax on paid technical services to the head office), the Department established that, for companies to be considered affiliated, there must be a controlling interest in the shares of one company by the other. Since ZATCA confirmed in its response that the Company is a 100% Saudi company, and upon reviewing the contract of the Kuwaiti Company, it was found that its founders are not Saudi, as such it is evident that the two companies are not affiliated. Therefore, the Department concluded by cancelling the Defendant's decision regarding this item. Regarding Late payment fine, the Department established that the fine is calculated from the deadline for filing the tax return until the date the tax is paid, as determined by the tax law and any amendments made by the Defendant. Given that the dispute between the parties is based on the interpretation of documents and not on a fundamental disagreement regarding the law, the Department concluded by cancelling the Defendant's decision regarding this matter. Therefore, the Department ruled to Accept the case in form and on merits and its decision is final and enforceable.

Instruments:

- Articles (64.b) and (77.a&b) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions. ◇



On Sunday, 24/07/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, formed pursuant to Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, convened to hear the Case.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), in his capacity as Attorney of Plaintiff/ Saudi Ltd. Co., (CR. No.....), Pursuant to POA No. (...) Dated 04/03/1443 AH, filed this case objecting to ZATCA's assessment of the withholding tax for 2015 AD. The Plaintiff's objection is related to the following items: Item First: Withholding Tax on Paid Technical Services to the Head Office: The Plaintiff objects to the Defendant's action of imposing a withholding tax of 15% for October 2015, stating that the ownership of the two companies is clear and has been explained in the original objection memorandum. Additionally, the memorandum of association of each company has been attached, so there is no way to consider them related in any way; therefore, the Plaintiff requests cancellation of the Defendant's decision. Item Second: Late Payment Fine: The Plaintiff objects to the Defendant's action of charging a late payment fine, stating that it adheres to the original objection memorandum moving to cancel all imposed fines. Upon presenting the statement of claim to the Defendant, it responded with a memorandum stating that with regard to item (withholding tax on paid technical services to the head office): The Defendant stated that after meeting with the Plaintiff and reviewing the AOA's of the two companies, it is clear that (...), a Saudi Company, located in KSA is affiliated with A Kuwaiti Company located in Kuwait, as they are members of (Network group), which includes a group of ... companies. Therefore, it is a related company for any amounts paid for technical and consulting services at a rate of 15%. As such, the Plaintiff's objection was rejected and ZATCA's procedure was upheld. Regarding item (Late payment fines): The Defendant stated that Taxpayer's objection was rejected and ZATCA's procedure was upheld based on Article (77) of the Income Tax Law, which stipulates that in addition to the fines stipulated in Article (76.b) of this Law, 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.

On Sunday, 24/07/2022, the Department held its session remotely to hear the case. The session was attended by Mr., ID No. (...), in his capacity as the Plaintiff Company's Attorney pursuant to the attached electronic POA, and Mr. ... ID No., in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No...., dated .../10/1443 AH, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney about his claim, he maintained his response included in the statement of claim submitted to the General Secretariat of Tax Committees. Having asked Defendant's Representative regarding his response, he maintained the statements contained in the Reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not submitted during the objection and examination phases. Having asked parties to the Case whether they had further statements, they maintained their statements contained in memoranda submitted to the Department. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax



Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff instituted this case to cancel ZATCA's decision regarding withholding tax assessment for 2015. Since this dispute is considered a tax dispute that falls 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 given that the Case was filed with valid grounds, by an eligible party, and within the legally prescribed period, the case is to be accepted in form.

On Merits: The Department, having examined the case papers and documents as well as the requests, defenses and pleas presented by its parties, both appeals found that the Plaintiff disputes withholding tax assessment issued by the Defendant for 2015, specifically concerning the objection related to the following items:

Item First: Withholding Tax on Paid Technical Services to the Head Office:

The Plaintiff objects to the Defendant's action of imposing a withholding tax of 15% for October 2015, while the Defendant believes that (...) a Saudi Company, located in KSA is affiliated with A Kuwaiti Company located in Kuwait, as they are members of ... (Network group), which includes a group of ... companies. Therefore, it is a related company for any amounts paid for technical and consulting services at a rate of 15%. Article (64.C) of the Income Tax Law states: "Companies and agencies shall be deemed under common control if the same person or related persons control 50% or more according to this Article as follows: 1. With respect to partnerships, control means the ownership of rights to its income or capital, either directly or indirectly, through a subsidiary company or companies of any type. 2. With respect to capital companies, control means ownership of the voting rights therein or ownership of its value, either directly or indirectly, through a subsidiary company or companies of any type. 3. With respect to agencies that administrate properties endowed for specific purposes, control means the possession of a beneficial interest in their income or assets". Based on the foregoing, and upon reviewing the aforementioned Article, it is clear that for the purpose of considering a company as a related party, it is required to prove the control percentage over its shares. Since the Defendant admitted in its Reply that it is a 100% Saudi Company and upon reviewing the contract of the Kuwaiti Company, it became clear that its founders are non-Saudis, which indicates that the two companies are not related to each other, Therefore, the Department concluded by cancelling the Defendant's decision in this regard.

Item Second: Late Payment Fine:

The Plaintiff objects to Defendant's action of charging a late payment fine, while the Defendant maintains that Taxpayer's objection was rejected based on Article (77) of the Income Tax Law. Whereas Paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on the foregoing, and upon referring to the Case file, defenses and documents, and since the late payment fine is charged from the end date of the deadline for submitting the tax return until the date of payment of the due tax pursuant to the provisions of the law and the amendments made by the Defendant, and since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the provisions, the Department therefore decides to cancel the Defendant's decision in this regard.

For those grounds and after deliberation, the Department unanimously decided to:



Decision

- Cancel the Defendant's decision regarding the two items subject of the Case. This decision was made in presence of both parties. The date the decision is filed in the electronic system of the General Secretariat of Zakat, Tax, and Customs Committees shall be considered the date of delivery. The parties involved have the right to appeal the decision within thirty days from the day after its receipt. If no appeal is submitted within this period, the decision shall become final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1876)

Issued in Case No. (W-58621-2021)

Keywords:

Withholding Tax – Late Payment Fine – Extinction of the Original Tax Liability – Substantive Acceptance.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax assessment for 2018 AD - The Plaintiff based its objection on the following items: Item (Withholding tax). ZATCA imposed a withholding tax for 2018, and item (Late payment fine). ZATCA imposed a late payment fine related to the withholding tax fine. Regarding item (withholding tax), ZATCA responded by stating that it conducted an assessment on the item due to failure to provide supporting documents, and regarding item (Late payment fine), ZATCA did not respond to this item. – As for item Withholding tax, the Department established that the disputed amounts were paid to local companies for consulting services, as the Plaintiff presented (an Excel sheet with names, addresses, and contact numbers of the entities, and a consulting fees statement detailing the payments and their dates), and ZATCA's failure to provide any evidence proving the payment or settlement or the like to a non-resident entity. Regarding item (Late payment fine) it was established in the first item that ZATCA's procedure in imposing the withholding tax was incorrect, so the late payment fine is canceled due to the extinction of the original tax liability. Therefore, the Department ruled to Cancel the Defendant's decision and the Department's decision is final and enforceable.

Instruments:

- Articles (68.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (63.1) of [Implementing Regulations of Income Tax Law issued by Minister Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 22/08/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, formed pursuant to Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, convened to hear the Case.

The facts of this Case are summed up as follows: Mr. (...), (ID No. ...), in his capacity as the Representative of the Plaintiff/ ..., Trading Company, C.R. No. (...), filed this Case



objecting to ZATCA's assessment of the withholding tax for 2018. The Plaintiff's objection is related to the following items:

Item First: Withholding Tax: The Plaintiff objects to the Defendant's action of imposing a withholding tax of SAR (6,956) for 2018. The Plaintiff indicated that the Defendant imposed a withholding tax on payments for consulting services provided by Saudi offices and institutions. The Plaintiff explained that a detailed statement was provided from the accounting system for the consulting item, and a statement showing the names and addresses of the beneficiaries of the consulting fees. Accordingly, the Plaintiff requested that the withholding tax be canceled on grounds that it is imposed on non-residents.

Item Second: Late Payment Fine: The Plaintiff objected to the late payment fine of SAR (834) imposed by the Plaintiff in relation to the withholding tax fine, and requested that the fine be canceled.

Having presented the statement of claims to the Defendant, it responded with a memorandum that addressed the objection to the withholding tax as follows: The Defendant stated that Taxpayer was addressed on 04/12/2019 to submit a breakdown statement of the consulting fees within (10) working days. As such, given that the Plaintiff failed to submit the statement, ZATCA made its assessment based on Article (16.1) of the Implementing Regulations of the Income Tax Law, and Article (68.A) of the Income Tax Law, and Article (63.1) of the Implementing Regulations of the Income Tax Law.

On Monday, 22/08/2022 AD, the Department held its session remotely to hear the case. The session was attended by Mr., ID No. (...), in his capacity as the Company's Legal Representative as per the Company's Articles of Association, while for the Defendant appeared Mr....., ID No., in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No....., dated .../10/1443 AH, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney about his claim, he maintained his response included in the statement of claim submitted to the General Secretariat of Tax Committees. Having asked Defendant's Representative regarding his response, he maintained the statements contained in the Reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not submitted during the objection and examination phases. Having asked parties to the Case whether they had further statements, they maintained their statements contained in memoranda submitted to the Department. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having pursued Zakat Law promulgated by Royal Order No. (577/28/17) dated 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH as amended. Having taken cognizance of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15 /01/1425 AH, as amended, and its Implementing Regulations issued by virtue of Minister of Finance Decision No. (1535) dated 11/06/1425 AH, as amended, and after reviewing Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff instituted its case moving to cancel ZATCA's decision regarding the assessment of the withholding tax for the year 2018 AD. Since this dispute is a tax dispute, it is then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes according to Royal Order No. (26040) dated 21/04/1441 AH; and since the Plaintiff filed Case No. within the prescribed period which was closed without a legitimate reason; and since this case was filed by a person with a capacity, it is accepted in form.



On Merits: Having examined the case papers and documents as well as the requests, defenses and pleas presented by its parties, the Department found that the Plaintiff disputes withholding tax assessment issued by the Defendant for 2018, specifically concerning the objection related to the following items:

Item First: Withholding Tax:

The Plaintiff objects to the Defendant's decision to impose withholding tax of SAR (6,956) for 2018, while the Defendant insists on that assessment due to failure by the Plaintiff to provide supporting documents for its claims. Article (68.a) of the Income Tax Law stipulates: "A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates...". Additionally, Article (63.1) of the Implementing Regulations of the Income Tax Law stipulates: "(1) A non-resident shall be subject to tax on any amount he receives from any source in the Kingdom, and the tax shall be deducted from the total amount". Based on the foregoing, and in light of the statements received from the parties, it becomes clear from the provisions of the law that the withholding tax is levied on any amount paid to a non-resident party from inside the Kingdom, and the tax rates vary according to the nature of payment. Referring to the Case file, it is clear that the disputed amounts were paid to local companies for consulting services, as the Plaintiff presented (an Excel sheet with names, addresses, and contact numbers of the entities, and a consulting fees statement detailing the payments and their dates), and due to ZATCA's failure to provide any evidence proving payment or settlement or the like to a non-resident entity. Therefore, the Department concluded by cancelling the Defendant's decision regarding this item.

Item Second: Late Payment Fine:

The Plaintiff objects to the late payment fine of SAR (834) imposed by the Defendant in respect of the withholding tax. The Defendant did not respond to this item in its plea. Article (77.a) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH provides that: "In addition to the fines stipulated in Article (76) of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". And, Article (68.1) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH provides that: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: (a) Delay in payment of due tax as per the return. (b) Delay in payment of due tax as per the Department's Assessment". Therefore, it is established that the late payment fine is imposed on the Taxpayer as a result of delay in paying the tax; and since the Department has determined that ZATCA's decision in respect of Item (First) related to imposing the withholding tax in issue is invalid, it hence rules to cancel ZATCA's decision regarding the late payment fine which is incidental to Item First.

For those grounds and after deliberation, the Department unanimously decided to:

Decision

1. Cancel the Defendant's decision regarding the withholding tax.
2. Cancel the Defendant's decision regarding late payment fine.

This decision was delivered in the presence of both litigants and shall be deemed final and enforceable as per Article (42) of Tax Dispute and Violation Committee Procedures.

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



(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-
1912)

Issued in Case No. (W-
84166-2021)

Keywords:

Withholding Tax - Tax Assessment - Unjustified Transfers to Companies - Late Payment Fine.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding tax assessment for March and April 2013 - The Plaintiff limited its objection to the following two items: Item (Unjustified Transfers to Companies): The Plaintiff objects to the Defendant's action of adding unjustified transfers to companies, while the Defendant argued that during the tax assessment, it requested Taxpayer to provide an analysis of foreign transfers and supporting documents. Taxpayer submitted an Excel file to ... Bank, detailing foreign transactions. Upon review, it was found that there were several foreign transfers totaling SAR (2,326,624) without justification for their nature or evidence of any deductions from them. The Department established that the Plaintiff attached documents proving validity of its claim, and attached bank transfers from Company to Company, amounting to SAR (450,480) on March 4, 2013, SAR (750,800) on March 18, 2013, and SAR (450,480) on June 3, 2013. The Plaintiff also presented a check issued by the Partner, the Plaintiff Company, for the aforementioned amount, and bank statements proving the recovery of those amounts from the Partner to the Plaintiff Company. Therefore, the Department unanimously decided to cancel the Defendant's decision to impose a withholding tax on the total amount of SAR (1,651,760). Regarding the Second Item: Late payment fine: The Plaintiff objects to the Defendant's action of imposing a late payment fine in the event of any delay in paying the withholding tax, while the Defendant argued that it imposed late payment fines for non-payment of tax differences by the due date, and since the late payment fine is calculated from the end of the deadline for submitting the return to the date of payment of the due tax resulting from the application of the provisions of the law. The Department found that the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the provisions of the law. As such the Department concludes by amending the Defendant's decision by waiving the late payment fine for the items in which the Defendant's decision was canceled. Therefore, the Department ruled to Cancel the Defendant's decision regarding the unjustified transfers to companies for March and April 2013, dismiss in form items overseas shipping brokers, value of a cloud-based program for tracking the Taxpayer's shipments, and operational expenses, and amend the Defendant's decision regarding the late payment fine.

Facts:





Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 01/09/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, formed pursuant to Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (65474) dated 23/12/1439 AH, and reformed pursuant to Royal Decree No. (26760) dated 14/05/1442 AH, held its session via video conferences to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with the General Secretariat of the Zakat, Tax and Customs Committees under the above number on 28/11/2021.

The facts of this Case are summed up as follows: Mr. (...), (Residence No....), in his capacity as Attorney of Plaintiff/..., CR. No. ..., filed this Case objecting to ZATCA's assessment for March and April 2013 AD. The Plaintiff's objection is related to the following items: Item First: Unjustified Transfers to Companies: The Plaintiff objects to the Defendant's action of adding unjustified transfers to companies, and presented what it considers as evidence to support its claim. Item Second: Overseas Shipping Brokers. Item (3): Value of a cloud-based program for tracking Taxpayer's shipments, and operational expenses. Item (4): Late Payment Fine: The Plaintiff objects to Defendant's action of imposing a delay fine in the event of any delay in the payment of withholding tax.

Having presented the statement of claim to the Defendant, it responded with a memorandum stating as follows: During the assessment, the Defendant requested from Taxpayer an analysis of the foreign transfers and supporting documents. Taxpayer submitted an Excel file from Bank ... detailing foreign transactions. Upon review, the Defendant found several foreign transfers totaling SAR (2,326,624) for which the nature or any deductions were not justified. Therefore, these were subjected to a withholding tax of 15% as other payments. The Defendant stated that late payment fines were imposed for failing to pay tax differences by the statutory deadline.

On Thursday, 01/09/2022 AD, the Department held its session remotely to hear the case. The session was attended by Mr. ..., holding Residence No. (...), in his capacity as a Legal Representative under the attached MOA, and Mr. ... ID No. ..., in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No...., dated .../10/1443 AH, issued by Deputy Governor for Legal Affairs. Having asked the Plaintiff's Attorney about his claim, he maintained his response included in the statement of claim submitted to the General Secretariat of Tax Committees. Having asked Defendant's Representative regarding his response, he maintained the statements contained in the Reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not submitted during the objection and examination phases. Having asked parties to the Case whether they had further statements, they maintained their statements contained in memoranda submitted to the Department. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since the Plaintiff aims through its case to cancel ZATCA's decision regarding tax assessment for March and April 2013, and given that this dispute falls under the



category of tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it is accepted in form.

Regarding items Overseas shipping brokers, value of a cloud-based program for tracking Taxpayer's shipments, and operational expenses: An objection to these items was required to be filed initially with the Defendant, and since it is established from the Case documents that the Plaintiff did not submit its objection to these items before the Defendant, the Department decided to reject it in form.

On Merits: Having examined the case papers and documents as well as the requests, defenses and pleas presented by its parties, the Department found that the Plaintiff disputes tax assessment for March, April issued by the Defendant for 2013, specifically concerning the objection related to the following items:

Item First: Unjustified Transfers to Companies: The Plaintiff is disputing the Defendant's action of including unjustified transfers to other companies in its tax assessment. The Defendant countered this claim by stating that it requested Taxpayer to provide a breakdown of these foreign transactions along with supporting documentation. Taxpayer then submitted an Excel file from ... bank detailing these transactions. Upon reviewing this file, the Defendant found multiple foreign transfers totaling SAR (2,326,624) for which Taxpayer could not provide a reasonable explanation or supporting documentation for deductions. Article (63.1) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH stipulates that: "1. A non-resident is subject to tax that any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: - Any royalty or rent, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... At %15". Moreover, Article (57.3) of the same Regulations states that: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information".

Based on the foregoing, with respect to the dispute over item unjustified transfers to companies outside the Kingdom, upon reviewing the Case file, there is a discrepancy in the amounts. Upon reviewing the assessment notice, it appears that the withholding tax is SAR (72,522,9), which means the amount subject to withholding tax is SAR (483,486). The Plaintiff is contesting the foreign transfers amounting to SAR (1,651,760), stating that these funds belong to Partner/ ... for the purpose of purchasing a residential apartment through his company in Lebanon and were later returned to the Company's account at Bank. Upon reviewing the documents submitted in the Case file, the Plaintiff failed to provide official documentary evidence showing that the funds were transferred from the Plaintiff Company to Partner/ ... or to Company, a Lebanese Company, Partner/ ... is a partner, as confirmed by the Defendant. The Defendant, in turn, stated that the Plaintiff did not provide official documentary evidence showing that the transferred funds were returned from the Partner to ... Company. Upon examining the documents attached to the Case file, it was evident that the Plaintiff provided documents to substantiate its claim. The Plaintiff attached bank transfers from ... Global Company to ... Global Company, amounting to SAR (450,480) on 4 March 2013, SAR (750,800) on 18 March 2013, and SAR (450,480) on 3 June 2013. Additionally, the Plaintiff presented a cheque issued by Partner ... to the Plaintiff Company for the aforementioned amount, along with bank statements proving



the recovery of these amounts from the Partner to the Plaintiff Company. Therefore, based on the aforementioned evidence, the Department unanimously decided to cancel the Defendant's decision to impose a withholding tax on the total amount of SAR (1,651,760).

Item Second: Late Payment Fine:

The Plaintiff objects to the Defendant's action of imposing a late payment fine in the event of any delay in paying the withholding tax, while the Defendant argued that that it imposed late payment fines for the failure to pay the tax differences by the regulatory due date. Article (67.a) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH 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". Based on the foregoing, the Department established that the fine is calculated from the deadline for filing the tax return until the date the tax is paid, as determined by the tax law. Given that the dispute between the parties is based on the interpretation of documents and not on a fundamental disagreement regarding the law, the Department concluded by amending the Defendant's decision by dismissing the late payment fine for the items where the Defendant's decision was canceled.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

1. Cancel the Defendant's decision regarding item Unjustified Transfers to Companies in March and April 2013.
2. Dismiss in form item Overseas Shipping Brokers.
3. Dismiss in from items Value of a cloud-based program for tracking Taxpayer's shipments, and operational expenses.
4. Amend Defendant's decision regarding Late Payment Fine.

This decision was made in presence of both parties. The date the decision is filed in the electronic system of the General Secretariat of Zakat, Tax, and Customs Committees shall be considered the date of delivery. The parties involved have the right to appeal the decision within thirty days from the day after its receipt. If no appeal is submitted within this period, the decision shall become final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1395)

Issued in Case No. (W-88959-2021)

Keywords:

Withholding Tax on Royalty Services – Late Payment Fine – Substantive Acceptance.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax assessment for 2019 and 2020 AD - The Plaintiff based its objection on the following items: Item (Withholding Tax on Royalty Services). ZATCA charged a withholding tax at a rate of (15%) on payments for royalty services paid to a non-resident British company, and item (Late Payment Fine). ZATCA charged a late payment fine on the disputed items. With respect to item (Withholding Tax on Royalty Services), ZATCA responded that it imposed a withholding tax on royalties at a rate of (15%) instead of what the Plaintiff declared at a rate of (8%), as mentioned in Article (68) of the Income Tax Law. As for item (Late Payment Fine) ZATCA responded that the late payment fine was imposed on the unpaid tax differences at the statutory due date. Regarding item (Withholding Tax on Royalty Services), the Department established that after reviewing the provisions and agreements attached by the Plaintiff, in addition to the financial statements of the non-resident Company (M.K) UK, that the agreements give (M.K) UK the right to grant franchise rights to beneficiaries in the Middle East and several other regions, as is evident from the agreement, in addition to the financial statements. Franchise revenues from the Middle East are clearly shown in the financial statements, which proves that (M.K) UK is the beneficiary and therefore the justification for implementing the double taxation avoidance agreement. As such, the Department ruled to cancel ZATCA's decision in this regard. As for item (Late Payment fine) it is clear that the late payment fine is calculated from the end date of the deadline for submitting the tax return until the date of payment of the due tax arising from the application of the provisions of the law and the amendments made by the Defendant. Additionally, since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the law provisions, the Department therefore decides to cancel the Defendant's decision due to the extinction of the original tax liability. Therefore, the Department ruled to Accept the Case in form and on merits. The decision shall be final and enforceable.

Instruments:

- Articles (68) and (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (63.1), (67.3), (68), (68.1) and (71.2) of [Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)



- Article (12) of [the Agreement for the Avoidance of Double Taxation between \(the Government of the Kingdom of Saudi Arabia and the Government of the United Kingdom of Great Britain and Northern Ireland\), with respect to taxes on income and capital and the prevention of tax evasion, signed on 31/10/2007 and entered into force on 01/01/2009.](#)

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 15/06/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, formed pursuant to Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, convened to hear the Case.

The facts of this Case are summed up as follows: Mr. (...), (ID No. ...), in his capacity as Attorney of Plaintiff/ Food Company, (CR. No.....), Pursuant to POA No. (...) Dated .../07/1441 AH, filed this case objecting to ZATCA's assessment of withholding tax for 2019 and 2020. The Plaintiff's objection is related to the following items: Item First: Withholding Tax on Royalty Services: The Plaintiff objects to the Defendant's action of charging a withholding tax at a rate of 15% on payments for royalty services made to a non-resident British company. The Plaintiff argues that the correct rate is 8%, as per the double taxation avoidance agreements, which is the rate that the Plaintiff declared and paid the withholding tax on. Therefore, the Plaintiff requests to cancel ZATCA's action. Regarding the second item: Late Payment Fine: The Plaintiff objects to Defendant's procedure of imposing a delay fine on the above contested items. The Plaintiff asserted that tax returns were filed within the legal deadlines and that the late payment fines related to the tax discrepancy resulted from mistakes and differing interpretations, not from any deliberate attempt to avoid paying the tax on time. Consequently, the Plaintiff seeks cancellation of any additional tax liability arising from this, arguing that it should not be subject to late payment fine.

Upon presenting the statement of claim to the Defendant, it responded with a memorandum stating as follows: With regard to the objection to the inclusion of amounts paid for royalties at a rate of 15% instead of 8% in accordance with the provisions of the agreement: The Defendant stated that it imposed a withholding tax on royalties at a rate of 15% instead of the 8% declared by the Taxpayer, as provided for in Article (68) of the Income Tax Law, as it became clear to ZATCA that the double taxation avoidance agreements do not apply to the Taxpayer because the ultimate beneficiary is in America and not in Singapore or Britain, as stated in the financial statements that the Company obtained the franchise right from America (Exhibit 1) as shown in Taxpayer's financial statements. Since there is no double taxation avoidance agreement between Saudi Arabia and America, the Taxpayer exploited the agreements between Saudi Arabia and Singapore and Saudi Arabia and Britain; therefore, the assessment was made in accordance with Article (68) of the Income Tax Law. Upon studying the objection, a meeting was held with the Taxpayer on Sunday, November 28, 2021, and through the meeting, it was asked to provide information about the contractual relationship between (M.K.) America and (M.K.) UK. The Taxpayer stated that the relationship between them is a relationship of selling intellectual property rights and not granting a license. When the Taxpayer was asked about the ability of (M.K.) America to withdraw these rights from (M.K.) UK, as it had previously withdrawn them from (M.K.) Singapore, Taxpayer explained that (M.K.) America has the ability to do so. It is clear from this that the contractual relationship between them is not a sale but a grant of a license and that the beneficial owner is (M.K.) America. Besides, upon reviewing the intellectual property rights transfer agreement from



(M.K.) America to (M.K.) Singapore, it becomes evident that the agreement explicitly stated that the licensor is (M.K.) America and that it owns all rights, which means that neither (M.K.) Singapore nor UK is the beneficial owner and that the transfer that took place was merely a grant of licenses to other companies. ZATCA clarifies its response to Taxpayer's claim that it complied with the provisions of ZATCA's circular no. (1434/16/5068) dated 20/07/1434 AH. Same circular stated in its third paragraph that Taxpayer is required to declare and undertake to bear and pay any tax amounts or fines due on the non-resident beneficiary as a result of incorrect information provided, calculation errors, or misunderstanding in the interpretation of the provisions of the double taxation avoidance agreement between the Kingdom and the other Contracting State according to form no. (Q7/J). The circular also indicated that if Taxpayer is unable to meet these requirements, it has the right to follow the procedures set forth in the previous circular no. (19/3228) dated 09/06/1431 AH issued by ZATCA. Furthermore, ZATCA clarifies its response regarding Taxpayer's argument that (M.K.) UK recognized intangible assets, which means that it has full ownership of these rights. However, according to accounting standards, an intangible asset is defined as: "Any identifiable non-monetary asset without physical substance (such as intellectual property rights) controlled by an entity as a result of past events, such as purchase or self-development, and from which future economic benefits are expected." Therefore, it is recognized as an asset and is amortized over its useful life, which is applicable to Taxpayer's case. As such, mere recognition of an asset in the financial statements does not necessarily mean that the entity owns this asset, but rather that it may only be benefiting from its economic resources. In light of the foregoing and since neither (M.K.) Singapore nor (M.K.) UK is the beneficial owner, which is a condition for applying the reduced rate stipulated in the agreement pursuant to Article (12), paragraphs 1 and 2, of the Double Taxation Avoidance Agreement between the Government of the Kingdom of Saudi Arabia and the United Kingdom, which states: "(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State. (2) However, such royalties may also be taxed in the Contracting State in which they arise in accordance with the law of that Contracting State; but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed eight percent (8%) of the gross amount of the royalties," Noting that these companies (M.K.) United Kingdom and Singapore are not the beneficial owners of that revenue (which is a condition for applying the reduced rate stipulated in the agreement), but rather the beneficial owner is the American Company (M.K.) America, therefore, the objection has been rejected and ZATCA maintains the validity and soundness of its procedure. With regard to the objection to item late payment fine: The Defendant stated that the late payment fine was imposed on unpaid tax differences after the due date, and the Defendant maintains the correctness of its procedure.

On Wednesday, 15/06/2022 AD, the Department held its session remotely to hear the case. The session was attended by Mr. ..., ID No (...), in his capacity as Attorney under the attached POA, and Mr. ... ID No. ..., in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No...., dated .../10/1443 AH, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney about his claim, he maintained his response included in the statement of claim submitted to the General Secretariat of Tax Committees. Having asked Defendant's Representative regarding his response, he maintained the statements contained in the Reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not submitted during the objection and examination phases. Having asked parties to the Case whether they had further statements, they maintained their statements contained in



memoranda submitted to the Department. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff instituted this case to cancel ZATCA's decision regarding withholding tax assessment for 2019 and 2020. Since this dispute is considered a tax dispute that falls 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 given that the Case was filed with valid grounds, by an eligible party, and within the legally prescribed period, the case is to be accepted in form.

On Merits: Having examined the case papers and documents as well as the requests, defenses and pleas presented by its parties, the Department found that the Plaintiff disputes withholding tax assessment issued by the Defendant for 2019 and 2020, specifically concerning the objection related to the following items:

Item First: Withholding Tax on Royalty Services:

The Plaintiff objects to the Defendant's action of charging a withholding tax at a rate of 15% on payments for royalty services paid to a non-resident British company, while the Defendant believes that it imposed a withholding tax on royalties at a rate of 15% instead of the 8% declared by the Plaintiff, as provided for in Article (68) of the Income Tax Law. Article (63.1) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1438 AH stipulates that: "1. A non-resident is subject to tax that any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates:". Additionally, Article (12) of the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and the United Kingdom states: "(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State. (2) However, such royalties may also be taxed in the Contracting State in which they arise in accordance with the law of that Contracting State; but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed eight percent (8%) of the gross amount of the royalties". Based on the foregoing, and given that the Defendant relied on the Plaintiff's financial statements and the previous withdrawal of franchise distribution rights from (M.K.) Singapore, but this does not necessarily mean that the beneficiary of these revenues is (M.K.) America as stated by the Defendant, and upon reviewing the aforementioned provisions and agreements submitted by the Plaintiff in addition to the financial statements of the non-resident Company (M.K.) UK, it is clear that the agreements grant (M.K.) UK the right to grant franchise rights to beneficiaries in the Middle East and several other regions. This is evident from the agreement as well as the financial statements, as the franchise revenues from the Middle East are clearly shown in the financial statements, which proves that (M.K.) UK is the beneficiary and therefore the application of the double taxation avoidance agreement is justified. As such, the Department concludes by canceling the Defendant's decision in this regard.

Item Second: Late Payment Fine:

The Plaintiff objects to Defendant's action of imposing a late payment fine, while the Defendant believes that a late payment fine shall be imposed on the unpaid tax



differences after the due date. Whereas Paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: “In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment” and in accordance with Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: (a) Delay in payment of due tax as per the return. (b) Delay in payment of due tax as per the Department’s assessment”. Based on Article (67.3) of the Implementing Regulations of Income Tax Law stating that: “the unpaid tax means the difference between what the Taxpayer paid at due date and the tax due for payment under the provisions of the Law, including amendments made by ZATCA that have become final as stated in Article (71.2) of the Implementing Regulations of the Income Tax Law, including disputed cases where the fine is calculated from the due date for submitting the return and payment.” Based on the foregoing, and upon reviewing the Case file and its contents of defenses and documents, and since the late payment fine is calculated from the end of the deadline for submitting the return until the date of payment of the due tax arising from the application of the provisions of the law and the amendments made by the Defendant, and since the dispute between the parties is a documentary dispute and did not arise from a significant difference in the interpretation of the provisions of law, the Department decided to reject the Plaintiff’s objection due to the extinction of the original tax liability.

For those grounds and after deliberation, the Department unanimously decided to:

Decision

- Cancel the Defendant's decision regarding withholding tax and late payment fine for 2019 and 2020.

This decision was made in presence of both parties. The date the decision is filed in the electronic system of the General Secretariat of Zakat, Tax, and Customs Committees shall be considered the date of delivery. The parties involved have the right to appeal the decision within thirty days from the day after its receipt. If no appeal is submitted within this period, the decision shall become final and enforceable.

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

Appeal Committee:

Appeal Committee has decided to uphold the Department’s decision.



(Withholding Tax)

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
1630)

Issued in Case No. (W-
70198-2021)

Keywords:

Withholding Tax - Adjustment letters do not clarify reasons and details of ZATCA's adjustments – Late Payment Fees – Substantive Rejection.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax for July 2017 AD - The Plaintiff based its objection on the following items: Item (Adjustment letters do not clarify reasons and details of ZATCA's adjustments). ZATCA calculated additional withholding tax on certain payments made to non-residents. Item (Withholding tax for July 2017) ZATCA imposed withholding tax for the disputed period. Item (Late payment fine) ZATCA imposed a late payment fine on the disputed items, despite the Plaintiff submitting its tax returns within the prescribed period and that the tax difference is due to a difference in viewpoint with ZATCA. In response to item (Adjustment letters do not clarify reasons and details of ZATCA's adjustments), ZATCA argues that the Plaintiff has not explained why these payments are subject to withholding tax. In response to item (Withholding tax for July 2017), ZATCA argues that the Plaintiff has not provided documents supporting the application of the double taxation avoidance agreement between (Saudi Arabia and Italy). Furthermore, based on the contracts and activities of the Plaintiff, it appears that Company is a related party to the Plaintiff. In response to item (Late payment fine), ZATCA argues that its decision is in accordance with the provisions of the Income Tax Law. With respect to item (Adjustment letters do not clarify reasons and details of ZATCA's adjustments), the Department found that the Plaintiff was notified of the details and reasons for the adjustments in the tax return. Moreover, as there is no formal procedural defect in the Plaintiff's objection, and given that the purpose of the aforementioned regulations has been fulfilled through other means that prove the Plaintiff's notification of the assessment and its adjustments, the Department decided to reject the Plaintiff's objection. Regarding item (Withholding tax for July 2017), it was found that the Plaintiff withheld tax at a rate of 5%. However, since Company indirectly owns 100% of (...) Engineering and Contracting Company, it is considered a related party. The Plaintiff did not withhold tax correctly, as the tax on payments to related parties should be withheld at a rate of 15%, As such, the Department decided to reject the Plaintiff's objection. Regarding item (Late payment fine), it was found that the dispute between the parties is a documentary dispute and did not arise from a significant difference in the interpretation of the Regulations. As such, the Department has decided to reject the Plaintiff's objection. Therefore, the Department ruled to, accept the Case in form, and dismiss the Case on merits. The decision shall be final and enforceable.

Instruments:



- Articles (62.B) and (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (59.7), (63.1), (67.3), and (68.1) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)
- Article (28) of [the Agreement for the Avoidance of Double Taxation between \(the Kingdom of Saudi Arabia and Italy\), with respect to taxes on income and capital and the prevention of tax evasion, signed on 13/01/2007 and entered into force on 01/12/2009.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday 02/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, convened to hear the Case.

The facts of this Case are summed up as follows: Mr. (...), (Legal Residence No. ...) in his capacity as the Plaintiff's Legal Representative of, pursuant to the CR attached to the Case file/ (...) for Engineering and Contracting Limited (CR No. ...), has filed an objection to the withholding tax for July 2017 AD, issued by ZATCA, which consists of three items:

Item First: Adjustment letters do not clarify reasons and details of ZATCA's adjustments.

Item Second: Withholding Tax.

Item (3): Late Payment Fine.

Upon presenting the statement of claim to the Defendant, it responded with a memorandum stating as follows: Case items are limited to two: Item First: Withholding tax. Regarding this item, ZATCA clarifies that it did not apply the double taxation avoidance agreement to (...) Company and imposed a withholding tax of 15% due to the Company being a related party. Furthermore, the Plaintiff did not provide any documents supporting the implementation of the agreement in accordance with Article (28) of the Agreement for the Avoidance of Double Taxation. Regarding the second item: Late payment Fine, ZATCA clarifies that it imposed these fines on the outstanding tax differences in accordance with Article (77.A) of the Income Tax Law; therefore, ZATCA requests to dismiss the Case, while reserving its right to submit further responses and clarifications before the committees.

On Monday, 02/02/1442 AH, the Department held its session remotely to consider the Case. The session was attended by Ms., in her capacity as the Plaintiff's Attorney pursuant to POA, a copy of which is attached to the Case file. Also Ms. was present, in her capacity as Representative of the Defendant/ZATCA under Authorization No...., a copy of which is attached to the Case file Having asked the Plaintiff's Attorney about her client's claims, she maintained the response included in the statement of claims submitted to the General Secretariat of Tax Committees. Having asked Defendant's Representative regarding her response, she maintained the statements contained in Defendant's Rejoinder, and requested Department not to accept any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked parties to the Case whether they had further statements, they responded in the negative. As such, pleadings and deliberations were closed.

Grounds:

Having perused Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082)



of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since the Plaintiff filed the Case to cancel Defendant's decision regarding Withholding Tax for July 2017 AD, and since this dispute is a Tax dispute, then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Withholding Tax for July 2017 AD, which included the following three items:

First: Adjustment letters do not clarify reasons and details of ZATCA's adjustments:

The dispute lies in the Plaintiff's objection to the Defendant's action of charging an additional withholding tax on certain payments made to non-residents. The Plaintiff argues that the Defendant has not provided reasons for subjecting these payments to withholding tax. The Plaintiff further contends that the Defendant's action is irregular and in violation of Article (59.7) of the Implementing Regulations of the Income Tax Law. However, the Defendant's memorandum does not include a response to this point. Article (62.b) of the Tax Law states that "b. ZATCA shall notify the taxpayer of the tax assessment under paragraph (a) of this Article and of the tax due on it by a registered official letter, or by any other means that proves its receipt of the notification." Upon reviewing the Implementing Regulations of the Income Tax Law issued by Ministerial Decree No. (1535) dated 11/06/1425 AH, it was found that Article (59.7) states that "if ZATCA does not agree with Taxpayer's return, it shall notify the Taxpayer of its modifications on the return, the reasons thereof, the amount of tax and subsequent fines, and of the Taxpayer's right to object and the statutory period specified for objection. The notice to the Taxpayer shall be sent by registered mail or by any other means that proves the Taxpayer's receipt of such notice". Based on the foregoing, and given that ZATCA, upon issuing the tax assessment, must notify the taxpayer of the adjustments and reasons for the adjustment through registered mail or any other means that proves Taxpayer's receipt of the notification, and upon reviewing the adjustment notification letter issued by ZATCA on 12/04/2021 regarding the adjusted assessment for 2017, it is evident that the notification includes the phrase "adjusted pursuant to a review of the objection" without specifying the items that were adjusted in the notification or the reasons for the adjustment. Despite this, the procedure followed by ZATCA since the beginning of issuing automatic assessments through "Eirad" system has been to indicate the items adjusted in the Taxpayer's return on "Eirad" system, along with the reasons for the adjustment. In some cases, the Taxpayer requests to be provided with the assessment letter that details the adjusted items, and ZATCA provides it to the Taxpayer so that it can study the assessment and file an objection. Therefore, if the Taxpayer does not agree with the adjustments and it is evident that ZATCA has notified the Plaintiff of the adjustments included in the adjusted assessment through the details available in "Eirad" system, as evidenced by the Plaintiff's memorandum dated 12/08/2021 in response to ZATCA's viewpoint, where the details of the items included in the assessment notification and the amount deducted by ZATCA in the adjusted assessment were mentioned, which indicates that the Plaintiff was notified of the details and reasons for amending the items in the return, and in view of the absence of any evidence to support the Plaintiff's claim regarding the formal aspect of accepting its



objection, and since the purpose of the aforementioned statutory provisions has been fulfilled through other means that prove its notification of the assessment and its adjustments, as such, the Department decided to reject the Plaintiff's objection.

Second: Withholding tax for July 2017 AD:

The dispute centers on the Defendant's decision to impose withholding tax for the disputed period. The Plaintiff argues that the Defendant's reliance on Article (28) of the Double Taxation Avoidance Agreement between (Saudi Arabia - Italy) is not relevant to the facts of the Case, as the agreement allows for a refund of tax if the right to levy taxes is affected by the provisions of this agreement. The Plaintiff demands exemption from the withholding tax, while the Defendant argues that all notices and adjustments issued by it comply with the provisions of Article (59.7) of the Implementing Regulations of the Income Tax Law. Additionally, the Plaintiff has not provided any documents supporting the implementation of the aforementioned agreement in accordance with Article (28) of the Double Taxation Avoidance Agreement. The Defendant further adds that it has found, based on the contracts and operations carried out by the Plaintiff, that (...) company is a related party to the Plaintiff, as the Plaintiff owns 70% of the aforementioned Company. Article (63.1) of the Implementing Regulations of Income Tax Law states that: "1. A non-resident is subject to tax that any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: - Any royalty or rent, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company...at a %15 rate. Additionally, Article (7.1) "Business Profits" of the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and Italy, "the profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment". Based on the foregoing, and considering that the foreign company's branch operating in the Kingdom is deemed a permanent establishment for a non-resident in the Kingdom, and given that the Plaintiff is requesting the application of Article (7.1) "Business Profits" of the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and Italy, which stipulates that a non-resident is subject to tax in the Contracting State if it has a permanent establishment, and given that (...) Engineering and Contracting Company Limited is wholly owned by (...) Company (as per the attached organizational chart), consequently, it is necessary to withhold tax in accordance with Article (63.1) of the Implementing Regulations of the Income Tax Law. Referring to the withholding tax returns submitted by the Plaintiff (attached), it is evident that they have withheld tax at a rate of 5%, and given that Company (...) owns (...) Engineering and Contracting Company Limited at a rate of 100% indirectly, it is therefore considered a related party. Since the Plaintiff has not withheld tax correctly, as the tax on amounts paid to related companies should be withheld at a rate of 15%, the Department decided to reject the Plaintiff's objection.

Third: Late Payment Fine:

The dispute centers on the Defendant's decision to impose a late payment fine on the disputed items. The Plaintiff stated that it submitted its tax returns within the prescribed period, and added that the difference in tax is due to a difference in views with the Defendant, while the Defendant argued that its decision is in accordance with the provisions of Article (77.A) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH which states as follows: "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”. Article (68.1) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH provides that: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: B. Delay in payment of the tax payable as per ZATCA’s assessment” Article (67.3) of the Implementing Regulations of Income Tax Law states that: “the unpaid tax means the difference between what the Taxpayer paid at due date and the tax due for payment under the provisions of the Law, including amendments made by ZATCA that have become final as stated in Article (71.2) of the Implementing Regulations of the Income Tax Law, including disputed cases where the fine is calculated from the due date for submitting the return and payment.” Based on the foregoing, and upon reviewing the Case file and its contents of defenses and documents, and since the late payment fine is calculated from the end of the deadline for submitting the return until the date of payment of the due tax arising from the application of the provisions of the law and the amendments made by the Defendant, and since the dispute between the parties is a documentary dispute and did not arise from a significant difference in the interpretation of the statutory texts, the Department decided to reject the Plaintiff’s objection.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss the objection filed by the Plaintiff (...) Engineering and Contracting Ltd, (C.R. No. ...), to the decision issued by the Defendant/ ZATCA regarding withholding tax assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set Monday, .../.../... 1442 AH for receiving a copy of the decision. Parties to this Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1577)

Issued in Case No. (W-34782-2021)

Keywords:

Withholding Tax on Dividends – Late Payment Fine – Substantive Acceptance.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax for March 2018 AD - The Plaintiff based its objection on the following items: Item (Withholding Tax on Dividends). ZATCA imposed a withholding tax of SAR (340,808) on the Company's dividends for 2018. The Plaintiff stated that the Plaintiff Company is directly and indirectly owned by ... Ltd Co., a Saudi Arabian Company registered with the Defendant under TIN. The Plaintiff is requesting to cancel the Defendant's decision, arguing that no profits were transferred to a non-resident partner. As for item (Late Payment Fine), ZATCA imposed a late payment fine on the disputed items. In response, ZATCA stated that its imposition of withholding tax on dividends was in compliance with the Income Tax Law and its Implementing Regulations. As for the late payment fine, ZATCA stated that it was imposed on the unpaid tax differences that were not settled by the due date. Regarding withholding tax on dividends, the Department found that the Plaintiff had correctly classified the disputed amounts as accounts payable rather than dividends. Since it was proven that ZATCA's action of subjecting the disputed amounts to withholding tax on the basis that they represented dividends was incorrect, and that the accounting entry was considered a settlement between accounts, consequently, the Department ruled to cancel ZATCA's decision to impose withholding tax on these amounts. As for the withholding tax imposed on dividends made to the resident partner. Upon reviewing the Company's AOA, the Department determined that the partner is a Saudi limited liability company based in Saudi Arabia. Since Article (63) of the Income Tax Law does not apply to such entities, the Department ruled to cancel ZATCA's decision to impose withholding tax on dividends made to this resident partner. As for item (late payment fine), since the Department has already cancelled ZATCA's original decision to impose the tax, the Department ruled also to cancel the fine, due to the extinction of the original tax liability. Therefore, the Department ruled to Cancel ZATCA's decision and the Department decision shall be deemed final and enforceable.

Instruments:

- Articles (3.B), (68), (68.A), (76), (77.A&B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (63), (63.1), (68.1), (67.3) [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:





Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 25/12/1443 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, convened to hear the Case.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), in his capacity as Attorney of Plaintiff/ (C.R. No. ...), Pursuant to POA No. (...) dated 04/06/1442 AH issued by notary public/..., filed an objection to withholding tax for March 2018 issued by ZATCA.

Having presented the statement of claim to the Defendant, it answered as follows regarding the imposition of withholding tax on dividends for 2018: The Defendant had imposed withholding tax on the dividends to the non-Saudi partner as reflected in the financial statements, based on Article (68) of the Income Tax Law and Article (63) of its Implementing Regulations. Regarding late payment fines: The Defendant imposed late payment fines as the Plaintiff failed to pay tax differences in the prescribed period, citing Article (77) of the Income Tax Law, and Article (68) of its Implementing Regulations. Based on those grounds, ZATCA requested to dismiss the Case, reserving its right to submit further responses and clarifications until closing of the pleadings.

On Sunday, 25/12/1443 AH, the Department held its session remotely to hear the case. The session was attended by Mr. (ID No.....), in his capacity as Plaintiff's Attorney under POA No. (...), dated 04/06/1442 AH issued by notary public/.... The session was also attended by Ms. ..., (ID No.....), in her capacity as Defendant/ZATCA Representative by virtue of Authorization No... dated ... issued by the Deputy Governor for Legal Affairs and Compliance. Having asked the Plaintiff's Attorney about its claim, he maintained his response included in the statement Case on submitted to the General Secretariat of Tax Committees. Having referred to the Defendant's Representative for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. When asking both parties to the case if they had any further statements, they replied in the negative. Therefore, the Department decided to close pleadings and proceed with deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since the Plaintiff filed the Case to cancel Defendant's decision regarding Withholding Tax for March 2018 AD, and since this dispute is a Tax dispute, then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the imposition of withholding tax for March 2018 AD, which included the following items:



First: Item (Withholding Tax on Dividends):

The dispute lies in the Plaintiff's objection to the Defendant's action of imposing a withholding tax of SAR (340,808) on dividends for 2018. The Plaintiff stated that the Company is directly and indirectly owned by ..., a company resident in Saudi Arabia and registered with the Defendant under TIN. The Plaintiff is requesting cancellation of the Defendant's action, as no profits were transferred to a non-resident partner. Additionally, the Plaintiff mentioned that it declared dividends in the financial statements for 2017 amounting to SAR (9,737,362), and this amount was recorded under the current liabilities account in the balance sheet from 2017 to 2019. The dividends have not been paid until this date. However, the Defendant argued that its action was in accordance with Article (63.1) of the Implementing Regulations of the Income Tax Law issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH stipulating that: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Technical or consulting services; international telephone services other than payments made to the head office or an affiliated company; rent; airline tickets; air or maritime freight; dividends; loan charges; insurance or reinsurance premiums. (5%)". Moreover, Article (3.B) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stated that: "A company shall be considered a resident in the Kingdom during the taxable year if it meets any of the following conditions: 1. It is formed in accordance with the Companies Law. 2. Its central management is located in the Kingdom." Based on the foregoing, regarding the imposition of withholding tax on distributions due for payment, it is noted that the imposition of withholding tax is linked to the existence of an actual payment or its equivalent, such as settlement of accounts and clearing, based on Article (63) of the Implementing Regulations of the Income Tax Law. Upon reviewing the documents submitted by both parties, the Department found that the Plaintiff had classified due profits as accounts payable and had not distributed them. Given that it has been proven that the Defendant's action of subjecting the disputed amounts to withholding tax on the basis that they represent dividends is incorrect, and that the accounting entry is considered a settlement of accounts, the Department therefore ruled to cancel the Defendant's decision regarding the imposition of withholding tax on due dividends. As for the imposition of withholding tax on dividends to the resident partner, upon reviewing the AOA, the Department found that the partner (... Co.) is a Saudi limited liability company based in Saudi Arabia. Since Article (63) of the Income Tax Law does not apply to such entities, the Department ruled to cancel the Defendant's decision to impose withholding tax on dividends made to this resident partner.

Second: Item (Late Payment Fine):

The dispute lies in the Plaintiff's objection to the late payment fine, while the Defendant argued that the late payment fine was imposed on the unpaid tax differences that were not paid on the prescribed period. Article (68.1) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH provides that: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: b) Delay in payment of due tax as per ZATCA's assessment. e) 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". Moreover, Article (67.3) of the same Regulations states that: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by ZATCA, as stated in Paragraph (2) of Article (71)) of these Regulations, including contested cases, where the fine shall be due from the due date for



return filing and payment". Additionally, Article (77.A) of the Income Tax Law states: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on the foregoing, and after reviewing the Case file, including the defenses and documents, and considering that the late payment fine is calculated from the end of the deadline for submitting the tax return until the date of payment of the due tax arising from the application of the provisions of the law and the amendments made by the Defendant, and since the decision of the Department in the first item concluded with the cancellation of the Defendant's decision, the Department ruled to cancel the Defendant's decision to impose the late payment fine, due to the extinction of the original tax liability.

For those grounds and after deliberation, the Department unanimously decided to:

Decision

- Cancel ZATCA's decision against the Plaintiff/ Company, (TIN No.), related to the assessment subject matter of this Case.

This decision was made in presence of both parties. The date the decision is filed in the electronic system of the General Secretariat of Zakat, Tax, and Customs Committees shall be considered the date of delivery. The parties involved have the right to appeal the decision within thirty days from the day after its receipt. If no appeal is submitted within this period, the decision shall become final and enforceable.

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

Appeal Committee:

Appeal Committee has decided to uphold the Department's decision.



(Withholding Tax)

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
1587)

Issued in Case No. (W-
39116-2021)

Keywords:

Withholding Tax - Consulting services provided by employees outside the Kingdom - Payment to related parties for services - Late Payment Fines.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding tax assessment for 2018 AD with respect to the following (3) items: Consulting services provided by employees outside the Kingdom (among other expenses), Payment to related parties for services amounting to SAR (2,049,717.16), and Late payment fines. In response, Regarding the first item, ZATCA stated that these amounts are subject to a 15% withholding tax. As for the second item, ZATCA stated that the Company enters into agreements with related parties to provide consulting and technical services, specifically in operation and usage areas. As for the third item, ZATCA stated that the Plaintiff submitted the partners' minutes without specifying the value of the bonus, and that the Plaintiff had unrealized losses that were not deducted from the net profit. ZATCA calculated a late payment fine of 1% for every thirty days of delay on the unpaid tax differences. The Department established that, regarding the first item, the Plaintiff failed to provide the contracts concluded with its employees and any evidence proving the contractual relationship with them. Concerning the second item, it was established that the Plaintiff submitted monthly withholding tax returns, which revealed that only SAR (1,572,845.64) was paid in October for services rendered to related companies. Additionally, the annual return submitted showed that the amount subject to services rendered to related companies was SAR (2,097,363.84) but it was unsigned and unverified. Moreover, the Plaintiff did not submit monthly returns for the other amounts. As for the third item, it was established that the dispute is based on documentation. Therefore, the Department ruled to Reject the Plaintiff's objection regarding the first item, and amend the Defendant's action regarding the second and third items. The decision shall be deemed final and enforceable.

Instruments:

- Articles (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (63.1), (67.3), (68.1) of [Implementing Regulations of Income Tax Law issued by Minister Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions. ◇



On Monday 26/12/1443 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended and Royal Order No. (65474) of 23/12/1439 AH,

held its session via video conference to consider the above-mentioned Case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number on 25/02/2021.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), in his capacity as Attorney of Plaintiff/ (C.R. No. ...), Pursuant to POA No. (...) dated ..., issued by the Ministry of Investment, filed an objection to ZATCA's tax assessment for 2018.

Having presented the statement of claims to the Defendant, it responded with a memorandum that addressed the objection to the withholding tax as follows: The Defendant imposed withholding tax on consulting services provided by employees outside the Kingdom (among other expenses) and payment to related parties for services at a rate of 15%. The Plaintiff objected to the two withholding tax items: Item First: Consulting services provided by employees outside the Kingdom (among other expenses): This is divided into two parts: Withholding tax on consultations provided by employees outside the Kingdom amounting to SAR (3,758,859), and withholding tax on consulting services provided by employees outside the Kingdom, which was classified as salaries and wages amounting to SAR (768,967). The Plaintiff's objection was rejected, as the nature of the services provided to the Company was clarified. The Company subject to the objection supplies equipment to the Ministry of Defense and Aviation in the Kingdom and contracts with employees outside the Kingdom (among other expenses) to provide consulting and technical services for the imported equipment, and these services consist of operating and using the equipment. The Taxpayer here objects to the percentage and at the same time acknowledges that these are consulting services. These amounts are subject to a 15% withholding tax, based on Article (63) of the Implementing Regulations of the Income Tax Law. Item Second: Payment to related parties for services amounting to SAR (2,049,717.16): The Defendant imposed a 15% withholding tax on payments made to related parties for services rendered abroad. The Company subject to the objection supplies equipment to the Ministry of Defense and Aviation in the Kingdom and contracts with related parties to provide consulting and technical services for the imported equipment. These services consist of operating and using the equipment. The Plaintiff's objection was rejected, based on Article (63) of the Implementing Regulations of the Income Tax Law. As for the objection to the income tax: Item First: Salaries and wages for 2018 amounting to SAR (5,160,912): The Defendant made adjustments to the net profit, as the Plaintiff provided statements and a breakdown of monthly salaries. It was found that the Plaintiff had included some consulting fees paid abroad as salaries in the salary statement. Based on the data provided by the Plaintiff, total salaries and wages amount to SAR (6,989,662.64), while salaries and wages in the tax return amount to SAR (11,196,806). The Plaintiff here includes salaries paid abroad, which increases the salary expense by SAR (4,207,143.36) and is included in the income statement. There is also a bonus that does not have a system in the Company, as the Plaintiff presented the partners' minutes without specifying the value of the bonus, so this bonus of SAR (953,768.53) was not accepted. Thus, the unacceptable salaries amount to SAR (5,160,911.89) The Plaintiff's objection was rejected, as the amounts in the salary statements do not pertain to salaries and wages, but rather to payments made abroad for consulting services as detailed in the submitted statement. Therefore, the Plaintiff's objection was rejected, based on Article (9) of the Implementing Regulations of the Income Tax Law. Item Second: Unrealized losses for 2018 amounting to SAR (1,074,772): The Defendant reversed the unrealized losses for 2018 amounting to SAR (1,074,772) based on the audit balance sheet, which showed that



the Plaintiff had unrealized losses of SAR (1,074,772) that were not reversed to the net profit in the tax return. Therefore, an adjustment was made to reverse them under the 'Other' item. The Plaintiff's objection was rejected, based on Article (9) of the Implementing Regulations of the Income Tax Law. As for the late payment fine for both withholding tax and income tax: The Defendant calculated the late payment fine according to Article (77) of the Income Tax Law and Article (68) of its Implementing Regulations. A late payment fine of 1% is imposed for every thirty days of delay on the unpaid tax differences. Therefore, ZATCA requests dismissal of the Case, while reserving its right to submit further responses and clarifications before closing of the pleadings.

On Monday, 26/12/1443 AH, the Department held its session remotely to hear the Case. The session was attended by Mr. (ID No.....), in his capacity as Plaintiff's Attorney under POA No. (...), dated ..., Issued by the Ministry of Investment. The session was also attended by Ms. ... (ID No.....), in her capacity as Defendant/ZATCA Representative by virtue of Authorization No... dated ... issued by the Deputy Governor for Legal Affairs and Compliance. Having asked the Plaintiff's Attorney regarding his client's claim, he maintained his response included in the statement of claim submitted to General Secretariat of Tax Committees. Having asked the Defendant's Representative regarding such response, she maintained the Defendant's Reply, and requested the Department not to accept any new documents that have not been submitted to the Defendant during the examination and objection stage. When asking both parties to the case if they had any further statements, they replied in the negative. Therefore, the Department decided to close pleadings and proceed with deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since the Plaintiff filed the Case to cancel Defendant's decision regarding tax assessment for 2018 AD, and since this dispute is a Tax dispute, then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of tax assessment for 2018 AD, which included the following three items:

First: Consulting services provided by employees outside the Kingdom (among other expenses):

The dispute centers on the Plaintiff's objection to the Defendant's action of imposing a 15% withholding tax on consulting services provided by employees outside the Kingdom. The Plaintiff stated that it paid a 5% withholding tax on these services, in accordance with Article (63) of the Implementing Regulation of Income Tax Law, as these services were provided by individuals directly employed by ... Company, a Saudi company, under fixed-term contracts. However, the Defendant argued that its action was in accordance with the provisions of the Implementing Regulations of the Income Tax Law, as Article (63.1) of the Implementing Regulations of the Income Tax Law issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH stated that: "(1) A non-resident is subject to



tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds; payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... at 15% - Technical or consultancy services, international telecommunications services other than the amounts paid to the head office or an affiliated company, rent, airline tickets, air cargo or freight transport, profits distributed, loans returns or insurance or reinsurance premiums... At 15%”. Based on the foregoing, amounts paid for consulting services provided by employees outside the Kingdom are subject to a 5% withholding tax, while if paid to a related party, they are subject to a 15% withholding tax. Upon reviewing the Case file, the Department found that the Plaintiff failed to provide the contracts entered into with its employees or any evidence to prove the contractual relationship with them. Instead, it merely submitted a list of individuals subject to a 5% withholding tax. Given this, the Department ruled to reject the Plaintiff's objection.

Second: Payment to related parties for services amounting to SAR (2,049,717.16):

The dispute centers on the Plaintiff's objection to the Defendant's action of imposing a 15% withholding tax amounting to SAR 307,457 on payments made to related parties for services transferred to third parties totaling SAR (2,049,717.16) The Plaintiff pointed out that it had already paid a 15% withholding tax on payments made to non-resident related parties for services amounting to SAR (2,097,363.84) as per its tax return and financial statements for 2018. Based on the foregoing, the Plaintiff is requesting that the payments made to non-resident parties be considered as the basis for accounting to avoid double taxation. However, the Defendant argued that its action was in accordance with the provisions of the Implementing Regulations of the Income Tax Law, as Article (63.1) of the Implementing Regulations of the Income Tax Law issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH stated that: “(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds; payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... at 15% - Technical or consultancy services, international telecommunications services other than the amounts paid to the head office or an affiliated company, rent, airline tickets, air cargo or freight transport, profits distributed, loans returns or insurance or reinsurance premiums... at 15%”. Based on the foregoing, and upon reviewing the Case file, it is evident that the Plaintiff submitted monthly withholding tax returns for 2018. These returns showed that only SAR (1,572,845.64) were paid in October for services rendered to related companies. Additionally, the Plaintiff submitted an annual return for 2018, which revealed that the amount subject to services rendered to related companies was SAR (2,097,363.84) but it was unsigned and unverified. Furthermore, the Plaintiff did not submit monthly returns for the remaining amount of SAR (2,524,512) Therefore, the Department ruled to amend the Defendant's action to the amount of SAR (1,572,845.64).

Third: Item (Late Payment Fine):

The dispute lies in the Plaintiff's objection to the late payment fine, while the Defendant argued that the late payment fine was imposed on the unpaid tax differences that were not paid on the prescribed period. Article (68.1) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH provides that: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: b) Delay in payment of due tax as per ZATCA's assessment. e) 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”. Moreover, Article (67.3) of the same Regulations



states that: “Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by ZATCA, as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment”. Additionally, Article (77.A) of the Income Tax Law states: "In addition to the fines stipulated in Article (76) of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on the foregoing, and upon referring to the Case file, defenses and documents, and since the late payment fine is charged from the end date of the deadline for submitting the tax return until the date of payment of the due tax pursuant to the provisions of the law and the amendments made by the Defendant, and since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the provisions, the Department therefore decides to amend the Defendant's decision by imposing a late payment fine from the due date on the items for which the Plaintiff's objection was rejected, and waive the late payment fine on the items for which the Defendant's decision was overturned due to extinction of the original tax liability. For those grounds and after deliberation, the Department unanimously decided to:

Decision

First: Dismiss the objection filed by Plaintiff (... Company), (TIN No.), against the decision issued by the Defendant/ZATCA, regarding item Consulting services provided by employees outside the Kingdom (among other expenses), subject matter of the Case.

Second: Amend the action taken by the Defendant/ ZATCA against the Plaintiff/... (TIN No.), regarding item Payment to related parties, subject matter of the Case, in accordance with the reasons set forth herein.

Third: Amend the action taken by the Defendant/ ZATCA against the Plaintiff/... Company, (TIN No.), regarding the late payment fine on the withholding tax, subject matter of the Case, in accordance with the reasons set forth herein.

This decision was delivered in presence of the Parties. The Department set Thursday, .../.../... 1444 AH for receiving a copy of the decision. Parties to this Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable.

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

Appeal Committee:

Appeal Committee ruled to uphold the Department’s decision, except for with regard to the third item which shall be amended.



(Withholding Tax)

Determination Committee

Third Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
5597)

Issued in Case No. (W-
34966-2021)

Keywords:

Withholding Tax - Tax Assessment - Late Payment Fines- Failure to Submit Invoices or Customs Declaration.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding tax assessment for December 2018 AD and 2019 AD with respect to the following items: Withholding tax on transactions of ... Company for 2018 and 2019. Withholding tax on transactions of ... Company for 2018. Withholding tax on transactions of ... Company for 2018. Withholding tax on transactions of ... Company for 2018 and 2019. Withholding tax on transactions of ... Company for 2018. Withholding tax on transactions of ... Company for 2018. Withholding tax on transactions of ... Company for 2019. Withholding tax on transactions of ... Company for 2019. Withholding tax on transactions of ... Company for 2019. Withholding tax on transactions of ... Company for 2019. Withholding tax on transactions of ... Company for 2019, and late payment fines. Regulations stipulate that an objection must be filed within the prescribed period from the date of notification. In response, ZATCA stated, with regard to the first and eleventh items, that the difference in the exchange rate is acceptable. As for the second, third, fifth and sixth items: ZATCA stated that it had requested documents, which the Taxpayer failed to provide. As for the fourth item: It has been verified that the invoice and payment were made in 2018, and the difference in the exchange rate is acceptable. As for the seventh item: It has been found that the invoice and payment were indeed made in 2018, and regarding the exchange rate difference: the 9% difference in the exchange rate is considered significant. As for the eighth Item: It has been found that the invoice and payment were indeed made in 2018, and the difference in the exchange rate is acceptable. As for the ninth and tenth items: The Taxpayer has provided the required documents. As for the twelfth item: A late payment fine has been imposed on the unpaid tax differences. The Department has determined the following: As for the first, third, eighth, ninth, tenth, and eleventh items: The dispute has been resolved. As for the second item: It has been established that the Plaintiff has provided supporting documents. As for the fourth item: The Plaintiff has not provided payment documents. As for the fifth item: The Plaintiff has not provided invoices or the customs declaration. As for the sixth item: The Plaintiff has not submitted a tax payment receipt or a monthly declaration. As for the seventh item: The Plaintiff has not provided any documents to support this difference. As for the twelfth item: It has been established that the dispute is based on documents. Therefore, the Department ruled to Confirm resolution of the dispute regarding the first, third, eighth, ninth, tenth, and eleventh items, cancel the Defendant's decision with regard to the second item, amend the



Defendant's decision with regard to the twelfth item, and dismiss all other objections. The decision shall be final and enforceable.

Instruments:

- Articles (68.A, C), (76.B), (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (57.3), (63.1), (67.3), (68.1), (71.2) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)
- Article (70) of [the Implementing Regulations of Procedure before Sharia Courts issued by the Minister of Justice Resolution No. \(39933\) dated 19/05/1435 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 30/11/1443 AH, the Third Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax Law promulgated by Royal Decree No. (M/30) dated 15/01/1425 AH, as amended, and formed pursuant to Royal Decree No. (22800) dated 25/04/1442 AH, held its session via video conferences to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with the General Secretariat of the Zakat, Tax and Customs Committees under the above number on 21/01/2021.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), in his capacity as Attorney of the Plaintiff/... Ltd Co, (C.R No.....), filed an objection to ZATCA's tax assessment for December 2018 and 2019. The Plaintiff's objection is limited to the following twelve items:

Item First: Withholding tax on transactions of ... Company For 2018 and 2019. The Plaintiff's objection to the Defendant's action lies in the imposition of an additional withholding tax for 2018 and 2019. In its statement of claim, the Plaintiff stated that it had paid all amounts except for SAR (7,505) for 2018, SAR (35,741) for 2019 (which is the exchange rate difference), and SAR (295,984) that were not subject to tax and were paid by the Taxpayer. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item Second: Withholding tax on transactions of ... Company For 2018. The Plaintiff's objection to the Defendant's action lies in the imposition of withholding tax of SAR (366,633) on a loan. In its statement of claim, the Plaintiff stated that this was a loan and not loan returns. It also mentioned that it had paid SAR (139,312) for interest, with an exception of SAR (366,633), which represents the principal amount of the loan. According to the Company's financial statements, the total financing costs amounted to SAR (269,990), not SAR (505,945) as stated in the assessment. The difference between the two amounts represents the repayment of the loan principal. Document (HS SPC) details the general ledger account for financing expenses for 2018. Additionally, the annual withholding tax return for 2018, which is attached to the response, shows that only the interest was subject to withholding tax. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (3): Withholding tax on transactions of ... Company For 2018. The Plaintiff's objection to the Defendant's action lies in the imposition of withholding tax on transactions between the Plaintiff and ... Company, classifying them as technical and consulting services. In its statement of claim, the Plaintiff stated that an amount of SAR (119,105) had already been subjected to withholding tax and paid in March and August 2018. It is worth noting that all assessed amounts were disclosed and paid in the 2018 tax



return, but under two different names for the same company, ... and also.... The Company will provide you with copies of invoices showing the name of the service provider along with payment receipts. Additionally, the annual withholding tax return for 2018 is attached to the response. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (4): Withholding tax on transactions of ... Company For 2018 and 2019. The Plaintiff's objection to the Defendant's action lies in the imposition of withholding tax for 2018 and 2019 on transactions classified as technical and consulting services. In its statement of claim, the Plaintiff stated that an amount of SAR (1,294,069) for 2018 had already been subject to withholding tax as per the annual tax return. The remaining difference of SAR (1,295,138) for 2019 had been taxed in previous years, and the SAR (1,563) represent an exchange rate difference. The Company will provide you with copies of invoices and payment receipts for the amounts paid in 2018 and subject to withholding tax in the same year. It will be clear to you that the invoices pertain to 2018, not 2019. Therefore, the Company's position is that it is not permissible to subject these amounts to withholding tax twice. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (5): Withholding tax on transactions of ... Company For 2018. The Plaintiff's objection to the Defendant's action lies in the imposition of withholding tax on transactions with ... Company, classifying them as technical and consulting services. In its statement of claim, the Plaintiff pointed out that an amount of SAR (1,648,493) was not subject to withholding tax, as it represented the supply of goods and services. The Company will provide you with copies of invoices from Company, which clearly show that the Company imported goods such as printers and their accessories. Therefore, these payments are not subject to withholding tax according to the Regulations. The Company mistakenly subjected some payments to withholding tax in 2018. We will also provide you with copies of the customs declaration for 2018, which details the imported goods. The amounts in foreign currency in the declaration can be matched with the amounts on the invoices. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (6): Withholding tax on transactions of ... Company For 2018. The Plaintiff's objection to the Defendant's action lies in the imposition of a second withholding tax on payments made to ... Company. This amount was previously included in earlier monthly tax returns under the name of Company, due to an error, as the Company's bank account appeared under this name during the transfer.... The Plaintiff stated in its statement of claim that these payments had already been taxed. We request that you refer to the annual tax return, which shows Company with an amount of SAR (276,522). The Taxpayer mentioned that after a meeting, it provided a copy of the invoices to ...; therefore, the Company used this name when filing the withholding tax return. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (7): Withholding tax on transactions of ... Company For 2019. The Plaintiff's objection to the Defendant's action lies in the imposition of an additional withholding tax on transactions with ... Company - USA for 2019. In its statement of claim, the Plaintiff stated that the difference of SAR (2,300,463), of which SAR 1.8 million was taxed in 2018 and SAR 432 thousand in 2017, and SAR (388,759) represents an exchange rate difference, accounting for currency fluctuations. Additionally, a creditor's notice for an invoice of \$59,967.5 was included, which was subsequently canceled in the system. Attached is a bank statement from ... Company provided by Company, which clearly shows all invoices for the same period. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (8): Withholding tax on transactions of ... Company For 2019. The Plaintiff's objection to the Defendant's action lies in the imposition of an additional withholding tax on transactions with ... Company for the year 2019. In its statement of claim, the Plaintiff stated that the difference of SAR (1,365,985) had already been subject to withholding tax



in previous years, and an additional SAR (1,261) represents an exchange rate difference. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (9): Withholding tax on transactions of ... Company For 2019. The Plaintiff's objection to the Defendant's action lies in the imposition of an additional withholding tax on transactions with ... Company for 2019. In its statement of claim, the Plaintiff stated that the difference of SAR (1,721,771) had been subject to withholding tax in previous years, and an additional SAR (312,141), which was not previously taxed, had been paid by the Taxpayer and consequently verified. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (10): Withholding tax on transactions of ... Company For 2019. The Plaintiff's objection to the Defendant's action lies in the imposition of an additional withholding tax on transactions with ... Company for 2019. In its statement of claim, the Plaintiff stated that the difference of SAR (50,550) represents an exchange rate difference, and an additional SAR (170,121), which was not previously taxed, had been paid by the Taxpayer and consequently verified. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (11): Withholding tax on transactions of ... Company For 2019. The Plaintiff's objection to the Defendant's action lies in the imposition of an additional withholding tax on transactions with ... Company for 2019. In its statement of claim, the Plaintiff stated that the difference of SAR (117,197) represents an exchange rate difference. As such, the Plaintiff is requesting to cancel ZATCA's action.

Item (12): Late payment fines. The Plaintiff's objection to the Defendant's action lies in the imposition of a late payment fine on the aforementioned disputed items. In its statement of claim, the Plaintiff argued that the late payment fines arising from the tax discrepancies are a result of errors and differences in interpretation, rather than intentional non-payment of taxes by the due date. Consequently, the Plaintiff is requesting the cancellation of any additional tax liability arising from this, which is not subject to a late payment fine.

Having presented the statement of claim to the Defendant, it answered as follows: With regard to the first item: Withholding tax on transactions of ... Company For 2018 and 2019. A payment of SAR (295,984) has been verified. As for the exchange rate difference, comparing the total amount paid to the Company in 2018 SAR (505,945) and in 2019 SAR (1,837,685), we find that the exchange rate difference is acceptable. Regarding the Second Item: Withholding tax on transactions of ... Company For 2018. A payment of SAR (139,312) has been verified. However, since a meeting was held with the Taxpayer and it was requested to submit loan documents, which the Taxpayer failed to provide, we find it necessary to reject the Taxpayer's objection and request the payment of the withholding tax on SAR (366,633). As for the third item: Withholding tax on transactions of ... Company For 2018. upon reviewing the monthly and annual tax returns, we found a payment of SAR (86,940.56) made in August 2018, which has already been accounted for. The remaining balance of SAR (32,164.44) has not been paid by the Taxpayer. Since a meeting was held with the Taxpayer and it was requested to provide payment documents, which it failed to do, we find it necessary to reject the Taxpayer's objection and request the payment of the withholding tax on SAR (32,164). As for the fourth item: Withholding tax on transactions of ... Company for 2018 and 2019, upon reviewing the annual tax return, we found a payment of SAR (977,121). However, the remaining balance of SAR (268,091.95) has not been paid by the Taxpayer. Since a meeting was held with the Taxpayer and it was requested to provide payment documents, which it failed to do, we find it necessary to reject the Taxpayer's objection and request the payment of withholding tax for 2018 of SAR (268,091.95). According to the annual tax return for 2018, a total of SAR (1,295,138) was shown (How was it withheld in 2018 and charged in 2019?). There is also an exchange rate difference of SAR (1,563), for which the Taxpayer did not provide



documents. A meeting was held with the Taxpayer, and it was requested to provide invoices and payment documents. The Taxpayer provided these documents along with a statement for 2018. The invoice and payment were indeed found to be in 2018. Therefore, its objection was accepted after verifying the withholding tax return. Regarding the exchange rate difference, comparing the total amount paid to the Company of SAR (2,130,654), we believe that the exchange rate difference is acceptable. As for the fifth item: Withholding tax on transactions of ... Company for 2018, the Plaintiff failed to provide the necessary documents. A meeting was held with the Taxpayer, and it was requested to submit invoices for verification, but it failed to do so. Therefore, we find it necessary to reject the Taxpayer's objection and request the payment of the withholding tax of SAR (1,648,493). As for the sixth item: Withholding tax on transactions of ... Company for 2018. The Taxpayer did not provide any documents and failed to make the payment for these transactions. A meeting was held with the Taxpayer, and it was requested to provide proof of payment. Although the Taxpayer provided invoices ..., it failed to provide proof that the withholding tax had been paid. Therefore, we find it necessary to reject the Taxpayer's objection and request payment of the withholding tax amounting to SAR (162,291). As for the seventh item: Withholding tax on transactions of ... Company for 2019, it was found that an amount of SAR (1,867,917) for ... Company was included in the 2018 annual return, and an amount of SAR (432,545) was included in the 2017 annual return. (How was it withheld in withheld in 2017 and 2018 and then charged in 2019?). Additionally, there was an exchange rate difference of SAR (388,759), for which no supporting documents were provided. A meeting was held with the Taxpayer, and it was requested to provide invoices and payment documents. The Taxpayer provided these documents along with a statement for 2018. The invoice and payment were indeed found to be in 2018. Therefore, its objection was accepted, as we verified from the withholding tax return for 2017 and 2018 that these amounts were declared and paid. The Taxpayer stated that the reason for recording them in a later year was that they were not recorded in their respective years, hence charged in 2019. Regarding the exchange rate difference, comparing the total amount paid to the Company of SAR (4,297,703), we find that the exchange rate difference, which represents 9%, is considered significant. Therefore, we rule to reject the objection regarding the exchange rate difference and request payment of withholding tax to SAR (388,759). As for the eighth Item: Withholding tax on transactions of ... Company for 2019. According to the 2018 annual return, a total amount of SAR (1,365,985) was shown (How was this withheld in 2018 and then charged in 2019?). Additionally, there was an exchange rate difference of SAR (1,261), for which no supporting documents were provided. A meeting was held with the Taxpayer, and it was requested to provide invoices and payment documents. The Taxpayer provided these documents along with a statement for 2018. The invoice and payment were indeed found to be in 2018. Therefore, its objection was accepted, as the withholding tax return was verified. Regarding the exchange rate difference, comparing the total amount paid to the Company of SAR (1,655,730), we believe that the exchange rate difference is acceptable. As for the ninth item: Withholding tax on transactions of ... Company for 2019. According to the 2018 annual return, a total amount of SAR (1,721,771) was shown. A meeting was held with the Taxpayer, and it was requested to provide payment documents for an amount of SAR (312,141). The Taxpayer provided these documents; therefore, its objection is accepted, as we verified the withholding tax return. As for the tenth item: Withholding tax on transactions of ... Company for 2019. A meeting was held with the Taxpayer, and it was requested to provide payment documents for an amount of SAR (170,121). The Taxpayer provided these documents; therefore, its objection is accepted. Regarding the exchange rate difference, comparing the total amount paid to the Company of SAR (2,257,228), we believe that the exchange rate difference is acceptable. As for the eleventh item: Withholding tax on



transactions of ... Company for 2019. Regarding the exchange rate difference, comparing the total amount paid to the Company of SAR (21,820,248), we believe that the exchange rate difference is acceptable. As for the twelfth item: Late Payment Fines: Late payment fine was imposed on unpaid tax differences after the due date. The Defendant maintains the correctness of its action.

On Tuesday, 22/11/1443 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant. Having called parties to the Case; Ms., ID No.(...), appeared in her capacity as the Plaintiff's Attorney, under POA No. (...); and Mr. ID No. (...), in his capacity as Representative of the Defendant/ ZATCA, by virtue of Authorization No. (...), dated .../.../..., issued by ZATCA's Deputy Governor for Legal Affairs. Having asked parties to the Case whether they had further statements, they answered "no". Accordingly, the Department decided to close pleadings and adjourn the Case until Wednesday, 29/06/2022, for issuance of a judgment.

On Wednesday, 30/11/1443 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant. Having called parties to the Case; Ms., ID No.(...), appeared in her capacity as the Plaintiff's Attorney, under POA No. (...); and Mr. ID No. (...), in his capacity as Representative of the Defendant/ ZATCA, by virtue of Authorization No. (...), dated .../.../..., issued by ZATCA's Deputy Governor for Legal Affairs. The session was dedicated to issuing the decision after deliberation.

Grounds:

Having perused Zakat Law promulgated by Royal Order No. (17/28/577) of 14/03/1376 AH, as amended, and Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and 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,

In Form: The Plaintiff instituted this case to cancel ZATCA's decision regarding tax assessment for December 2018 and 2019. Since this dispute is considered a tax dispute that falls 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 given that the Case was filed with valid grounds, by an eligible party, and within the legally prescribed period, the case is to be accepted in form.

On Merits: Having examined the case papers and documents as well as the requests, defenses and pleas presented by its parties, the Department found that the Plaintiff disputes tax assessment for December issued by the Defendant for 2018 and 2019. The Plaintiff's objection is specifically against the following twelve items:

Item First: Withholding tax on transactions of ... Company for 2018 and 2019:

The Plaintiff's objection lies in the Defendant's imposition of an additional withholding tax for 2018 and 2019. However, the Defendant has asserted that a payment of SAR (295,984) has been verified. Regarding the exchange rate difference, upon comparing the total amount paid to the Company during 2018 and 2019, the exchange rate difference is found to be acceptable.

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" Additionally, Article (70.1) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates 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”: and

Based on the foregoing, and given that the dispute has ended with the Defendant's acceptance of the Plaintiff's claims as stated in the Defendant's Reply, which includes the statement: “Upon comparing the total amount paid to the Company in 2018 of SAR (505,945) and in 2019 of SAR (1,837,685), we find that the difference in the exchange rate is acceptable”. As such, the Department believes it is necessary to establish that the dispute has ended.

Item Second: Withholding tax on transactions of ... Company for 2018:

The Plaintiff is objecting to the Defendant's action of subjecting the loan to a withholding tax of SAR (366,633). However, the Defendant has claimed that only SAR (139,312) was actually paid. Furthermore, the Defendant has requested the Plaintiff to provide the loan documents, but the Plaintiff has failed to do so.

Article (63.1) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH states as follows: “A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Loan proceeds at 5%”. In addition, Article (57.3) of the Implementing Regulations of the Income Tax Law states that: “The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information”.

Based on the foregoing, upon reviewing the new data submitted by both parties, and considering that withholding tax is imposed on the total amount of proceeds from loans and not on the principal amount of the loan itself, and considering that the dispute centers on the total financing costs and what portion thereof is subject to withholding tax and what has been paid, and considering that the Plaintiff has submitted the loan documents, namely a copy of the financing agreement and a withholding tax statement confirming the payment of withholding tax on loan proceeds, and considering that the total principal amount of the loan is not subject to withholding tax, but rather the proceeds from the loan, as a source in the Kingdom, are subject to withholding tax, and considering that the Plaintiff has submitted supporting documents; the Department therefore concludes by canceling the Defendant's decision regarding item (Withholding tax on transactions of ... Company).

Item (3): Withholding tax on transactions of ... Company for 2018:

The Plaintiff's objection to the Defendant's action centers on the imposition of withholding tax on transactions between the Plaintiff and ... Company on the grounds that they were technical and consulting services. However, the Defendant has claimed that the Plaintiff was requested to provide payment documents but failed to do so.

Article (57.3) of the Implementing Regulations of the Income Tax Law states: “The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information”.



Based on the foregoing, Upon reviewing the data submitted by both parties, and considering that the Plaintiff has provided documents consisting of a copy of invoices showing the name of the service provider and payment receipts, as well as an annual withholding tax return for 2018, and considering that the Defendant has accepted the Plaintiff's claim based on the content of the letter issued by the Defendant in Reply (2) which states: "Upon verification, it is evident that the withholding tax of SAR (32,164) has been paid; therefore, the Taxpayer's objection has been accepted". As such, the Department believes it is necessary to establish that the dispute has ended.

Item (4): Withholding tax on transactions of ... Company for 2018 and 2019:

The Plaintiff is objecting to the Defendant's action of subjecting the transactions to withholding tax for 2018, on the grounds that they were technical and consulting services. However, the Defendant has claimed that the Plaintiff was requested to provide payment documents but failed to do so.

Article (57.3) of the Implementing Regulations of the Income Tax Law states: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information".

Based on the foregoing, and considering that the Plaintiff has failed to provide payment documents, the Department therefore concludes by rejecting the Plaintiff's objection to withholding tax for 2018 and 2019.

Item (5): Withholding tax on transactions of ... Company for 2018:

The Plaintiff's objection to the Defendant's action centers on the imposition of withholding tax on transactions with ... Company on the grounds that they were technical and consulting services. However, the Defendant has claimed that the Plaintiff was requested to provide payment documents but failed to do so.

Article (57.3) of the Implementing Regulations of the Income Tax Law states: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information".

Based on the foregoing, upon reviewing the data submitted by both parties, and considering that the Plaintiff has failed to provide the invoices related to this item, and has also failed to provide the customs declaration for 2018, which would clarify the imported goods and allow for a verification of the amounts in the declaration against the invoices, and to determine whether the transaction was for a service or a good, the Department therefore concludes by rejecting the Plaintiff's objection.

Item (6): Withholding tax on transactions of ... Company for 2018:

The Plaintiff's objection to the Defendant's action centers on the imposition of a second withholding tax on amounts paid to ... Company. However, the Defendant has claimed that the Plaintiff was requested to provide payment documents but failed to do so.

Article (68.A&C) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the



paid amount according to the following rates: ... C. 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. 3 If he fails to report withholding statements to the Department as stipulated under subparagraph (3) of paragraph (b) of this Article.” Additionally, Article (57.3) of the Implementing Regulations of Income Tax Law states that: “The burden of proof of correctness of information in the taxpayer’s return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department’s opinion based on relevant circumstances and facts and available information”.

Based on the foregoing, upon reviewing the data submitted by both parties, and considering that the Plaintiff has failed to provide a receipt for the tax payment and has also failed to provide the monthly statement in which the transaction was recorded; the Department therefore concludes by rejecting the Plaintiff’s objection.

Item (7): Withholding tax on transactions of ... Company for 2019:

The Plaintiff’s objection to the Defendant’s action centers on the imposition of an additional withholding tax on transactions with ... Company - USA for 2019. However, the Defendant has claimed that the Plaintiff was requested to provide payment documents but failed to do so.

Article (57.3) of the Implementing Regulations of the Income Tax Law states: “The burden of proof of correctness of information in the taxpayer’s return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department’s opinion based on relevant circumstances and facts and available information”.

Based on the foregoing, Upon reviewing the data submitted by both parties, and considering the exchange rate dispute raised by the Defendant, and given that the Plaintiff has failed to provide any documents supporting this difference, such as invoices, details of the currency conversion rate, and the creditor’s invoice notification (for a sum of \$59,967.50), within the Case file; the Department therefore concludes by rejecting the Plaintiff’s objection to the exchange rate difference of SAR (388,759).

Item (8): Withholding tax on transactions of ... Company for 2019:

The Plaintiff’s objection to the Defendant’s action centers on the imposition of an additional withholding tax on transactions with ... Company for 2019. However, the Defendant has accepted the Plaintiff’s objection as the withholding tax return was verified. Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" Additionally, Article (70.1) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates 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”: and



Based on the foregoing, and given that the dispute has ended with the Defendant's acceptance of the Plaintiff's claims as stated in the Defendant's Reply, which includes the statement: "Therefore, we accept the Plaintiff's objection as we have verified the withholding tax return. As for the exchange rate difference, and upon comparing the total amount paid to the Company of SAR (1,655,730), we find that the exchange rate difference is acceptable". As such, the Department concludes that the dispute has been resolved.

Item (9): Withholding tax on transactions of ... Company for 2019:

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" Additionally, Article (70.1) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates 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": and

Based on the foregoing, and given that the dispute has ended with the Defendant's acceptance of the Plaintiff's claims as stated in the Defendant's Reply, which includes the statement: "Therefore, we accept the Plaintiff's objection as we have verified the withholding tax return" As such, the Department believes it is necessary to establish that the dispute has ended.

Item (10): Withholding tax on transactions of ... Company for 2019:

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" Additionally, Article (70.1) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates 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": and

Based on the foregoing, and given that the dispute has ended with the Defendant's acceptance of the Plaintiff's claims as stated in the Defendant's Reply, which includes the statement: "Therefore, we accept the Plaintiff's objection as we have verified the withholding tax return. As for the exchange rate difference, and upon comparing the total amount paid to the Company of SAR (2,257,228), we find that the exchange rate difference is acceptable". As such, the Department concludes that the dispute has been resolved.

Item (11): Withholding tax on transactions of ... Company for 2019:

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" Additionally, Article (70.1) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates 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": and



Based on the foregoing, and given that the dispute has ended with the Defendant's acceptance of the Plaintiff's claims as stated in the Defendant's Reply, which includes the statement: "Regarding the exchange rate difference, and upon comparing the total amount paid to the Company of SAR (21,820,248), we find that the exchange rate difference is acceptable". As such, the Department concludes that the dispute has been resolved.

Item (12): Late Payment Fines:

The Plaintiff is objecting to the Defendant's action of imposing a late payment fine, arising from the tax difference. However, the Defendant argued that a late payment fine was imposed on the unpaid tax differences that were not settled within the prescribed time.

Article (77.A) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states as follows: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment" and in accordance with Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: B. Delay in payment of the tax payable as per ZATCA's assessment" Article (67.3) of the Implementing Regulations of Income Tax Law states that: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by ZATCA, ' as stated in Paragraph (2) of Article (71)) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment".

Based on the foregoing, and after reviewing case file and its included defenses and documents, since the late payment fine is calculated as of end of the deadline for submitting the return to the date of payment of due tax, in accordance with application of Law provisions and the adjustments made by the Defendant, and considering that the dispute between the parties is based on documentation rather than a significant difference in the interpretation of the legal texts, the Department therefore concludes to amend the Defendant's decision to impose a late payment fine from the due date on the items for which the Plaintiff's objection was rejected, and waive the late payment fine on the items for which the dispute between the Plaintiff and the Defendant has been resolved due to extinction of the original tax liability.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: In form:

Accept the objection filed by the Plaintiff/ ... Ltd. Co., (CR. No..) Against the decision made by the Defendant/ ZATCA.

Second: On merits:

- 1- Confirm resolution of the dispute concerning item (Withholding tax on transactions of ... Company).
- 2- Cancel the Defendant's decision concerning item (Withholding tax on transactions of ... Company).
- 3- Confirm resolution of the dispute concerning item (Withholding tax on transactions of ... Company).
- 4- Confirm resolution of the dispute concerning item (Withholding tax on transactions of ... Company).
- 5- Confirm resolution of the dispute concerning item (Withholding tax on transactions of ... Company).



- 6- Confirm resolution of the dispute concerning item (Withholding tax on transactions of ... Company).
- 7- Confirm resolution of the dispute concerning item (Withholding tax on transactions of ... Company).
- 8- Amend the Defendant's decision regarding item (Late Payment Fine).
- 9- Dismiss all other objections.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-
1201)

Issued in Case No. (W-
39314-2021)

Keywords:

Withholding Tax - Tax Assessment - Withholding Tax Difference - Late Payment Fines- Unpaid tax differences not settled by due date - Failure to submit detailed movement to the relevant parties - Rejection of Plaintiff's Objection.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding tax assessment for 2016 AD with respect to the following two items: Withholding tax difference and Late payment fines. In response, ZATCA stated that regarding the first item the Plaintiff did not submit a detailed movement to the relevant parties who provided it with services. As for the second item, ZATCA replied that it imposed a late payment fine on the unpaid tax differences that were not settled on due date. The Department established that, with regard to the first item, these amounts were paid to related parties, and with regard to the second item, it established that the imposition of fines was a result of the disputed items. Therefore, the Department ruled to Dismiss the Plaintiff's objection. The decision shall be final and enforceable.

Instruments:

- Article (60.B), (68.A), (76.C), (77.A, B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (63), (67.3), (68.1.b), (71.2), (77.a) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 20/07/2022, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended and formed by Royal Order No. (65474) of 23/12/1439 AH, held its session via video conference to consider the above-mentioned Case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number on 28/02/2021.

The facts of this Case are summed up as follows: the Plaintiff/ ... Company, CR. No.(...), filed an objection to the tax assessment for 2016, and limited its objection to the following items:



Item First: (Withholding tax difference). The Plaintiff bases its objection on the Defendant imposing a withholding tax on technical services from related parties and equipment rental amounting to SAR (4,905,284) and SAR (6,132,490) for 2016, respectively. The Plaintiff argues that it records all expenses when they are incurred according to the accrual basis of accounting, not the cash basis, in line with accounting standards. Therefore, the technical services amounting to SAR (4,905,284), and the equipment rental amounting to SAR (6,132,490), represent expenses that were recognized during 2016, according to the accrual basis, and include both paid and accrued expenses. The Plaintiff further argues that withholding tax is due when a payment is made to a non-resident from any source in the Kingdom for services, not when the invoice is issued. The Plaintiff relies on Article (63.9) of the Implementing Regulations of the Income Tax Law in support of its claim. The Plaintiff added that it had withheld tax from the amounts paid to non-resident parties for their services provided to the Company, and monthly returns were submitted and paid amounting to SAR (683,941) for services amounting to SAR (4,559,609). With regard to the remaining portion of the value of the technical services amounting to SAR (345,678), these are amounts due that have not been paid to the suppliers, and withholding tax will be remitted when the amounts are paid to the non-resident parties.

Item Second: (Late payment fines): The Plaintiff bases its objection on the defendant imposing a late payment fine on the disputed item, the Plaintiff therefore requests to cancel the Defendant's action.

Having presented the statement of claim to the Defendant, it responded with a memorandum summarized as follows: 1. Regarding the Plaintiff's objection to the withholding tax item for the disputed years: The Defendant explains that during the examination phase, it requested an analytical statement detailing the opening balances, debit and credit movements, and closing balances for transactions with related parties at the level of each party, with a clarification of the nature of the transaction. Accordingly, the amounts that were not previously subject to withholding tax by the Plaintiff were subjected to tax. During the review of the objection, the Plaintiff stated that all expenses are recognized when they are incurred according to the accrual basis of accounting in accordance with the adopted accounting standards, and that withholding tax on technical services from related parties is withheld upon actual payment and remitted directly to ZATCA. Therefore, the Defendant requested from the Plaintiff a statement of withholding tax showing the opening balance, credit and debit movements, and closing balance, along with the submission of paid withholding tax returns for subsequent periods. Upon reviewing the submitted data, it was found to be a statement showing the amounts from which the Taxpayer withheld tax and the month in which the withholding occurred. The Plaintiff did not submit a detailed movement for the related parties who provided it with services; therefore, it is not possible to verify that the amounts withheld by the Plaintiff are the total amounts paid in those periods; accordingly, the Defendant rejected the Plaintiff's objection based on Article (57.3) of the Implementing Regulations of the Income Tax Law. 2. Regarding the objection to the late payment fine: The Defendant explains that it imposed the late payment fine on the unpaid tax differences not settled at the due date based on Article (77.A) of the Income Tax Law, and Article (68.1.b) of the Implementing Regulations of the Income Tax Law. The Defendant insists on the correctness of its action, and requests rejection of the Case.

On Wednesday, 20/07/2022 AD, the Department held its session remotely to hear the case. The session was attended by Mr. ..., ID No.(...), acting as the Plaintiff's Attorney pursuant to POA No. (...), and Mr. ..., in his capacity as the Defendant's representative by virtue of Authorization No. (...). Accordingly, the Department decided to open pleadings. Having asked the Plaintiff's Attorney about the claim, he answered: "I object to the



withholding tax and late fine for 2016 and satisfy solely with the statement of claim uploaded on the portal of the General Secretariat of Tax Committees, maintaining the defenses raised therein.” Having presented the same to the Defendant’s Representative, he answered: “I rely on the memorandum uploaded on the portal of General Secretariat of Tax Committees, maintaining the defenses raised therein.” When both parties were asked if they wished to add anything further, they responded that they were satisfied with their previous submissions. Accordingly, the Department closed the pleading and adjourned the Case for review and deliberation.

Grounds:

Having perused the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH as amended, its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended and Rules of Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH,

In form: The Plaintiff instituted this case to cancel the Defendant’s decision regarding the tax assessment for 2016, and since this dispute is considered one of the tax 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 given that the Case was filed with valid grounds, by an eligible party, and within the legally prescribed period, the Case is to be accepted in form.

As for **the merits of Case**, upon careful consideration of the case file and the requests and arguments of the parties, the Department finds as follows:

Regarding item (Withholding tax difference), the dispute lies in the Plaintiff’s objection to the Defendant’s action of imposing withholding tax on technical services. The Plaintiff argues that it has recognized expenses when they occur in accordance with accounting standards, and adds that withholding tax is due when a payment is made to a non-resident from any source in the kingdom for services, not when an invoice is issued, while the Defendant argues that the Plaintiff has not provided a detailed movement of the related parties who provided it with services; therefore, it is not possible to verify that the amounts withheld by the Plaintiff are the total amounts paid in those periods.

Article (68.A) of the Income Tax Law states: “A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates”. Additionally, Article (63.1) of the Implementing Regulations of the Income Tax Law stipulates: “A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates”.

Upon reviewing the Case file, it was found that the Plaintiff does not dispute the fact that these payments made to non-resident entities are subject to withholding tax. Rather, the Plaintiff argues that these amounts are subject to withholding tax when the actual payment is made. Upon reviewing the defenses and documents included in the Case file, it was found that these amounts were paid to related parties, which leads the Department to conclude that the Defendant’s action in this matter is correct and valid, and is in accordance with Article (68) of the Income Tax Law and Article (63) of the Implementing Regulations of the Income Tax Law. The Plaintiff’s argument that the actual payment must occur is not valid in this case; since these are transactions with related parties, and are conducted according to the adopted accounting standards, settlement and clearing made between them, rendering them as an actual payment.

Regarding item (Late payment fines): The dispute lies in the Plaintiff’s objection to the Defendant’s action of imposing a late payment fine on the disputed item, while the



Defendant argues that its decision was in accordance with the provisions of Article (77.A) and Article (68.1.b) of the Implementing Regulations of the Income Tax Law.

Article (60.B) of the Income Tax Law, regarding Declarations, states: “The tax declaration shall be filed within 120 days following the end of the taxable year for which the declaration was made”. Additionally, Article (76.C) of the same Law, regarding Fines for Failure to File the Declaration, states: “Unpaid tax shall mean the difference between the amount of tax due under this Law and the amount paid on the date specified by law under Article 60(b) of this Law”. Article (77.A) of the same Law, regarding Delay and Fraud Fines, states: “In addition to the fines stipulated in Article (76) of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”.

Moreover, Article (67.3) of the Implementing Regulations of the Income Tax Law states: “Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by ZATCA, as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment”. Furthermore, Article (68.1) of the same Implementing Regulations states the following “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases:

(b). Delay in payment of due tax as per the Department’s assessment.

(e) 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”.

Based on the foregoing, it is evident that the tax is calculated from the due date, and the tax is deemed due within 120 days from the end of the taxpayer's fiscal year, which is the due date for submitting the return and paying the tax due in accordance with the provisions of the law and the amendments made by the Defendant. The existence of a difference in the due tax and the Plaintiff's disagreement therewith does not negate the legality of imposing a late payment fine from the due date. Since the imposition of fines is a consequence of the contested items, and since the Department has decided to reject the Plaintiff's objection in the disputed item, the Department concludes by upholding the Defendant's action in imposing the late payment fine.

For those grounds and after deliberation, the Department unanimously decided to:

Decision

First: Accept the case filed by the Plaintiff/ ... Company, C.R. No. (...), against the Defendant/ ZATCA in form, and dismiss it on merits.

This decision was delivered in presence of both parties. The Department set Wednesday, 17/08/2022 AD for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

First Department for Determination Income
Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-
2075)

Issued in Case No. (W-
87442-2021)

Keywords:

Interest transfers with overseas shipping brokers - Subjecting commission transfers with overseas shipping brokers to a 15% withholding tax - Imposing a late payment fine on withholding tax - Burden of proof of correctness of information in the Taxpayer's return rests on the Taxpayer.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax assessment for September 2010 in the following two items. First item: Interest transfers with overseas shipping brokers for September 2010. The Plaintiff objects to the Defendant's action of subjecting commission transfers with overseas shipping brokers to a 15% withholding tax, classifying these as "other payments" in relation to the tax period of September 2010. The Defendant, however, contends that it has correctly applied a 15% withholding tax on these commission transfers as "other payments". Regarding the Second Item: Late payment fine. The Plaintiff objects to the Defendant's action of imposing a late payment fine on withholding tax. The Defendant, on the other hand, argues that the late payment fines were correctly applied to the due and unpaid tax. The regulations support the Defendant's position by stating that ZATCA can, in addition to other fines, disallow any unproven expenses or make estimated assessments. Moreover, the regulations define "unpaid tax" as the difference between the amount paid by the Taxpayer on the due date and the total tax due, including any final adjustments made by ZATCA. Regarding the first item, the Department found that the dispute over the nature of the services performed outside the Kingdom is determined by the documents that clarify the nature of the service and where it was performed. Upon reviewing the documents submitted in the Case file, it became clear that the Plaintiff did not provide any documents to support its claim that the service was for shipping costs rather than commissions. Regarding the second item, Late payment fine is calculated from the deadline for filing return until the date of paying due tax resulting from the application of provisions of the Law and amendments made by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in the interpretation of statutory texts, the Department therefore ruled to: Accept Case in form, and dismiss the Plaintiff's objection. The decision shall be deemed final and enforceable.

Instruments:

- Articles (57.3), (67.3), (71.2) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:





Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 04/09/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) of 15/01/1425 AH as amended, and formed by Royal Order No. (65474) of 23/12/1439 AH, held its session via video conference to consider the above-mentioned Case. Since the Case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number on 22/12/2021 AD. The facts of this Case are summed up as follows: Mr. (...), holding Residence No. In his capacity as the Representative of ..., Global Ltd. Co. CR. No. under the AoA, filed its objection to withholding tax assessment for September 2010 issued by ZATCA. The Plaintiff's objection is limited to two items: Regarding First Item: Interest transfers with overseas shipping brokers for September 2010. The Plaintiff objects to the Defendant's action of subjecting commission transfers with overseas shipping brokers to a 15% withholding tax, classifying these as "other payments" in relation to the tax period of September 2010. The Company also clarifies that during the examination phase, it informed ZATCA via email about the nature of the amounts remitted to the shipping brokers as follows: (1) (Transfers of shipping costs EXWOKS (from the supplier's factory to the foreign port of the supplier's country) (2) Transfers of shipping costs CIF (from the supplier's port to Dammam port) The Company pointed out that the shipping broker receives 50% of its commission on each shipping bill and this commission is included in the shipping invoice. This invoice, which includes (shipping costs + broker's commission), is fully recovered from the local customer as shipping costs. The Company also explains that the aforementioned commission is a small, fixed amount and does not represent a percentage of the shipping costs. For example: \$ (3000) is the shipping cost from the supplier's country to Dammam port, \$ (40) is 50% of the shipping broker's commission, and \$ (3040) is the total shipping invoice that is fully collected from the local customer. The Plaintiff also stated that ZATCA considered the entire foreign transfer to the overseas shipping broker as commissions and not shipping costs, and subjecting it entirely to a 15% tax is incorrect. Therefore, the Company's objection and its request to calculate the tax at a rate of 5% is valid because the nature of these amounts is shipping costs and not commissions, and what is added to the invoice as a broker's commission is around 1% or less depending on the value of the bill. Regarding the Second Item: Late payment fine: The Plaintiff contests the Defendant's decision to impose a late payment fine on the withholding tax.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Interest transfers with overseas shipping brokers in September 2010. The Defendant argued that it had subjected these commission transfers to a 15% withholding tax as "other payments". This is based on the Taxpayer's email response stating that these amounts were transferred as service commissions to the overseas shipping broker, according to Article (63.7) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decree No. (1535) of 1425 AH. After reviewing the Company's financial statements, ZATCA found that the Company's activity is shipping and unloading goods. The Taxpayer's email, provided during the examination phase, confirmed that the nature of the payments was commissions to foreign shipping brokers and not shipping costs. Therefore, ZATCA's action in considering these as "other payments" subject to a 15% withholding tax, based on Article (63.7) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decree No. (1535) of 1425 AH, is correct. As such, ZATCA maintains the validity and correctness of its action.

Regarding the Second Item: Late payment fines. The Defendant stated that late payment fines were imposed on the outstanding tax because the tax was imposed based on clear



provisions stipulated in the Income Tax Law and its Implementing Regulations. Specifically, this is in accordance with Article (77.A) of the Income Tax Law and Article (68.1) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decree No. (1535) on 11/06/1425 H. As such, ZATCA maintains the validity and correctness of its action with regard to rejecting the objection. ZATCA's actions were upheld by Appellate Decision No. (1774) of 1438 AH. Furthermore, ZATCA's actions were also affirmed by the Second Administrative Department of the Court of Appeal in Riyadh in Case No. (3404/Q) of 1439 AH, which was issued regarding the decision of the Nineteenth Administrative Department of the Administrative Court of Riyadh in Case No. (5245/1/Q) of 1438 AH. As such, ZATCA maintains the validity and correctness of its actions.

On Sunday, corresponding to: 04/09/2022 AD, the Department held a remote session to hear the Case, attended by the Plaintiff's Attorney (...), Holder of Residence Permit No. Pursuant to the AOA attached to the Case file. Also, attended the Defendant's Representative, Mr. (...), ID No. appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No..... dated: 04/06/1442 AH. Upon asking both parties to the Case if they had any further statements, they were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) (M/1) of dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) of 11/06/1425 AH , as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) of 21/4/1441 AH, and the relevant Laws and regulations.

In form: the Plaintiff aim by this Case to cancel ZATCA's decision regarding withholding tax assessment for 2010, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) of 21/04/1441 AH. Since the Case was filed by a party with legal capacity and within the prescribed statutory period⁴ it is incumbent upon this Department to accept the Case in form.

On merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of withholding tax assessment for 2010. The Plaintiff's objection is limited to two specific items:

Regarding First Item: Interest transfers with overseas shipping brokers for September 2010. The Plaintiff objects to the Defendant's action of subjecting commission transfers with overseas shipping brokers to a 15% withholding tax, classifying these as "other payments" in relation to the tax period of September 2010. The Defendant, however, contends that it has correctly applied a 15% withholding tax on these commission transfers as "other payments".

It was evident from the Taxpayer's email response that these amounts were transferred as service commissions to the overseas shipping broker. Article (57.3) of the Implementing Regulations of the Income Tax Law states: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make



an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, and since the dispute over the nature of services performed outside the Kingdom is governed by documents that clarify the nature of the service and the place of its performance, and by reviewing the documents submitted, it was found that the Plaintiff did not provide documents supporting its point of view to prove that the service is shipping costs and not commissions, which leads the Department to reject Plaintiff's objection to item Interest transfers with overseas shipping brokers.

Regarding the Second Item: Late payment fines. The Plaintiff objects to the Defendant's action of imposing a late payment fine on the withholding tax, however, the Defendant argued that the late payment fines were imposed on the due and unpaid tax, as the tax was imposed pursuant to clear provisions stated in the Tax Law and its Implementing Regulations. Article (67.3) of the Implementing Regulations of the Income Tax Law states: "the unpaid tax means the difference between what the Taxpayer paid at due date and the tax due for payment under the provisions of the Law, including amendments made by ZATCA that have become final as stated in Article (71.2) of the Implementing Regulations of the Income Tax Law, including disputed cases where the fine is calculated from the due date for submitting the return and payment." Based on the foregoing, and upon reviewing the Case file and its contents of defenses and documents, and since the late payment fine is calculated from the end of the deadline for submitting the return until the date of payment of the due tax arising from the application of the provisions of the law and the amendments made by the Defendant, and since the dispute between the parties is a documentary dispute and did not arise from a significant difference in the interpretation of the provisions of law, the Department decided to reject the Plaintiff's objection to item Late payment fine on withholding tax.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Reject the Plaintiff's objection to item (Interest transfers with overseas shipping brokers).

Second: Reject the Plaintiff's objection to item (Late payment fine on withholding tax).

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

First Department for Determination Income
Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-
2081)

Issued in Case No. (W-
53624-2021)

Keywords:

Withholding Tax - Zakat Assessment - Undeclared Revenue Differences - Technical Services - Insurance premiums subject to withholding tax - Double Taxation - Confirmation.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding zakat assessment and withholding tax for period from (2006 to 2012). The Plaintiff's objection is based on three items. The first item: Undeclared Revenue Differences. This resulted from discrepancies in the terms of sale and delivery between the Ministry's contract with ... Company on one hand, and the contract between its company as a subcontractor and ... Company on the other hand. Item Second: Technical Services. The Plaintiff stated that the nature of support provided in France from 2006 to 2012 consisted entirely of services and expenses incurred in France for French entities. Item (3): Insurance premiums subject to withholding tax. The Plaintiff state that the insurance covers medical insurance for company employees, accident coverage, and vehicle insurance. In response, regarding the first item, ZATCA stated that ZATCA discussed with the Taxpayer the reasons for the discrepancies between the revenues reported in the income statement and the internal purchases. However, the Plaintiff Company failed to provide evidence of these discrepancies based on detailed invoices and accounts. Regarding the Second Item: These costs represent technical support from both within and outside the Kingdom. Technical support from outside the Kingdom originated from the French Republic, and these payments are subject to withholding tax. As for the third item: The Taxpayer declared in the attachments to the tax returns for the disputed years that the insurance premiums were paid to ... Insurance Company; therefore, they represent payments made to third parties. - With regard to the first item, the Department found that: The Plaintiff failed to provide evidence supporting the reasons for the discrepancies. Regarding the Second Item: The Plaintiff failed to provide evidence of the nature of the technical services rendered nor the location where these services were performed, and it was not specified whether these services were subject to the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and France. As for the third item: The Plaintiff failed to provide evidence of the nature of the technical services rendered, nor the location where the services were performed. Accordingly, the Department ruled as follows: Reject the Plaintiff's objection – The decision shall be deemed final and enforceable according to Article (42) of the Tax Dispute and Violation Committee Procedures.

Instruments:



- Article (57.3) of [the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 28/08/2022, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (65474) of 23/12/1439 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 07/06/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), in his capacity as Representative of the Plaintiff (... Co.), for Trading and Contracting, (C.R. No. ...), under the AoA, filed its objection to zakat and withholding tax assessment for the period from (2006 to 2012) issued by ZATCA. The Plaintiff's objection is limited to three items: Regarding First Item: Undeclared revenue differences as per the accounts of ... Company at (SAR 953,319). the Plaintiff contests the Defendant's action. In its statement of objection, the Plaintiff states that the reason for the difference in the terms of sale and delivery between the Ministry's contract and Company on one hand, and the contract between its Company as a subcontractor and ... Company on the other hand is due to the fact that ... Company only records revenue after the customer has received and accepted the spare parts. Similarly, regarding services, the contract between ... and the Ministry differs from that of ... Company, As the contract of ... Company is based on providing services for a fixed amount over a specific period; therefore, revenue is recorded on that basis. However, Company records revenue based on the services and supplies actually provided, hence, the difference in the timing of the revenues. The Plaintiff further adds that when ... Company records revenue before receiving an invoice from Company, it also records an expense for the amounts that Company will invoice in the future to match the revenue with the cost. Consequently, the amounts reported by Company for the years 2009, 2010, and 2011 are amounts that were not invoiced by Company but were instead invoiced by Company in the following years: - 2009 (SAR 5,000,000), 2010 (SAR 6,438,887), and 2011 (SAR 22,652,568).

Regarding the Second Item: Technical services amounting to (SAR 3,727,316) for the period from 2006 to 2012. The Plaintiff contests the Defendant's action and states in its objection that the nature of the support provided in France from 2006 to 2012 consisted entirely of services and expenses incurred in France for French entities, as per the contract. These services and expenses were requirements for the execution of the main contract, which obligated the contractor to provide support for the execution of the contract in France. This included costs and fees for training and qualification in France through training courses and attendance at (seminars) in the technical and manufacturing fields, as well as trainer fees, document translation, attendance at meetings with suppliers, site visits, travel, accommodation, and transportation. It did not include recruiting technicians or technical specialists from France to provide technical support for equipment and systems. Furthermore, the Plaintiff points out that Article (17) of the contract signed between the Ministry of Defense and the French government stipulates as follows: "All present and future taxes, duties, and customs fees payable in France pursuant to the execution of this contract shall be borne solely by the seller and shall be paid directly by the seller to the relevant authorities". Additionally, there is a Double Taxation Avoidance Agreement between KSA and the French Republic, signed on 18/02/1982.



As for the third item: Insurance premiums subject to a withholding tax of. (SAR 17,745). The Plaintiff contests the Defendant's action and states in its objection that the insurance maintained by ... Company purchased from ...Company for Cooperative Insurance in Jeddah covers medical insurance for the Company's employees, as well as accident and vehicle insurance.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Undeclared revenue differences as per the accounts of ... Company at (SAR 953,319). ZATCA has calculated zakat at (SAR 953,319) on the difference in revenues, considering it as undeclared revenues. It was found that the Taxpayer was questioned in a meeting minutes dated 23/06/1436 AH regarding the reasons for the differences between the revenues reported in the income statement and the internal purchases from ... Company ... A Saudi Arabia Company. However, the Plaintiff Company failed to provide reasons for the differences based on detailed invoices and accounts (as shown in the table). Moreover, the Taxpayer did not provide, as part of the objection, a confirmation from ... Company regarding the reasons for the difference between the amounts recorded in the accounts of ... Company and ... Company As such, the Plaintiff's objection was rejected based on the provisions of Article (20.3) of the Regulations for Zakat Collection.

Regarding the Second Item: Technical services at (SAR 3,727,316) for the period from 2006 to 2012. ZATCA has subjected the amounts paid to external parties for technical services to a withholding tax of 5%. Upon reviewing the objection, it was found that these costs represent technical support both from within and outside the Kingdom, and that the technical support from outside the Kingdom is from the French Republic. These payments are subject to withholding tax according to the provisions of Article (63) of the Income Tax Law and Article (68) of its Implementing Regulations, provided that the service is performed for a period exceeding three months within the Kingdom, in accordance with paragraphs (2 and 3) of Article 14 of the Double Taxation Avoidance Agreement between KSA and the French Republic. Therefore, the Plaintiff's objection was rejected based on Article (68) of the Income Tax Law.

As for the third item: Insurance premiums subject to a withholding tax of (SAR 17,745). ZATCA has subjected the amounts paid to external parties for insurance premiums to a withholding tax of 5%. Upon reviewing the objection, it was found that the Taxpayer stated in attachment (5) of the tax returns for the disputed years that insurance premiums were paid to Insurance Company in the Kingdom of Bahrain. Therefore, these represent payments made to external parties from a source in the KSA. Additionally, the Taxpayer stated in the attachments to the objection that these amounts were paid to Company for Cooperative Insurance in Jeddah, but did not provide the signed contracts or payment receipts. Therefore, the Plaintiff's objection was rejected based on Article (68) of the Income Tax Law.

On Sunday, 28/08/2022 AD, the Department held a remote session to consider the Case. At that session, the Plaintiff's Attorney, Mr. (...) was present, national ID No under POA No. (...), and also appeared the Defendant's Representative (...), national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No, dated .../.../... AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation in preparation for issuing a decision.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal



Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff aims with its claim to nullify ZATCA decision regarding zakat assessment for the period from 2006 to 2012. Given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of zakat assessment for the period from 2006 to 2012. The Plaintiffs objections are confined to three specific items detailed as follows:

Regarding First Item: Undeclared revenue differences as per the accounts of ... Company at (SAR 953,319). the Plaintiff contests the Defendant's action. In its statement of objection, the Plaintiff states that the reason for the difference in the terms of sale and delivery between the Ministry's contract and Company on one hand, and the contract between its Company as a subcontractor and ... Company On the other hand. The Defendant argued that it had calculated zakat at (SAR 953,319) on the difference in revenues, considering it as undeclared revenues. Article (57.3) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH stipulates: “3. The burden of proof of correctness of information in the taxpayer’s return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department’s opinion based on relevant circumstances and facts and available information”. Based on the foregoing, and upon reviewing the documents of the Plaintiff and the Defendant, it appears that there is a difference in the timing of revenue recognition. ... Company only records revenue after the customer has received and accepted the spare parts. Similarly, regarding services, the contract between ... and the Ministry differs from that of ... Company, As the contract of ... Company is based on providing services for a fixed amount over a specific period; therefore, revenue is recorded on that basis. However, Company records revenue based on the services and supplies actually provided, hence, the difference in the timing of the revenues. Therefore, it is clear that the Plaintiff must provide confirmation from Company regarding the reasons for the differences. Since the Plaintiff failed to provide such confirmation, the Department ruled to reject the Plaintiff's objection to the undeclared revenue differences according to the accounts of Company.

Regarding the Second Item: Technical services amounting to (SAR 3,727,316) for the period from 2006 to 2012. The Plaintiff contests the Defendant's action and states in its objection that the nature of the support provided in France from 2006 to 2012 consisted entirely of services and expenses incurred in France for French entities, as per the contract. These services and expenses were requirements for the execution of the main contract, which obligated the contractor to provide support for the execution of the contract in France. However, the Defendant argued that it had subjected the amounts paid to external parties for technical services to a withholding tax of 5%. Article (57.3) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH stipulates: “3. The burden of proof of correctness of information in the



taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, and upon reviewing the documents submitted by the Plaintiff and the Defendant, it is evident that the Plaintiff has not provided information regarding the nature of the technical services provided, nor the location where these services were performed, and whether they are subject to the Double Taxation Avoidance Agreement between KSA and France. As such, the Department decided to reject the Plaintiff's objection to technical services for the period from 2006 to 2012.

As for the third item: Insurance premiums subject to a withholding tax of. (SAR 17,745). The Plaintiff contests the Defendant's action and states in its objection that the insurance maintained by ... Company purchased from ...Company for Cooperative Insurance in Jeddah covers medical insurance for the Company's employees, as well as accident and vehicle insurance. However, the Defendant argued that it had subjected the amounts paid to external parties for insurance premiums to a withholding tax of 5%. Article (57.3) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH stipulates: "3. The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, and upon reviewing the documents submitted by the Plaintiff and the Defendant, it is evident that the Plaintiff has not provided information regarding the nature of the technical services provided, nor any evidence of the location where the services were performed, and that it made payments to Company Cooperative Insurance. As such, the Department decided to reject the Plaintiff's objection to insurance premiums subject to withholding tax. For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Reject the Plaintiff's objection to item (Undeclared revenue differences according to the accounts of ... Company).

Second: Reject the Plaintiff's objection to item (Technical services for the period from 2006 to 2012).

Third: Reject the Plaintiff's objection to item (Insurance premiums subject to withholding tax).

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Zakat and Withholding Tax

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2151)

Issued in Case No. (W-45837-2021)

Keywords:

Withholding Tax (Rentals) - Zakat Assessment - Sale of Shares - Capital Gains Tax - Provision for Employee Severance Pay - Book Value - Installment paid upon acquisition of shares - Late Payment Fine - Retained Earnings.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding the Plaintiff's objection to zakat, tax, and withholding tax assessment for 2015. The Plaintiff based its objection on the fact that it had declared the sale of shares and paid the capital gains tax on the sale of these shares, while ZATCA calculated an additional capital gains tax subject to a late payment fine of 1% for every 30 days of delay. The Plaintiff's arguments regarding the capital gains tax are as follows: 1. Payment of capital gains tax is the responsibility of the buyer and seller, not the Company. 2. Profit shares are different from capital shares. ZATCA's rejection of the Company's objection to the calculation of capital gains tax was done without providing any justification. The Plaintiff also asserts that the Company provided supporting documents related to the installment payment made at the time of acquiring the shares. However, ZATCA disregarded the Company's letter of objection. ZATCA considered the ending balance of the provision for employee severance pay as part of the book value, instead of considering the balance as of the actual date of the share sale. The Plaintiff clarifies that the Company had already paid the required withholding tax on the amount paid to a non-resident entity. - In response, Regarding the first item (capital gains tax for 2015), ZATCA stated that the Taxpayer has provided an explanation for the calculation of the sale value, using the same percentage determined by the Company. Additionally, the Taxpayer has submitted a clarifying statement. Regarding the second item (Installment paid upon acquisition of shares), ZATCA did not accept the amount, because the Taxpayer did not provide information about the source of the installment, and there were no supporting documents for the amount. Regarding the third item (Provision for employee severance pay), ZATCA calculated the provision for employee severance pay based on the year-end balance in the financial statements for 2015. Regarding the fourth item (Retained earnings), ZATCA calculated it based on the year-end balance in the financial statements as of 31 December 2015. Regarding the fifth item ((Withholding tax on rentals), ZATCA calculated the withholding tax on rental income because the Taxpayer did not provide supporting documents. Regarding the sixth item (Late payment fine), ZATCA calculated the late payment fine in accordance with Article (77) of the Tax Law and Article (68.1) of the Implementing Regulations of the Tax Law. - The Department found that the sale was completed after the relevant regulation was amended. The Company failed to provide supporting documents for the installment payment made when acquiring the shares. Additionally, certain components of the



Company's income were ineligible for tax or zakat deductions and had to be adjusted against the net profit. Zakat calculation of provisions was also adjusted based on the amount paid during the year from the balance of the provisions at the beginning of the year. The Department dismissed the Plaintiff's claim as no capital gains were calculated for 2015. Furthermore, the Plaintiff only provided a bank statement for a limited period, which did not clearly show the payment of withholding taxes. The Plaintiff also failed to submit supplier transactions and agreements to verify the value of transactions, payments, and the amount of withholding tax. Additionally, the Department upheld ZATCA's decision to impose a late payment fine. Therefore, the Department ruled to: Accept the objection filed by the Plaintiff regarding capital gains tax for 2015 has been accepted, reject the Plaintiff's objection regarding the installment payment upon acquisition of shares, retained earnings, and withholding tax, and amend the Defendant's action concerning the provision for employee severance pay and late payment fine. – This decision shall be deemed final and enforceable according to Article (42) of the Tax Dispute and Violation Committee Procedures.

Instruments:

- Articles (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (16.7.H) of [the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)
- Article (4/9/First) of [the Implementing Regulations of Zakat Law issued by Minister of Finance Resolution No. \(2082\) dated 01/06/1438 AH.](#)
- [Ministerial Resolution No. \(1776\) dated 05/18/1435 AH corresponding to 03/19/2014 AD.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 05/09/2022, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (65474) of 23/12/1439 AH, held its session via video conference to consider the above-mentioned Case. Since the Case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number on 04/04/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), in his capacity as Attorney of Plaintiff/ ... Company, Ltd, C.R. No. (...), under POA No. (...), filed an objection against ZATCA's zakat, tax, and withholding tax assessment for 2015 AD. The Plaintiff's objection is limited to the following six items: Regarding First Item: Capital Gains Tax for 2015. The Plaintiff is contesting the Defendant's action of imposing a capital gains tax on the sale of all shares of the Gulf partners in ... Ltd Company (Partner/... Company which owns 11% of Ltd Company) to Company for Petrochemicals (...) during 2015. The Plaintiff has clarified that the Company declared the sale of shares and paid the capital gains tax on the sale of shares from ... to in accordance with the regulations. However, ZATCA calculated an additional capital gains tax subject to a late payment fine of 1% for every 30 days of delay until the date of payment of the liability. According to ZATCA's calculation, an additional capital gains tax liability has arisen. The Plaintiff's contentions with respect to the capital gains tax are as follows: 1. The responsibility for paying capital gains tax lies with the seller and the buyer, not the



Company. The Plaintiff has clarified that according to Article (16.7.e) of the Implementing Regulations of the Income Tax Law, the responsibility for paying capital gains tax arising from the sale of a non-Saudi partner's share in a resident company is the responsibility of the seller (the exiting partner) and the buyer (the new partner), not the Company (... Ltd Company) Therefore, ZATCA's action of imposing a capital gains tax on ... Ltd Company is unjustified and contrary to the provisions of the Saudi Tax Law. Accordingly, the Plaintiff is requesting the cancellation of the capital gains tax assessment issued against the Company regarding the sale of the non-Saudi partner's share on 30 September 2015, and that the matter be referred to the seller to recover the capital gains tax.

2. Regarding profit shares that differ from capital shares, the Plaintiff is contesting ZATCA's action of calculating the tax for 2015 based on capital shares. The Plaintiff has clarified that profit shares differ from capital shares. ... Ltd Company submitted its tax/zakat return for 2015 based on its AOA, which stated that capital shares and profit shares are different in ... Ltd Company. They are as follows: Capital shares of ... Ltd Company - ... Company for Petrochemicals (...) 76%- ... Ministry - Council 3%- ... Company for Oil Industries, ... 11%- ... Company Arab Company, and Partners Limited (Foreign Partner) 10%. Profit shares of... Ltd Company - ... Company for Petrochemicals (...) 78.52%- ... Ministry - Council 3%- ... Company for Oil Industries, ...11% - ...Company Arab Company, and Partners Limited (Foreign Partner) 7.48%. Based on the foregoing, the adjusted profit was distributed in the tax/zakat return for 2015 based on the partners' profit shares mentioned above for the purpose of calculating tax and zakat as follows: Statement - Profit shares - Capital shares for Saudi/Gulf partners (subject to zakat) – 92.52% - 90% Foreign partner (subject to tax) – 7.48% - 10% The Plaintiff has also provided a copy of the AOA, which confirms that the profit share differs from the capital share as shown above (Attachment 5)..

3. Calculation of capital gains tax on sale of shares. The Plaintiff is contesting the calculation of capital gains tax on the sale of the aforementioned shares, as well as ZATCA's rejection of the Company's objection without providing any justification. Subject to the arguments raised previously, the Plaintiff referred to Article (16.7.b) of the Implementing Regulations of the Income Tax Law, which stipulates that capital gains shall be calculated as follows in the absence of accounts for the taxpayer (seller) on the date of sale of the shares: “If the asset sold is an interest in a capital company, the sale value shall be determined on the basis of the contractual value, the market value or the book value of this interest in the company's books, whichever is higher. The sale value is compared with the cost base to determine the capital gain”. In this regard, the Plaintiff stated that the Company correctly applied the book value as the basis for determining the sale value of the shares, which is consistent with the method used by ... Ltd Company to calculate capital gains. However, when comparing the book value (which is the sale value for calculating capital gains tax) with the cost of the shares, ZATCA did not consider the amount of (SAR 22,530,196) paid by...Company for Oil Industries to ... Company for purchase of the shares.

4. Installment paid upon acquisition of shares at (SAR 22,530,096). The Plaintiff objects to the refusal to allow a deduction for the payment made by... Company for Oil Industries to (...)) when acquiring the shares in 2007. ...Ltd Company firmly believes that since the payment represents an amount paid to purchase shares in 2007, it should be recognized as the purchase cost of the shares.

Regarding the Second Item: The installment paid upon acquisition of the shares amounting to (SAR 22,530,096). The Plaintiff objects to failure to consider the installment paid as part of the cost of the sold shares on the grounds that ... Ltd Company did not provide supporting documents for the payment of the installment. The Plaintiff asserts that the Company provided detailed explanations and positions under point A (2-1) of letters No. (2129-20A) and No. (21-2277), accompanied by supporting documents, regarding the installment paid at the time of the acquisition of the shares. However, ZATCA ignored the



objection letter through which the Company reconciled the shares acquired by... Company for Oil Industries to ... Company Ltd Company, supported by a copy of the bank statement of ... Company for 2007, which shows the amounts of (\$ 16,995,694.44) and (\$ 70,164,305.56), totaling (\$ 87,160,000), equivalent to (SAR 326,850,000), and the reason for receiving these amounts in 2007. Furthermore, the Defendant did not provide any objective justification for not accepting the amount of (SAR 22,530,196) for 2015. Therefore, based on the capital gains tax assessment for 2015, ZATCA did not recognize the aforementioned installment paid by... for Oil Industries to ... Company in 2007 at the time of the acquisition of shares in... in ... Company Ltd Company. ZATCA did not consider the aforementioned amount as a cost incurred by ... for Oil Industries, for the acquisition of shares in ... Company Ltd Company, due to the lack of supporting payment documents showing the amount paid by ... for Oil Industries, for the acquisition of shares in ... Company as well as due to the fact that the aforementioned amount had been recognized as profits in previous years. Accordingly, the Plaintiff clarified that it does not agree with the aforementioned calculation, as the amount of the aforementioned installment is part of the cost incurred by... for Oil Industries, for the acquisition of shares in ... Ltd Company, as shown in the reconciliation of the shares acquired by... for Oil Industries to ... Company Ltd Company and ... Ltd (attached to the statement of objection), The amount of \$87 million was received by ... From ... in exchange for the acquired shares in ... Ltd Company and ... Ltd Company. The Plaintiff referred to the submission of (a copy of the share purchase agreement for ... Company and ... Ltd Company dated 4 September 2007 between ... and (a copy of the bank statement of ... Company for 2007 showing the aforementioned amount and the reason for receiving these amounts in 2007), where ... Company paid (SAR 22,530,196) upon acquisition of shares in ... Company as an installment paid and which was declared as profit in Note (6) of the audited financial statements of ... for 2009. As such, ZATCA must consider it as part of the cost of acquisition of ... of shares in ... Ltd Company. The Plaintiff submitted (a copy of the audited financial statements of ... for 2009 which proves that ... paid the aforementioned amount to ... as part of the acquisition of a share in ... Ltd Company). It is noted that Note (6) of the financial statements is a confirmation from the seller of the shares that they received an amount of (SAR 22,530,196) on account of the installment of the sold shares. The Plaintiff also referred to the submission of (a copy of the minutes of the board meeting of... which shows the approval of a request to reduce the ownership of ... in ... Ltd Company and ... Ltd Company, which included the installment amount of (\$ 14,663,375) (i.e., SAR 54,987,656) as a cost. Therefore, since the total installment paid of (SAR 54,987,656) was distributed between ... Ltd Company and ... Ltd Company in proportion to their equity and advances, the Plaintiff submitted (a calculation of the distribution of the installment paid between ... Ltd Company and ... Ltd Company which was prepared based on the equity amounts and partner advances before the board meeting of in March 2009, where these advances provided by ... in 2009 as a partner in ... Ltd Company were disclosed in Note (17) of the audited financial statements of ... Ltd Company for 2010, which form part of the additional paid-in capital and are actually part of the book value of The Plaintiff submitted (a copy of the general ledger of the advance of ... for 2010 to match the amount of the advance with the aforementioned reconciliation and Note 17). The Plaintiff also pointed out that the excess amount paid and refunded to ... represents an amount refunded by... to of (\$ 4,701,517) (SAR 17,630,689) due to the reduction of the ownership of ... in ... Ltd Company and ... Ltd Company. The Plaintiff submitted (a copy of the amendments/appendices to the share purchase agreement with a total adjusted price of (\$82,458,482), equivalent to (SAR 309,219,308), and a copy of the bank transfer from ... to with a copy of the bank statement confirming that the refunded amount was transferred from ... to in addition to a letter issued by ... to



acknowledging that the difference between the consideration due under the share purchase agreement before the amendment contract was executed (amounting to \$87,160,000) and the consideration due for payment under the share purchase agreement after the amendment contract was executed (amounting to \$82,458,482) is (\$4,701,517) (SAR 17,630,689) in ... Ltd Company and ... Ltd Company. Based on the above information and explanations, the Plaintiff requests the cancellation of ZATCA's calculation of not allowing the deduction of the installment paid from the capital gains tax base for 2015, and the acceptance of the deduction of the installment paid in accordance with the calculation of ... Ltd Company for the capital gains tax for the aforementioned year.

As for the third item: Provision for employee severance pay at (SAR 6,878,445). The Plaintiff objects to ZATCA's calculation of the provision for employee severance pay made in accordance with the financial statements for 2015. The Plaintiff argues that ZATCA has taken into account the closing balance of the provision for employee severance pay paid as of 31 December 2015, as part of the book value instead of considering the balance as of the actual date of sale of the shares, which is 30 September 2015. The Plaintiff stated that the capital gains realized from the sale of all shares of the Gulf partners in ... Ltd Company, namely, Company for Oil Industries (at 11%) in ... Ltd Company to Company for Petrochemicals (...), should be calculated by taking into account the net book value of the Company (equity balance) on the date of sale, i.e., 30 September 2015 (as the sale value) minus the seller's share in the capital and additional capital contributed by the partners (as the cost value) instead of adopting the net book value of the Company at the end of the fiscal year, i.e., 31 December 2015. A copy of the audited financial statements for the period ending 30 September 2015 was submitted. As for the fourth item: Retained earnings amounting to (SAR 221,683,246). The Plaintiff objects to ZATCA's use of the closing balance of retained earnings as of 31 December 2015, amounting to (SAR 221,683,246), as part of the book value, instead of considering the closing balance of retained earnings as of the actual date of sale of the shares, which is 30 September 2015. The Company stated that the capital gains realized from the sale of all shares of the Gulf partners in Ltd Company, namely, Company for Oil Industries (at 11%) in ... Ltd Company to Company for Petrochemicals (...), should be calculated by taking into account the net book value of the Company (equity balance including retained earnings) on the date of sale, i.e., 30 September 2015 (as the sale value) minus the seller's share in the capital and additional capital contributed by the share partners (as the cost value) instead of adopting the net book value of the Company at the end of the fiscal year, i.e., 31 December 2015. Furthermore, the Company indicated that a copy of the audited financial statements demonstrating the retained earnings balance as at the actual date of sale, namely 30 September 2015 was submitted.

Regarding the fifth item: Withheld tax (rentals) at (SAR 2,812,500). The Plaintiff objects to the imposition of a 5% withholding tax amounting to (SAR 2,812,500) on the amounts paid to the non-resident entity (...) for the year ending on 31 December 2015. The Plaintiff explained that ... Ltd Company had previously paid the withholding tax due on the amount paid to the non-resident entity, namely ..., pursuant to the monthly withholding tax return for November 2015. The Plaintiff referred to the submission of (a copy of the monthly withholding tax return for November 2015, which shows that the aforementioned amount was declared and the withholding tax on the amount paid to the aforementioned non-resident entity was calculated and paid). Therefore, the Plaintiff requests the cancellation of the calculation of withholding tax on the amount paid to the non-resident entity, which was declared as the amount paid was previously subject to withholding tax, which was previously paid. Regarding the sixth item: Late payment fine. The Plaintiff objects to the imposition of a late payment fine on the capital gains tax liability and the additional withholding tax arising from ZATCA's assessments for 2015. The late payment fine has



been calculated at a rate of 1% for every 30 days of delay from the due date until the date of the assessment (i.e., 18 October 2020). The Plaintiff explained that no late payment fine should be imposed on the additional tax imposed due to proper compliance of ... Ltd Company with the Tax Law. Moreover, there is an ongoing technical dispute between the parties, and therefore the additional tax should not be subject to a late payment fine. The Plaintiff also referred to a number of appellate decisions that support the calculation of the fine after the completion of the objection and appeal procedures.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Capital gains tax for 2015. The Defendant stated that it had calculated the profits at a rate of 11% for ... Company for Oil Industries, since ... for Oil Industries had sold its share (11%) to Company. ZATCA provided (a clarification of the Taxpayer's calculation of the sale value using the same percentage specified by the Company), in addition to (a statement of clarification from the Taxpayer regarding the share of ... Company for Oil Industries at a rate of 11%). Upon objection, it became clear to ZATCA that the Taxpayer was requesting a calculation based on a profit percentage of (7.48%), which is incorrect, as ... Company has a share of (11%) and sold its entire share to ... Company for Petrochemicals (...). The percentage was calculated by the Company at (11%), as previously mentioned, and this is the correct procedure because what matters is the ownership percentage in the Company. Upon reviewing the case attachments and documents submitted by the Company, the objection was presented, which was clarifications from the financial statements only. It shows the Company's partners as follows: (... Company for Petrochemicals (...)) at a rate of 76%, Ministry of Islamic Affairs, Dawah, and Guidance 3%, Oil Company of Kuwait 11%, ... Company Arab Company and Partners (Foreign Partner) at a rate of 10%). These percentages represent the partners' shares in the capital. These percentages differed in the Company's profits for ... Company to become 78.52% and Company to become 7.48%, while the remaining percentages remained fixed. The Company's justification for this was that ... Company for Industries had sold its share. ZATCA clarified that this change was not included in the AOA to amend the partners' percentages; therefore, reliance should be placed on the percentages stated in the AOA. This applies to both the first and fourth items related to the percentages, and ZATCA's procedure is correct. On Tuesday, corresponding to 18/07/1442 AH, a meeting was held with the Taxpayer's Representative, Director of Zakat and Tax Department at the Company, and he was informed of the procedures followed in assessing the Taxpayer. Therefore, the objection was rejected.

Regarding the Second Item: Installment paid upon acquisition of shares at (SAR 22,530,096). The Defendant responded that it had not accepted the amount; this was due to the Taxpayer's failure to specify the source of the installment and the lack of supporting documents for the amount. After the Taxpayer submitted the supporting documents following the initial assessment, and according to the provided explanation, the amounts realized from the sale in 2009 are realized profits and therefore cannot be deducted as capital paid when purchasing shares in ... Company (the company subject to the objection). Upon objection, on Tuesday, corresponding to 18/07/1442 AH, a meeting was held with the Taxpayer's Representative, Director of Zakat and Tax Department at the Company, and he was requested to provide the trial balance and general ledger page. He presented the documents that had previously been submitted to ZATCA, and therefore the Taxpayer's objection was rejected, in accordance with Article (57.3) of the Implementing Regulations of the Income Tax Law.

As for the third item: Provision for employee severance pay at (SAR 6,878,445). The Defendant stated that it had calculated the provision for employee severance pay at a value of (SAR 6,878,445), based on the year-end balance in the financial statements for 2015. The Taxpayer, however, claims a value of (SAR 6,487,587). Upon objection, on Tuesday,



corresponding to 18/07/1442 AH, a meeting was held with the Taxpayer's Representative, Director of Zakat and Tax Department at the Company, and he was requested to provide a schedule of the provision that details the beginning balance, additions, deductions, and ending balance, as well as the trial balance and general ledger page. He presented the documents that had previously been submitted to ZATCA, and therefore the Taxpayer's objection was rejected. This is in accordance with Article (9.6) of the Implementing Regulations and Article (6.1.2) of Zakat Collection Regulations, respectively.

As for the fourth item: Retained earnings at SAR 221,683,246. The Defendant responded that it had taken the retained earnings based on the year-end balance in the financial statements for the year ending on 31 December 2015. According to the financial statements, the retained earnings amounted to SAR 221,683,246, not SAR 213,827,191 as stated by the Taxpayer. Upon objection, on Tuesday, corresponding to 18/07/1442 AH, a meeting was held with the Taxpayer's Representative, Director of Zakat and Tax Department at the Company, and he was requested to provide the trial balance and general ledger page. He presented the documents that had previously been submitted to ZATCA, and therefore the Taxpayer's objection was rejected. This is in accordance with Article (57.3) of the Implementing Regulations of the Income Tax Law, and Article (4.1.6) of the Implementing Regulations for Zakat Collection.

As for the fifth item: Withheld tax (rentals) at (SAR 2,812,500). The Defendant responded that it had calculated withholding tax on rental income because the Taxpayer had failed to provide supporting documents. Upon reviewing the objection and the Taxpayer's statement, as well as Attachment no. 11 to the objection, no document was found to prove that the Taxpayer had paid withholding taxes. Furthermore, the Company did not provide the supplier's invoice and the agreement to verify the value of the transactions, payments, and the amount of withholding tax. Therefore, ZATCA's procedure is correct, and the Taxpayer's objection was rejected. This is in accordance with Article (68.1) of the Implementing Regulations of the Tax Law, and Article (57.3) of the Implementing Regulations of the Income Tax Law.

As for the sixth item: Late payment fine. The Defendant responded that it had calculated a late payment fine in accordance with Article (77) of the Tax Law and Article (68.1) of the Implementing Regulations of the Tax Law. A late payment fine of 1% is imposed for every thirty days of delay on unpaid tax differences.

On Monday, 05/09/2022, the Department held its session remotely to consider the Case. In this session, the Plaintiff's Attorney (...) appeared, national ID No under POA No. (...), and also appeared the Defendant's Representative (...), national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No..... dated: 04/06/1442 AH. In this session the Department reviewed the statement of claim and found that it was not drafted in a way that clearly stated the items of objection. The Department therefore requested that the Plaintiff redraft the case and specify its claims. The Plaintiff's Representative submitted an annexed memorandum, which the Department reviewed. Having asked both litigants if they had other statements, they responded that they are satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation in preparation for issuing a decision.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax



Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since the Plaintiff filed the Case to abolish the Defendant's decision regarding against zakat, tax, withholding tax assessment for 2015, and since this dispute is a tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed by a person with capacity and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of against zakat, tax, withholding tax assessment for 2015. The Plaintiff's objection is limited to six items as follows:

Regarding First Item: Capital Gains Tax for 2015. The Plaintiff is contesting the Defendant's action of imposing a capital gains tax on the sale of all shares of the Gulf partners in ... Ltd Company (Partner/.... Company For oil industries, which owns 11% of... Ltd Company to Company for Petrochemicals (...), During 2015, However, the Defendant responded that it had calculated profits at a rate of 11% for ... Company for Oil Industries, since ... Oil Company had sold its share (11%) to ... Company. Based on Article (16.7.e) of the Implementing Regulations of the Income Tax Law issued by Minister of Finance's Decision No. (1535) dated 11/06/1425 AH, which states: "7. In the absence of taxpayer's (seller's) legal accounts, capital gains from disposal of an asset shall be determined as follows: (e) The disposing partner shall report the sale to the Department and pay the tax due on the pre-sale period and on resulting capital gains within sixty days from the date of sale. The company and the purchaser, together with the disposing partner, shall be deemed jointly and severally liable to pay any amounts that become due to the Department as a result of this transaction". Based on the foregoing, and upon reviewing the Case file and its accompanying documents, and upon referring to the amendment letter issued by ZATCA, no (024000205784) (attached as Attachment 72 in the system), it is evident that the letter was addressed to ... Ltd Company (the Plaintiff) and included a notice regarding capital gains tax and withholding tax, but no letter was addressed to the selling or buying partners of the shares. The Company (Plaintiff) is not jointly and severally liable with the purchasing or selling partner for the payment of any dues to ZATCA in accordance with Article (16.7.e) of the Implementing Regulations of the Income Tax Law, which obligated the selling partner to notify ZATCA and pay the capital gains tax resulting from the sale, jointly and severally with the purchaser, This provision was approved by Ministerial Decree No. (1776) dated 18/05/1435 AH corresponding to 19/03/2014 AD, whereas previously, before the amendment of the provision, the Company and the purchaser were jointly and severally liable with the seller, but after the aforementioned amendment, the Company is no longer jointly and severally liable for the payment of capital gains tax. It has been proven that the sale was concluded on 30 September 2015, after the amendment of the relevant Article in the Implementing Regulations, therefore, ZATCA's assessment is incorrect and consequently, ZATCA is not entitled to obligate the Taxpayer to pay the capital gains tax. With regard to the Plaintiff's second defense related to partners' percentages (profit shares differ from capital shares), and since the Plaintiff's objection to ZATCA's treatment of capital gains tax has been upheld, therefore, this defense has no impact on this item. As such, the Department accepts the Plaintiff's objection to the capital gains tax item for 2015.

Regarding the Second Item: The installment paid upon acquisition of the shares amounting to (SAR 22,530,096). The Plaintiff objects to failure to consider the installment paid as part of the cost of the sold shares on the grounds that Ltd Company did not provide supporting documents for the payment of the installment. In response, the



Defendant argued that it did not accept the amount due to the Taxpayer's failure to disclose the source of the installment and lack of supporting documents for the amount. Article (16.7.e) of the Implementing Regulations of the Income Tax Law issued by Minister of Finance's Decision No. (1535) dated 11/06/1425 AH, states: "7. In the absence of taxpayer's (seller's) legal accounts, capital gains from disposal of an asset shall be determined as follows: (e) The disposing partner shall report the sale to the Department and pay the tax due on the pre-sale period and on resulting capital gains within sixty days from the date of sale. The company and the purchaser, together with the disposing partner, shall be deemed jointly and severally liable to pay any amounts that become due to the Department as a result of this transaction". Based on the foregoing, and given that the examination in the first item above concluded that the Defendant (ZATCA) has no right to impose capital gains tax on the Company, therefore, the Plaintiff's request to deduct the amounts paid in 2007 when ... Oil Industries Company acquired ... Petrochemicals Company is unfounded. As such, the Department rejects the Plaintiff's objection to item installment paid upon acquisition of shares.

As for the third item: Provision for employee severance pay at (SAR 6,878,445). The Plaintiff objects to ZATCA's calculation of the provision for employee severance pay made in accordance with the financial statements for 2015. The Plaintiff argues that ZATCA has taken into account the closing balance of the provision for employee severance pay paid as of 31 December 2015, as part of the book value instead of considering the balance as of the actual date of sale of the shares, which is 30 September 2015. In response, the Defendant argued that it had calculated a provision for employee severance pay of SAR 6,878,445 based on the year-end balance in the financial statements for 2015, whereas the Taxpayer is claiming a calculation of SAR 6,487,587. Article (4.1.9) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decree No. (2082) dated 01/06/1438 H, states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9. Provisions at the beginning of the year (except for doubtful provisions for banks) after deducting the amounts used during the year". Based on the foregoing, and referring to Note 12 provided in the financial statements ending on 31 December 2015 (Attachment no. 18), it appears that the transactions of the provision for employee severance pay is as follows: 01 January - (SAR 5,913,334) Provision for the year - (SAR 1,050,581) paid during the year - (SAR 255,458) transferred, net - (SAR 66,770) 31 December - (SAR 6,641,687). Therefore, it appears that during the year it amounted to (SAR 1,050,581), which is not deductible for zakat or tax purposes and adjusts the net profit. As for zakat calculation of the provisions, the amount that has completed a full lunar year is added by deducting the amount paid during the year from the beginning-of-year provision balance, resulting in an amount of (SAR 5,687,876) (5,913,334 - 255,458) to be added to zakat base. As for tax purposes, the amount paid during the year of (SAR 255,458) is deducted from the tax base. As such, the Department concludes by amending the Defendant's action regarding the provision for employee severance pay.

As for the fourth item: Retained earnings amounting to (SAR 221,683,246). The Plaintiff objects to ZATCA's use of the closing balance of retained earnings as of 31 December 2015, amounting to (SAR 221,683,246), as part of the book value, instead of considering the closing balance of retained earnings as of the actual date of sale of the shares, which is 30 September 2015. In response, the Defendant argued that it had calculated the retained earnings based on the year-end balance in the financial statements for the year ending on 31 December 2015. According to the financial statements, the retained earnings amounted to (SAR 221,683,246), and not as per the Taxpayer's tax of (SAR 213,827,191). Article (16.7.e) of the Implementing Regulations of the Income Tax Law issued by Minister of Finance's Decision No. (1535) dated 11/06/1425 AH, states: "7. In the absence of taxpayer's (seller's) legal accounts, capital gains from disposal of an asset shall be



determined as follows: (e) The disposing partner shall report the sale to the Department and pay the tax due on the pre-sale period and on resulting capital gains within sixty days from the date of sale. The company and the purchaser, together with the disposing partner, shall be deemed jointly and severally liable to pay any amounts that become due to the Department as a result of this transaction”. Based on the foregoing, it is clear that the Plaintiff is requesting the calculation of capital gains realized from the sale of share in ... Oil Company (at 11%) in ... Ltd Company to Company for Petrochemicals (...), by taking into account the net book value of the Company (equity balance that includes retained earnings) on the date of sale, i.e., 30 September 2015 (as a selling price), minus the selling partner's share in the capital and additional capital contributed by the partners (as a cost), instead of adopting the net book value of the Company at the end of the fiscal year, i.e., 31 December 2015. This request is correct if capital gains are calculated for the Company. However, since the Department concluded in the first item above that the Defendant (ZATCA) has no right to impose capital gains tax on the Company, therefore, the Plaintiff's request is unfounded in the absence of any capital gains calculation for 2015. As such, the Department rejects the Plaintiff's objection regarding the retained earnings item.

As for the fifth item: Withheld tax (rentals) at (SAR 2,812,500). The Plaintiff objects to the imposition of a 5% withholding tax amounting to (SAR 2,812,500) on the amounts paid to the non-resident entity (... , Switzerland) for the year ending on 31 December 2015. In response, the Defendant argued that it had imposed a withholding tax on the rental payments because the Taxpayer had failed to provide supporting documents. Upon reviewing the objection and Taxpayer's statement, as well as Attachment no. 11 included in the objection, no document was found that proves the Taxpayer's payment of withholding taxes. Article (63.1) of the Implementing Regulations of the Income Tax Law stipulates: “1. A non-resident is subject to tax that any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: - Technical or consultancy services or international telecommunications services, except those paid to the head office or affiliated company, rent, ... at a rate of 5%”. Based on the foregoing, and upon reviewing the case file and its contents, including the defenses and documents, the Department found that the dispute centers on the Plaintiff's request to cancel the withholding tax imposed on the rental payment made to a non-resident entity (... , Switzerland). The Plaintiff previously declared the amount paid, which was subject to withholding tax and has been paid. However, upon reviewing the documents referenced by the Plaintiff in (Attachment no. 11), it was found that it only provided a (statement of account for the period from 01/05/2009 to 31/05/2009), which does not clearly indicate the Plaintiff's payment of withholding taxes. Additionally, the Plaintiff did not provide the supplier's transaction and agreement to match the value of transactions, payments, and the amount of withheld tax. Therefore, since the Plaintiff has not provided supporting documents for its claim regarding the payment of the required withholding tax on amounts paid to non-resident entities, the Department has decided to reject the Plaintiff's objection to item withholding tax - rentals.

As for the sixth item: Late payment fine. The Plaintiff is objecting to the imposition of a late payment fine on the capital gains tax liability and the additional withholding tax arising from ZATCA's assessments for 2015. In response, the Defendant argued that it had imposed a late payment fine, in accordance with Article (77) of the Income Tax Law and Article (68.1) of the Implementing Regulations of the Income Tax Law, which imposes a late payment fine of 1% for every thirty days of delay on unpaid tax differences. Additionally, Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states: “In addition to the fines stipulated in Article in Article (76) of this Law and in paragraph (b) of this Article, a Taxpayer shall pay a delay fine of 1% for every



30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on the above, after referring to the case file and the pleas and documents it contains. Whereas the late payment fine is calculated from the end of the deadline for submitting the return to the date of payment of the tax due arising under the application of the provisions of the law and the amendments made by Defendant. Whereas the dispute occurring between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the regulatory texts, it is therefore evident that ZATCA's action in imposing a late payment fine from the due date on the items for which the Plaintiff's objection was rejected is correct. The late payment fine on the items for which the Defendant's decision was cancelled due to the lapse of the original imposition of the tax has lapsed. As such, the Department concludes by amending the Defendant's action regarding the late payment fine as per the grounds mentioned in the decision. For these reasons and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept the Plaintiff's objection to item (Capital Gains Tax for 2015).

Second: Reject the Plaintiff's objection to item (Installment paid upon acquisition of shares).

Third: Amend the Defendant's decision regarding item (Provision for employee severance pay).

Fourth: Reject the Plaintiff's objection to item (Retained earnings).

Fifth: Reject the Plaintiff's objection to item (withholding tax - rentals).

Sixth: Amend the Defendant's decision regarding item (Late payment fine), as per the grounds mentioned in the decision.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by accepting withdrawal from the case under article (33.3) of Rules of Tax Dispute and Violation Committee Procedures).



Income Tax / Withholding Tax

Primary Committee

First Department for Determination Income
Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-
2346)

Delivered in Case No. (IW-
88909-2021)

Keywords:

Withholding Tax on Purchased Software – Late Payment Fine – Failure to Provide Sales Agreement and Evidence on Including Amount within Sales – Unpaid Tax Variances by Statutory Deadline – Failure to Provide an Approved Statement Showing Software Entry as Part of Inventory – Dismissing Plaintiff's Objection.

Abstract

Plaintiff moves for annulling ZATCA decision regarding the withholding tax assessment for October 2017. Plaintiff's objection is limited to two items. Regarding the first item: Withholding tax on purchased software for October 2017: Defendant argued for subjecting purchased software from abroad to a withholding tax of 15%, as it was not included in Taxpayer's customs declarations. In addition, ZATCA asked Taxpayer to provide sales agreement and evidence on including amount in sales, which was not provided. Accordingly, the item was rejected. Regarding the Second Item: Plaintiff objects to imposing late payment fines and requests that such fines are cancelled. On the other hand, Defendant argued that the late payment fines were imposed on unpaid tax variances by the statutory deadline. Regarding the first item, the Department found that Plaintiff did not provide an approved statement that elaborate that the software was recorded as part of inventory, nor did it submit the software supply agreement with the client or invoices related to software purchase to verify that it is not a royalty. Furthermore, Plaintiff failed to provide sales agreement, evidence on including amounts in sales, or invoices of transaction. Therefore, the Department finds that the transaction is subject to a withholding tax 15% and decided to dismiss Plaintiff's objection. Regarding the Second Item: Since the late payment fine is calculated from the deadline for filing return until the date of paying due tax resulting from the application of provisions of the Law and amendments made by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in the interpretation of statutory provisions. Therefore, the Department ruled to: Dismiss the Case filed by Plaintiff, and consider the decision as final and enforceable.

Instruments:

- [Articles \(77.A\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- [Articles \(67.3\), \(68.1\), and \(71.2\) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)
- [Ministerial Resolution No. \(1776\) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution \(1535\) dated 11/06/1425 AH](#)



Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 04/10/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) dated 15/01/1425 AH as amended, and formed by Royal Order No. (13957) dated 26/02/1444 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the prescribed legal requirements. Therefore, the Case was lodged with the General Secretariat of Zakat, Tax and Customs Committees on: 26/12/2021 AD. The facts of this Case are summed up as follows: Mr. (...), Resident Permit No. in his capacity as the legal representative of Plaintiff ... Company LTD, C.R. No. (...), under AOA, filed an objection to ZATCA withholding tax assessment for October 2017. Plaintiff's objection is limited to two items. Regarding the first item: Withholding tax on purchased software for October 2017: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on purchased software for October 2017 amounting to SAR 44,260.35. Plaintiff argues that the purchased software should be treated as inventory for their customers, which is not subject to withholding tax. However, Appellate Committee did not accept this matter. In addition, the software entirely belongs to customers, who are the beneficiaries of this software. Since the transaction falls under inventory category and is not subject to withholding tax. Therefore, Plaintiff requests annulling ZATCA decision. Regarding the Second Item: Late Payment Fine: Plaintiff objects to Defendant's procedure outlined in imposing late payment fine on the above contested items. In its statement of claim, Plaintiff asserted that tax returns were filed within the statutory deadlines and that the late payment fines related to tax variance resulted from errors and differing interpretations, not from any deliberate attempt to avoid paying tax on time. Therefore, Plaintiff moves for annulling any additional tax liability arising from the same, which is not subject to late payment fine.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Withholding tax on purchased software for October 2017: ZATCA imposed a withholding tax of 15% on software expenses amounting to SAR 295,069. ZATCA imposed a withholding tax of 15% on software purchased from abroad, as it was not included in Taxpayer's customs declarations. During a meeting with Taxpayer on 2/11/2021 AD, Taxpayer stated that such software was purchased for a customer within the Kingdom. Accordingly, ZATCA asked Taxpayer to provide sales agreement and evidence on including amount in sales, but Taxpayer did not provide such documents. Thereupon, the item was rejected. Regarding the Second Item: Late Payment Fine: The late payment fine was imposed for failing to pay tax variances by the statutory deadline.

On Tuesday, corresponding to 04/10/2022 AD, the Department held e-hearing session to consider the Case. However, Plaintiff's attorney did not appear, despite of being duly notified of session date. In addition, Defendant's attorney, ..., national ID No. appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated: 04/06/1442 AH. Having taken cognizance of Case file, and since the Case was ripe for adjudication in accordance with provisions of Article (20) Tax Dispute and Violation Committee Procedures, the Department decided to adjourn the session for deliberation in preparation for delivering a decision.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal



Decree No. (M/1) dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH , as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/4/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed its Case moving for annulling ZATCA decision regarding withholding tax assessment for 2017. Given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, the Department found that the Case should be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that Plaintiff objects to withholding tax assessment for October 2017. Plaintiff's objection is limited to two items as follows:

Regarding First Item: Withholding tax on purchased software for October 2017: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on purchased software for October 2017 amounting to SAR 44,260.35 and requests annulling ZATCA decision. On the other hand, Defendant argued that the purchased software from abroad was subject to a withholding tax of 15%, as they were not included in Taxpayer's customs declarations. During a meeting with Taxpayer on 02/11/2021 AD, Taxpayer stated that such software was purchased for a customer within the Kingdom. Accordingly, ZATCA asked Taxpayer to provide sales agreement and evidence on including amount within sales, but Taxpayer did not provide such documents. Thereupon, the item was rejected. Ministerial Resolution No. (1776) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH to be as follows: "First: I: The second and third boxes of the following table included in Paragraph (1) of Article (63) of the Regulations shall be added to be as follows: 1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalty or proceeds: 15%". As such and based on the statements provided by both parties, the Department found that Plaintiff did not provide an approved statement showing that the software was recorded as part of the inventory as claimed. In addition, Plaintiff failed to provide a supply agreement for software to the customer, invoices of purchase transaction to verify that it does not constitute a royalty, or its agreement with the manufacturer. Since Plaintiff did not provide sales agreement, evidence on including amounts within sales, or invoices related to the transaction, the Department found that the transaction is subject to withholding tax at a rate of 15%, and therefore dismissed Plaintiff's objection.

Regarding the Second Item: Late Payment Fine: Plaintiff objects to imposing late payment fines and requests that such fines are cancelled. On the other hand, Defendant argued that the late payment fine was imposed on the unpaid tax variances by statutory deadline. Article (77.A) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states as follows: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment" and in accordance with Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: Delay in payment of due tax as per the Department's assessment". Based on Article



(67.3) of the Implementing Regulations of Income Tax Law stating that: “Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment”. As such, and having taken cognizance of Case file, arguments and documents included therein, the Department found that the late payment fine is calculated as of the deadline for filing return until the date of payment of due tax ensuing under applying provisions of the law and the amendments introduced by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in the interpretation of statutory provisions. Therefore, the Department finds that ZATCA procedure outlined in imposing late payment fine from the due date regarding the item for which Plaintiff’s objection was dismissed.

For these grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss Plaintiff’s objection to (Withholding Tax on Purchased Software for October 2017) item.

Second: Dismiss Plaintiff’s objection to (Late Payment Fine) item.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination Income
Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-59)
Delivered in Case No. (W-
29451-2020)

Keywords:

withholding Tax - Late Payment Fine - Accepting Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding two items, the first of which: ZATCA withholding tax assessment for March and July 2015. Regarding the second item: Late Payment Fine. ZATCA answered that Taxpayer did not provide supporting documents. The statutory provisions stipulate the necessity for filing objection within the statutory period from the date of notification. The Department found, regard the first item, that the Company is a joint-stock company and that the ownership of ... Company at 37.5% is not related, making it subject to withholding tax. Regarding second item, the Department found that the basis for imposing tax. Therefore, the Department ruled to Accept Plaintiff's objection to the two items, and consider the decision as final and enforceable.

Instruments:

- [Articles \(77.A and B\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (63.1), (67.3), (68.1) and (71.2) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) 11/06/1425 AH.](#)
- [Ministerial Resolution No. \(1776\) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 02/01/2022, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, stipulated in Article (67) of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements; therefore, it was lodged with the General Secretariat of Tax Committees under the above-mentioned number dated 28/06/2020 AD.

The facts of this Case are summed up as follows: Mr. (...), holder of National ID No. (...), in his capacity as the attorney of Plaintiff (... Company), C.R. No. (...), under POA No. (...),



filed an objection to ZATCA withholding tax assessment for March and July 2015. Plaintiff objects to Defendant's procedure regarding (Withholding Tax for March and July 2015) item, claiming that ZATCA issued incorrect payment invoices wherein subjected the amounts paid to (...) Company for March and July 2015, including loan interest, to a withholding tax of 15% based on the assumption that it is a related party to (...) Company, while it owns 37.5%. Regarding (Late Payment Fine) item, Plaintiff objects to imposing fine and requests canceling such fine.

Having presented the Case to Defendant, it answered that Taxpayer did not provide supporting documents, including copies of invoices received from the beneficiary, payment and transfer documents to the beneficiary. In addition, Taxpayer had previously paid 5%, and ZATCA adjusted the rate by 10%, bringing the total to 15%, and required Taxpayer to pay tax variance and late payment fine for March and July 2015.

On Sunday, 02/01/2022 AD, the Department held e-hearing session to consider the Case. At that session, Plaintiff's Attorney, ..., national ID No under POA No. (...), and also appeared the Defendant's Representative (...), national ID No appeared by virtue of Authorization issued by ZATCA Vice Governor for Legal Affairs No.: ... dated ... Having asked both parties if they would like to add any documents or statements, they satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation before adjudication.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In form: Since Plaintiff aims with its Case to cancel ZATCA decision regarding withholding tax assessment for March and July 2015. Given that this dispute is a tax dispute, it falls within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, **requests, defenses and arguments** raised by the parties, the Department found that Plaintiff objects to withholding tax assessment for March and July 2015. Plaintiff's objection is limited to two items as follows:

Regarding First Item: Withholding Tax Assessment for March and July 2015: Plaintiff objects to ZATCA procedure, claiming that ZATCA issued incorrect payment invoices wherein subjected the amounts paid to ... Company, for March and July 2015, including loan interest, to a withholding tax of 15% based on the assumption that it is a related party to (...) Company, while, in fact, it holds only 37.5%. On the other hand, Defendant argued that Taxpayer did not provide supporting documents, including copies of invoices received from the beneficiary, payment and transfer documents to the beneficiary. In addition, Taxpayer had previously paid 5%, and ZATCA adjusted the rate by 10%, bringing the total to 15%. Ministerial Resolution No. (1776) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH to be as follows: "First: I: The second and third boxes of the following table included in Paragraph (1) of Article (63) of the Regulations shall be added to be as follows: "(1) A non-resident is subject to



tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: - Any royalty or rent, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... 15% Technical or consultancy services, international telecommunications services other 15% Service amounts paid to the head office or an affiliated company, rent, airline tickets, air cargo or freight transport, profits distributed, loans returns or insurance or reinsurance premiums... 5%". As such, having taken cognizance of documents included in Case, and after reviewing Articles of Association "AOA", it turns out that the Company is a joint-stock company. Having reviewed data of major shareholders on Tadawul website for March and July, it was found that ... Company owns 37.5%, indicating that it is not a related party and is subject to a withholding tax of 5%. Therefore, the Department accepts Plaintiff's objection to (Withholding Tax for March and July 2015) item.

Regarding the Second Item: Late Payment Fine: Plaintiff objects to imposing late payment fine on the contested item. In addition, Defendant argued that it imposed late payment fine in accordance with Article (77) of Income Tax Law and Article (68) of the Implementing Regulations of Income Tax Law. Paragraph (A) of Article (77) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". In addition, Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH 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 due tax as per the Department's assessment". Moreover, Paragraph (3) of Article (67) of the Implementing Regulations of Income Tax Law stipulates: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations including contested cases, where the fine shall be due from the due date for return filing and payment". As such, it turns out through statutory provisions that the late payment fine is imposed on Taxpayer as a result of delay in paying tax due. Since the Department found that the first item related to levying withholding tax on services provided to unrelated parties was incorrect; therefore, the Department concludes that ZATCA procedure related to levying withholding tax is invalid, which results in canceling late payment fine due to invalidity of levying tax. Thereupon, the Department accepts Plaintiff's objection regarding this item.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept Plaintiff's objection regarding (Withholding Tax for March and July 2015) item.

Second: Accept Plaintiff's objection regarding (Late Payment Fine) item.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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



(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2124)

Delivered in Case No. (W-42457-2020)

Keywords:

Withholding Tax – Statute of Limitations – Late Payment Fine – Amending Defendant’s Decision.

Abstract

Plaintiff requests annulling ZATCA decision regarding tax assessment for years from 2012 to 2014 and 2018 regarding three items: Statute of Limitations, Withholding Tax on Licenses and Late Payment Fine. ZATCA answered regarding withholding tax on licenses, stating that the core of transaction indicates that the amounts were paid to non-resident entities in exchange for licenses. Therefore, such amounts should be subject to tax. Regarding late payment fine, ZATCA answered that the fine was imposed on tax variances that were not paid by the statutory deadline. The statutory provisions stipulate the necessity for filing objection within the statutory period from the date of notification. The Department found, regarding the first item, that Plaintiff did not withhold tax on payments made to non-resident entities for the years in question. Regarding the second item, the Department found that the document provided by Plaintiff is an annex to the contract, which was found to be a non-exclusive license agreement. However, Plaintiff did not provide the main agreement to define and classify the nature of work and services rendered by the non-resident entities. Regarding the third item, the Department found that the fine ensued from ZATCA procedure outlined in imposing withholding tax on licenses under the contract. Therefore, the Department ruled to Dismiss the objection filed by Plaintiff to the first and second items, amend Defendant’s decision regarding the third item and consider the decision as final and enforceable.

Instruments:

- **Articles (65.A and B), (68.1), (76.B), (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)**
- **Articles (57.3) and (63) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH](#)**

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 12/09/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) dated 15/01/1425 AH as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements; therefore, it was lodged



with the General Secretariat of Tax Committees under the above-mentioned number dated 19/03/2021 AD.

The facts of this Case are summed up that Plaintiff (...), Resident Permit No. C.R. No. (...), under POA No. (...), filed an objection to ZATCA tax assessment for years from 2012 to 2014 and 2018. Plaintiff's objection is limited to three items. Regarding the first item: Statute of Limitations: Plaintiff objects to Defendant's procedure, arguing that ZATCA is not entitled to make assessment due to expiry of the statutory period stipulated by Paragraph (A) of Article (65). Therefore, Plaintiff requests annulling ZATCA procedure above-mentioned due to expiry of the statutory period for making assessment. Regarding the Second Item: Withholding Tax on Licenses: Plaintiff objects to Defendant's procedure outlined in imposing a withholding tax of 15% on licenses. Plaintiff stated in the statement of claim that purchases of software should not be subject to withholding tax whenever the intention is to resell the software. In addition, the nature of item, according to the contract made by and between the enterprise and the non-resident company, is the purchase and resale of software obtained from the supplier for the purpose of resale within the Kingdom. Therefore, Plaintiff requests the Department to accept the objection to this item and annul ZATCA procedure. As for the third item: Late Payment Fine: Plaintiff objects to Defendant's procedure outlined in imposing late payment fine on the above contested items. In its statement of claim, Plaintiff asserted that tax returns were filed within the statutory deadlines and that the late payment fines related to tax variance resulted from errors and differing interpretations, not from any deliberate attempt to avoid paying tax on time. In addition, Plaintiff relied on ZATCA answer in Frequently Asked Questions "FAQs" section to justify its tax treatment of the item that resulted in imposing withholding tax. Therefore, Plaintiff moves for annulling any additional tax liability arising from the same, which is not subject to late payment fine.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Withholding Tax on Licenses: The core of transaction indicates that these are amounts paid to non-resident entities for licenses. Therefore, such amounts should be subject to a withholding tax of 15% as they constitute royalties for licenses. Regarding the Second Item: Late Payment Fine: The late payment fine was imposed for failing to pay tax variances by the statutory deadline.

On Monday, 12/09/2022 AD, the Department held e-hearing session to consider the Case. At that session, Plaintiff's Attorney, ..., holder of National ID No. (...), appeared under POA No. (...), and also appeared the Defendant's Representative (...), national ID No. appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated ... Having asked both parties if they would like to add further statements or documents, Plaintiff's attorney referred to the supplemental memorandum previously submitted, and both parties stated they were satisfied with the earlier submissions. Therefore, the Department decided to adjourn the session for deliberation in preparation for issuing a decision.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/4/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed its Case moving for annulling ZATCA decision regarding tax assessment for years from 2012 to 2014 and 2018. Given that this dispute is a tax



dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that the dispute involves Defendant's procedure outlined in issuing tax assessment for years from 2012 to 2014 and 2018. Plaintiff's objection is limited to two items as follows:

Regarding First Item: Statute of Limitations: Plaintiff objects to Defendant's procedure, arguing that ZATCA is not entitled to make assessment due to expiry of the statutory period stipulated by Paragraph (A) of Article (65). Therefore, Plaintiff requests annulling ZATCA procedure above-mentioned due to expiry of the statutory period for assessment. Paragraphs (A) and (B) of Article (65) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulate: "The Department may, with a reasoned notification, make or amend a tax assessment within five years of the deadline specified for filing the tax declaration for the taxable year, or at any time, upon the written consent of the taxpayer. B. The Department may make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year if a taxpayer does not file its tax declaration, or it is found that the declaration is incomplete or incorrect with the intent of tax evasion." As such, it turns out that Article (68) of Income Tax Law stipulates that the resident person (Taxpayer) is obligated and responsible for withholding tax from the amounts paid to non-residents and must remit such tax to ZATCA within the prescribed deadlines in accordance with monthly withholding tax returns. Furthermore, Article (65) of Income Tax Law, cited by Plaintiff, directly pertains to the assessments made by ZATCA based on tax returns filed by taxpayers for the taxable year. However, the dispute between the parties involves ZATCA procedure outlined in imposing withholding tax on amounts paid by Plaintiff to non-resident entities, which does not pertain to tax assessments but rather falls under the purview of Article (68) of Income Tax Law and Article (63) of the Implementing Regulations of Income Tax Law. Having taken cognizance of Case file, it turned out that Plaintiff did not withhold tax on payments made to non-resident entities for the years in question contrary to the statutory provisions. Since the resident (Plaintiff) is obligated and responsible for withholding tax from amounts paid to non-residents, and given that there is not statutory provision extinguishes ZATCA right to claim withholding tax after a certain period. Therefore, the Department upholds ZATCA procedure outlined in imposing withholding tax for the years in question and dismisses Plaintiff's objection to this item.

Regarding the Second Item: Withholding Tax on Licenses: Plaintiff objects to Defendant's procedure outlined in imposing a withholding tax of 15% on payments related to software licenses. On the other hand, Defendant argued that the core of transaction demonstrates that such payments were made to non-resident entities as royalties for the licenses. Accordingly, such payments should be subject to a withholding tax of 15% as they qualify as royalties for licenses. stipulates that "Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: Royalty or proceeds: 15%". In addition, Paragraph (3) of Article (57) of the Implementing Regulations of Income Tax Law stipulates: "3. The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment



according to the Department's opinion based on relevant circumstances and facts and available information". As such, and having taken cognizance of documents included in Case file, it turns out that Plaintiff provided an annex to the main agreement for solution provider (the main agreement) entered into with the non-resident entities (... Company) dated September 25, 2015 AD, while the dispute involves years from 2013 to 2018. Accordingly, it turns out that this exhibit provided by Plaintiff is an annex to the agreement made with ... Company, which specifies that it is a non-exclusive license agreement. In addition, Plaintiff did not submit the primary agreement to define and classify the nature of works and services provided by non-resident entities under this agreement to verify whether the concept and definition of royalties apply to the provided services. Given Plaintiff's failure to provide supporting documents, including all agreements made with ... Company, in addition to invoices issued by ... to Plaintiff. Therefore, the Department dismisses Plaintiff's objection to withholding tax on licenses.

As for the third item: Late Payment Fine: Plaintiff objects to Defendant's procedure outlined in imposing a late payment fine on the contested items above-mentioned. On the other hand, Defendant argued that the late payment fine was imposed on tax variances that were not paid by the statutory deadline. Paragraph (A) of Article (77) of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment" and in accordance with Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: (b). Delay in payment of due tax as per the Department's assessment. (e) 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". As such, it turns out from the relevant statutory provisions that the late payment fine is calculated from the date in which tax becomes due by Taxpayer until the date of payment. However, having taken cognizance of Case file, the Department found that the unpaid tax resulted from adjustments to items not governed by explicit statutory provisions, as the fine arose from ZATCA procedure outlined in imposing withholding tax on licenses under the contract. Therefore, the Department amends Defendant's decision regarding the fines by calculating the fine from the date in which Plaintiff was notified of the decision issued in the Case.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss Plaintiff's objection to (Statute of Limitations) item.

Second: Dismiss Plaintiff's objection to (Withholding Tax on Licenses) item.

Third: Amend Defendant's decision regarding (Fines) item by calculating fine from the date in which Plaintiff was notified of the decision issued in the Case.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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



(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2126)

Delivered in Case No. (41139-2020- ZI)

Keywords:

Withholding Tax - Fines - Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding withholding tax assessment for December 2014, June, May, November, December, September and August 2016, April, March and January 2017, April 2018, and April 2019, regarding two items: Withholding Tax and Fines. ZATCA answered, regarding the first item, by stating that Plaintiff did not provide any supporting documents for the objection. Regarding the second item, ZATCA answered that the fine was imposed on tax variances that were not paid by the statutory deadline. The statutory provisions stipulate the necessity for filing objection within the statutory period from the date of notification. The Department found, regarding the first item, that Plaintiff did not provide supporting documents for Plaintiff's objection. Regarding the second item, it shall be subject to what applied to the first item. Therefore, the Department ruled to Dismiss Plaintiff's objection to the two items, and consider the decision as final and enforceable.

Instruments:

- Articles (68) and (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (63) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 29/08/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) dated 15/01/1425 AH as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH,

e-hearing session to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements; therefore, it was lodged with the General Secretariat of Tax Committees under the above-mentioned number dated 10/03/2021 AD.

The facts of this Case are summed up that Plaintiff (...), holder of National ID No. in his capacity as the owner of (... Enterprise), C.R. No. (...), filed an objection to ZATCA withholding tax assessment for December 2014, June, May, November, December, September and August 2016, April, March and January 2017, April 2018 and April 2019. Plaintiff's objection is limited to two items: Regarding First Item: Plaintiff objects to



Defendant's procedure outlined in imposing withholding tax based on findings of field audit dated 08/07/2019 AD. Plaintiff stated that they filed all financial returns, paid all zakat obligations, closed Enterprise's file with ZATCA, and deactivated TIN on 24/07/1440 AH. Plaintiff argued that the withholding tax assessed following the field audit is incorrect and was not recorded based on any supporting documents. Plaintiff emphasized that the Enterprise is based in the Kingdom, all its operations and contracts are conducted within the Kingdom, and it has no contractual relationship with any external entity outside the Kingdom. Plaintiff also noted that the owner has a similar company in ..., United Arab Emirates. Accordingly, Plaintiff requests annulling ZATCA procedure regarding this item.

Regarding the Second Item: Fines: Plaintiff objects to Defendant's procedure outlined in imposing late payment fine on the contested items above-mentioned. In its statement of claim, Plaintiff stated that tax returns were filed within the statutory deadlines and that the late payment fines related to tax variance resulted from errors and differing interpretations, not from any deliberate attempt to avoid paying tax on time. Therefore, Plaintiff moves for annulling any additional tax liability arising from the same, which is not subject to late payment fine.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Withholding Tax: ZATCA stated that it imposed withholding tax based on the findings of the field audit conducted on 08/07/2019 AD, as it turned out that there are amounts paid for consultancy services. In addition, ZATCA relied on provisions of Article (68) of Income Tax Law and Article (63) of the Implementing Regulations of Income Tax Law. Having taken cognizance of Plaintiff's objection, it turned out that no supporting documents for its objection were provided. Thereupon, ZATCA insists on validity of its procedure.

Regarding the Second Item: Fines: The late payment fine was imposed on unpaid tax variances that were not paid by the statutory deadline. In addition, Defendant insists on validity of its procedure.

On Thursday, 28/07/2022 AD, the Department held e-hearing session to consider the Case. At that session, Plaintiff, ..., national ID No (...) appeared. In addition, the representative of Defendant (...), national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated: ... Having asked both parties if they would like to add further statements or documents, Plaintiff's representative requested to review the field audit report dated 08/07/2019 AD, which allegedly indicated amounts paid for consultancy services. Having presenting the field audit report and documents to Defendant's representative, the Department decided dismissing procedural defense raised by Defendant and proceed with the Case on its merits. The Department requested Defendant's representative to upload all relevant documents to the website of the General Secretariat of Zakat, Tax and Customs Committees before the next session. Therefore, the Department decided to adjourn the hearing to a later session, which was set for Thursday, 18/08/2022 AD, 07:00 pm. The session concluded at 08:30 pm.

On Thursday, 18/08/2022 AD, the Department held its e-hearing session to consider the Case. At that session, Plaintiff, ..., national ID No (...) appeared. In addition, the representative of Defendant (...), national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated ... At that session, Defendant's representative provided the required documents, which Plaintiff's representative had not yet reviewed, citing difficulties in accessing them via the website. Accordingly, Plaintiff's representative requested an opportunity for reviewing and responding to the documents. In addition, the Department instructed Plaintiff's representative to provide the response through the website of the General Secretariat of



Zakat, Tax and Customs Committees before the next session. Therefore, the Department decided to adjourn the hearing to a later session, which was set for Sunday, 28/08/2022 AD, 07:00 pm. The session concluded at 08:30 pm.

On Monday, 29/08/2022 AD, the Department held e-hearing session to consider the Case. At that session, Plaintiff, ..., national ID No (...) appeared. In addition, the representative of Defendant (...), national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated: ... At that session, the Department reviewed the memorandum submitted by Plaintiff's representative. Therefore, the Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH as amended, and Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/4/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed its Case moving for annulling ZATCA decision regarding withholding tax assessment for December 2014, June, May, November, December, September and August 2016, April, March and January 2017, April 2018 and April 2019. Given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, the Department found that the Case should be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that the dispute involves Defendant's procedure outlined in issuing withholding tax assessment for December 2014, June, May, November, December, September and August 2016, April, March and January 2017, April 2018, and April 2019. Plaintiff's objection is limited to two items as follows:

Regarding First Item: Withholding Tax: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax based on the findings of field audit dated 08/07/2019 AD. On the other hand, Defendant argued that the withholding tax was imposed pursuant to findings of field audit dated 08/07/2019 AD, as it turned out that there are amounts paid for consultancy services in accordance with Article (68) of Income Tax Law and Article (63) of the Implementing Regulations of Income Tax Law. Having taken cognizance of Case file, all documents provided and in particular field audit report dated: 08/07/2019 AD, the Department found that there are amounts paid for consultancy services to non-resident foreign entities. In addition, Plaintiff did not provide evidence to the contrary in its arguments, as Plaintiff's argument that the reason for the transfers was the suspension of Enterprise's accounts and the request for contractors to issue invoices with the account number of another enterprise outside the Kingdom is unsubstantiated and irrelevant. This does not negate the fact that the non-resident enterprise provided consultancy services within the Kingdom. Therefore, the Department dismisses Plaintiff's objection to the withholding tax.

Regarding the Second Item: Fines: Plaintiff objects to Defendant's procedure outlined in imposing a late payment fine on the contested items. On the other hand, Defendant argued that it imposed late payment fine on tax variances that were not paid by the statutory deadlines. In addition, Paragraph (A) of Article (77) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425AH stipulates: "In addition to



the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be Income Tax Law withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. As such, and having taken cognizance of Case file, arguments and documents included therein, the Department found that the late payment fine is calculated as of the deadline for filing return until the date of payment of due tax ensuing under applying provisions of the law and the amendments introduced by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in the interpretation of statutory provisions. Since the first item was dismissed. Therefore, Plaintiff’s objection is dismissed regarding (Fines) item. For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss Plaintiff’s objection to (Withholding Tax) item.

Second: Dismiss Plaintiff’s objection to (Fines) item.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination Income
Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-
2290)

Delivered in Case No. (W-
48826-2021)

Keywords:

Withholding Tax – Paying Capital Gains Tax Due – Late Payment Fine

Abstract

Plaintiff requests annulling ZATCA decision regarding withholding tax assessment for October 2020. On Merits: The Department found that Plaintiff's objection is confined to three items: Item First: (Withholding Tax) Item: It turned out that Plaintiff's objection involves ZATCA procedure outlined in issuing the withholding tax invoice for October 2020. Plaintiff argues that ZATCA should issue an invoice for capital gains tax instead. In addition, it turned out that Plaintiff declared capital gains through the withholding tax form, and as a result, ZATCA amended the withholding tax form and did not issue a separate invoice for the capital gains tax, as ZATCA does not have procedures for issuing a separate invoice for capital gains tax. Moreover, this procedure does not create any financial obligations for Plaintiff (withholding tax for that period), but it is merely a procedural difference. Therefore, the Department decided to dismiss Plaintiff's objection to this item. Second Item: (Capital Gains Tax Payment Under Objection) item: Plaintiff objected to ZATCA procedure outlined in rejecting Company's objection on the ground of failing to provide an amended share purchase agreement or written consent from the contracting parties confirming the lowest actual sale price of shares. Furthermore, Plaintiff stated that ZATCA did not consider (escrow) agreement as evidence of the amended agreed amount per share purchase agreement. Plaintiff clarified that the value of this agreement is USD 11,080,571 and noted that supporting documents were provided. On the other hand, Defendant argued that it subjected the profits from the sale of outgoing shareholder's shares, as disclosed by Taxpayer, to a capital gains tax of 20% upon assessment. In addition, it turned out that Plaintiff provided an amended agreement to sale price dated 15/08/2021 AD, indicating revisions to the contract price, resulting in a final adjusted purchase price of USD 11,080,571. Moreover, Plaintiff provided a copy of the acknowledgment of receipt of the amount received, confirming share sale price at this adjusted amount. Therefore, the Department accepts Plaintiff's objection and amends Defendant's procedure by considering adjusted purchase price. Third Item: (Late Payment Fine) item: Plaintiff objects to Defendant's procedure outlined in imposing late payment fine and requests its cancellation. On the other hand, Defendant argued that a late payment fine was imposed due to the payable tax variance that was not paid. In addition, the fine was imposed in accordance with Income Tax Law. The Department finds that ZATCA procedure outlined in imposing late payment fine from the due date on the item for which Plaintiff's objection was rejected is valid. However, the fine was deemed invalid on the item where Defendant's procedure was amended, as the basis for imposing tax was nullified. Therefore, the Department ruled to: Dismiss Plaintiff's objection to



(Withholding Tax) item, and amend Defendant's procedure regarding (Capital Gains Tax Payment Under Objection) item and (Late Payment Fine) item.

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 20/09/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article (67) of Income Tax Law issued by Royal Decree No.: (M/1) dated 15/01/1425 AH as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements; therefore, it was lodged with the General Secretariat of Tax Committees under the above-mentioned number dated 26/04/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), Resident Permit No. in his capacity as the representative of Plaintiff (... Company), C.R. No. (...), under the commercial registration, filed an objection to ZATCA withholding tax assessment for October 2020. Plaintiff's objection is limited to three items. Regarding the first item: Withholding Tax: Plaintiff objects to Defendant's procedure, stating that ... Company sold its shares in (...) Company to Company, on September 06, 2020 AD, and amended the Articles of Association "AOA", which were certified on the same date to reflect the new ownership ratios. In addition, the Company informed ZATCA of this amendment and the new ratios through a letter dated November 05, 2020 AD, as indicated by Plaintiff, who claimed to have attached supporting documents provided to ZATCA. Plaintiff asserted that the sale of Company's shares had been completed. Given that ... Company is a non-resident entity and generated income from selling its investments in the Company (a resident company), Plaintiff argued that these profits are subject to capital gains tax rather than withholding tax. Regarding the Second Item: Capital Gains Tax Payment Under Objection: Plaintiff objects to ZATCA procedure outlined in rejecting Company's objection due to failure to provide an amendment to share purchase agreement or written consent from the contracting parties confirming the lowest actual agreed-upon sale price for shares. Furthermore, Plaintiff argued that ZATCA did not consider (escrow) agreement as evidence on the amended amount in accordance with share purchase agreement. Plaintiff clarified that the value of this agreement amounts to USD 11,080,571 and indicated that the supporting documents had been attached. As for the third item: Late Payment Fine: Plaintiff objects to ZATCA procedure outlined in imposing late payment fine of 1% for every 30 days of delay on additional tax amounts. In addition, Plaintiff argued that the tax assessed in the adjustment resulted from ZATCA adoption of a stance contrary to provisions of Income Tax Law and its Implementing Regulations. Plaintiff emphasized that the assessed tax amount did not arise from tax evasion or intentional delay in payment.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Withholding Tax: ZATCA amended Plaintiff's withholding tax return for October 2020 to include capital gains tax disclosed by Plaintiff. Plaintiff's objection involves claim for a separate invoice for the capital gains, independent of assessment invoice issued for October 2020. In addition, ZATCA procedures involve amending Taxpayers' returns of withholding tax and that no separate invoice for capital gains tax is issued. Since the sale transaction was completed in September 2020, the adjustment was made to the subsequent month, October 2020. Regarding the Second Item: Capital Gains Tax Payment Under Objection: ZATCA subjected the profits from sale of outgoing shareholder's shares to capital gains tax at a rate of 20%, based on the disclosure provided by Taxpayer to ZATCA. As for the third item: Late Payment Fine: ZATCA imposed a late



payment fine on tax variance that is unpaid. Since the tax was levied in accordance with Income Tax Law, and ZATCA insists on its position and rejects Plaintiff's objection. On Tuesday, corresponding to 20/09/2022 AD, the Department held e-hearing session to consider the Case. At that session, Plaintiff's attorney, ..., national ID No under POA No. (...), and also appeared the Defendant's Representative (...), national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated: 04/06/1442 AD. Having asked both parties if they would like to add any documents or statements, they satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation before adjudication.

Grounds:



Having reviewed Zakat Law issued by Royal Decree No. (17/28/577) dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/4/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed its Case moving for annulling ZATCA decision regarding withholding tax assessment for October 2020. Given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that Plaintiff objects to withholding tax assessment for October 2020. Plaintiff's objection is limited to three items as follows:

Regarding First Item: Withholding Tax: Plaintiff objects to Defendant's procedure, stating that ... Company sold its shares in (... Company) to ... Company, on September 06, 2020 AD, with AOA amended and certified on the same date to reflect the new ownership ratios. On the other hand, Defendant argued that it amended withholding tax return for October 2020 to include capital gains tax reported by Plaintiff. In addition, Plaintiff stated that its objection involves claim for a separate invoice for capital gains tax rather than the one issued for October 2020. Moreover, ZATCA clarified that its procedures involve amending 'Taxpayers' withholding tax returns and that a separate invoice for capital gains tax is not issued. Since the sale transaction was completed in September 2020, the amendment was made for the following month, October 2020. As such, and having taken cognizance of Plaintiff's memorandum and ZATCA answer, it turned out that Plaintiff's objection involves ZATCA procedure outlined in issuing withholding tax invoice for October 2020. Plaintiff argues that ZATCA should issue an invoice for capital gains tax instead. In addition, it turned out that Plaintiff declared capital gains through the withholding tax form, and as a result, ZATCA amended the withholding tax form and did not issue a separate invoice for the capital gains tax, as ZATCA does not have procedures for issuing a separate invoice for capital gains tax. Moreover, this procedure does not create any financial obligations for Plaintiff (withholding tax for that period), but it is merely a procedural difference. Therefore, the Department decided to dismiss Plaintiff's objection to (Withholding Tax) item.

Regarding the Second Item: Capital Gains Tax Payment Under Objection: ZATCA rejected Company's objection due to failure to provide an amendment to share purchase



agreement or written consent from the contracting parties confirming the lowest actual agreed-upon sale price for shares. Furthermore, Plaintiff argued that ZATCA did not consider (escrow) agreement as evidence on the amended amount in accordance with share purchase agreement. Plaintiff clarified that the value of this agreement amounts to USD 11,080,571 and indicated that supporting documents had been attached. On the other hand, Defendant argued that it subjected the profits from sale of outgoing shareholder's shares to capital gains tax at a rate of 20%, based on Taxpayer's disclosure to ZATCA. As such, and having taken cognizance of Case file, it turns out that Plaintiff provided an agreement of amending sale price dated 15/08/2021 AD, which specified a revised contract price of USD 11,080,571. In addition, Plaintiff provided an acknowledgment of receipt of the amount, which substantiates the sale price of shares at this value. Therefore, the Department accepts Plaintiff's objection and amends Defendant's assessment to account for the adjusted purchase price.

As for the third item: Plaintiff objects to Defendant's procedure outlined in imposing a late payment fine and requests its cancellation. On the other hand, Defendant argued that the late payment fine was imposed on tax variance that is not paid, as the tax was levied in accordance with Income Tax Law. Paragraph (A) of Article (77) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (B) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment" and in accordance with Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: Delay in payment of due tax as per the Department's assessment". As such, the Department finds that Defendant's procedure outlined in imposing late payment fine is valid from the date of accrual for the item where Plaintiff's objection was rejected. However, the late payment fine is invalid for the item where Defendant's procedure was amended, as the underlying tax imposition was nullified. For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss Plaintiff's objection to (Withholding Tax) item.

Second: Amend Defendant's procedure regarding (Capital Gains Tax Payment Under Objection) item according to decision grounds.

Third: Amend Defendant's procedure regarding (Late Payment Fine) item according to decision grounds.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2299)

Delivered in Case No. (W-22965-2021)

Keywords:

Withholding Tax - The burden of proof of the accuracy of Taxpayer's return lies with Taxpayer – ZATCA is entitled to disallow expense not substantiated by Taxpayer or to impose an estimate assessment - The dispute over the nature of payment subject to withholding tax is governed by the documents that clarify its nature – Failure to Provide Supporting Documents – Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding withholding tax assessment for March 2019. Plaintiff grounded its objection on the claim that the amounts paid to a foreign entity, SAR 524,506.70, were for the import of goods. Plaintiff further stated that the amount of SAR 524,507 was erroneously included as a reverse charge in VAT return for Q1 2019. The Department found that the nature of payment subject to withholding tax depends on the documents that clarify its nature. In addition, it was established that Plaintiff failed to provide supporting documents for proving that the amounts paid to foreign entities were for the import of goods rather than for other services. Therefore, the Department ruled to Dismiss Plaintiff's objection, and consider the decision as final and enforceable.

Instruments:

- Articles (57.3) and (63.1) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 20/09/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article (67) of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements; therefore, it was lodged with the General Secretariat of Tax Committees under the above-mentioned number dated 20/08/2020 AD.

The facts of this Case are summed up as follows: Mr. (...), holder of National ID No. in his capacity as Representative of the Plaintiff (... Co.), C.R. No. (...), filed an objection to ZATCA withholding tax assessment for March 2019. Plaintiff's objection is limited to (Withholding Tax for March 2019) item. Plaintiff objects to Defendant's procedure outlined in imposing withholding tax for March 2019 in the amount of SAR



26,225.35. Since the amounts paid to third party, SAR 524,506.70, are payments for the import of goods. Plaintiff further stated that the amount of SAR 524,507 was erroneously included as a reverse charge in VAT return for Q1 2019. Therefore, Plaintiff requests canceling withholding tax

On Tuesday, 20/09/2022 AD, the Department held e-hearing session to consider the Case. However, Plaintiff's attorney did not appear, despite of being duly notified of session date. In addition, Defendant's attorney, ..., holder of National ID No appeared under ZATCA Vice Governor for Legal Affairs POA No. (...) dated ... At that session, Defendant's attorney raised an argument for inadmissibility of the Case in form. Since the Case was ripe for adjudication as per provisions of Article (20) Tax Dispute and Violation Committee Procedures, the Department decided to adjourn the session for deliberation in preparation for delivering a decision.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/4/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed its Case moving for annulling ZATCA decision regarding withholding tax assessment for 2019. Given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves Defendant's procedure outlined in issuing withholding tax assessment for March 2019. Plaintiff's objection is limited to (Withholding Tax for March 2019) item. In addition, Plaintiff objects to Defendant's procedure outlined in imposing withholding tax for March 2019 in the amount of SAR 26,225.35. On the other hand, Defendant did not provide an answer addressing Plaintiff's claims. Paragraph (1) of Article (63) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1438 AH stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Any other payments 15%". Additionally, Article (57.3) of the Implementing Regulations of Income Tax Law states that: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". As such, and given that the nature of payment subject to withholding tax is determined by the supporting documents that clarify its nature, the Department, having taken cognizance of documents included in Case file, finds that Plaintiff did not provide supporting documents that the amounts paid to foreign entities were for the import of goods rather than other services. Therefore, the Department dismisses Plaintiff's objection to (Withholding Tax) item.

For these grounds and after deliberation, the Department unanimously decided as follows:



Decision

- Dismiss Plaintiff's objection to (Withholding Tax) item.

This decision was delivered in presence of the parties in accordance with provisions of Article (56) of the Law of Civil Procedure. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2087)

Delivered in Case No. (W-45779-2021)

Keywords:

Withholding Tax – Royalties – Franchise Rights – Trademark – Unclear Payment Date – Tax Rate

Abstract

Plaintiff requests annulling ZATCA decision regarding its objection to withholding tax assessment for December 2015 and 2017. Plaintiff based its objection on the ground that the amounts in question constitute royalties, asserting instead that they are technical services subject to a tax of 5%. ZATCA answered that it imposed withholding tax on the agreement concluded between the Company in question and ... Company for Manufacturing (...) in return for royalties and trademarks of 15% for December of years from 2015 to 2018, assuming that the payment was made in December due to the lack of clarity regarding the payment date. The Department found that the dispute involves the applicable tax rate on the amounts subject to withholding tax. Therefore, the Department ruled to Dismiss Plaintiff's objection, and consider the decision as final and enforceable.

Instruments:

- Article (63.1) of [the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 05/09/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) dated 15/01/1425 AH as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session via video conference to consider the above-mentioned Case. Since the Case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number on 04/04/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), holder of National ID No. in his capacity as the legal representative of the factory of ... Company C.R. No. under AOA, filed an objection to ZATCA withholding tax assessment for December 2015 and 2017. Plaintiff's objection is limited to the item: Withholding Tax for December of 2015 and 2017: Plaintiff objects to Defendant's procedure outlined in imposing tax of 15% on services as royalties, claiming that such services are technical services, which should be taxed at 5%.



Having presented the statement of claim to Defendant, it answered as follows: Withholding Tax for December of 2015 and 2017: Defendant imposed a withholding tax on the agreement made by and between the Company in question and ... Company for Manufacturing (...) in return for royalty and trademark rights at a rate of 15% for December of years from 2015 to 2018. In addition, Defendant assumed that the payment occurred in December due to unclear payment date. Having reviewed the objection, it turns out that ZATCA based its assessment on the journal entries provided by Taxpayer, assuming that December is accrual month. However, the journal entry for 2016 (31/12/2016 AD) showing an amount of SAR 800,351.1 was an entry of the technical support agreement, not the payment of value. Similarly, the entry for 2018 (30/12/2018) showing SAR 600,450 was the cancellation of the third installment of technical support agreement, rather than the payment of value. In addition, Taxpayer provided a copy of agreement termination confirmation (translated officially), showing that payments were made in three installments: USD 120,000 on 17/10/2015 AD, USD 60,000 on 22/01/2017 AD and USD 60,000 on 28/05/2017 AD, along with a bank statement showing the transfers. However, the agreement termination occurred on 08/12/2020 AD corresponding to 23/04/1442 AH, i.e., after the tax assessment was made. Furthermore, Taxpayer provided withholding tax returns for September 2015, January 2017 and May 2017 for these payments, applying a tax of 5% and settling tax accordingly. It turned out that Taxpayer correctly applied the withholding tax to the amounts, and on the actual payment dates, but at a rate of 5%. On Monday, 05/09/2022 AD, the Department held e-hearing session to consider the Case. At that session, Plaintiff's attorney, ..., national ID No under POA No. (...), and also appeared the Defendant's Representative (...), national ID No appeared by virtue of Authorization issued by ZATCA's Vice Governor for Legal Affairs No.: dated: 04/06/1442 AH. Having asked parties to the Case about if they would like to add further statements or documents, they satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/4/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed its Case moving for annulling ZATCA decision regarding withholding tax assessment for 2015 and 2017. Given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, the Department found that the Case should be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that Plaintiff objects to withholding tax assessment for December of 2015 and 2017. Plaintiff's objection is limited to an item as follows:

Withholding Tax for 2015 and 2017: Plaintiff objects to Defendant's procedure outlined in imposing a tax of 15% on services as royalties, arguing instead that the services are technical and should be subject to a tax of 5%. On the other hand, Defendant argued that it imposed withholding tax on the agreement made by and between the Company in question and ... Company for Manufacturing (...) for royalty and trademark rights at a



rate of 15% for December of years from 2015 to 2018. Defendant assumed that payment occurred in December due to the lack of clarity on the actual payment date. In addition, Paragraph (1) of Article (63) of the Implementing Regulations stipulates: 1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds; payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... 15%". As such, it turns out that the dispute involves the applicable tax rate on the withholding tax amounts. Plaintiff claims that the amounts are for technical services, while Defendant states that such amounts outline royalties. Having reviewed the agreement made by and between Plaintiff and ... Company for Manufacturing, it turns out that Articles (2), (9) and (10) stipulates that a license for trademark was granted, and the agreement also includes technical services. Accordingly, given that Plaintiff did not provide evidence distinguishing between licensing fees and technical services, the entire amounts shall be treated as royalties. Accordingly, the Department dismiss Plaintiff's objection to (Withholding Tax for December of 2015 and 2017) item. For these grounds, and after deliberation, the Department unanimously decides as follows:

Decision

- Dismiss Plaintiff's objection to (Withholding Tax for December of 2015 and 2017) item.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

Appeal Committee:

Appeal Committee has decided to uphold the Department's decision.



(Withholding Tax)

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-2104)

Delivered in Case No. (W-56329-2021)

Keywords:

Withholding tax on dividends to a non-resident shareholder – Disallowing deduction of income tax paid on non-resident shareholder's share - Late Payment Fine – Applying additional withholding tax on tax variances unpaid by the statutory deadline – Withholding tax is imposed on undistributed dividends.

Abstract

Plaintiff requests annulling ZATCA decision regarding tax assessment for 2017 and 2018. Plaintiff's objection involves two items. Regarding the first item: Withholding Tax on Dividends Distributed to a Non-Resident Shareholder: Plaintiff objects to imposing withholding tax on dividends to the non-resident shareholder, disallowing deduction of income tax paid on the non-resident shareholder's share. On the other hand, Defendant argued that the amounts taxed outline dividends to the non-resident shareholder. Item Second: Late Payment Fine: Plaintiff objects to imposing additional withholding tax for failing to pay tax variances by the statutory deadline. On the other hand, Defendant argued that late payment fines were imposed due to the non-payment of tax variances by the statutory deadline. Regarding the first item, the Department found: Since there is no double taxation in ZATCA procedure outlined in imposing withholding tax on dividends distributed to a non-resident, as well as subjecting income of resident enterprise to income tax, as income tax is levied on the net taxable profit resulting from enterprise's operations, while the withholding tax is imposed on the distributed portion of the profits. Since the permanent enterprise of a non-resident is entitled to deduct the withholding tax paid on expenses related to the business activity from the tax owed by the Taxpayer. However, this does not apply to Plaintiff's case, as it seeks to deduct withholding tax paid on dividends distributed to a non-resident shareholder, which is not consistent with the Law. Therefore, the Department dismisses Plaintiff's objection to the first item, in addition to the related matters. Therefore, the Department ruled to Dismiss the Case filed by Plaintiff, and consider the decision as final and enforceable.

Instruments:

- [Articles \(68.A\) and \(77.A\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (63.6.C) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions. ◇



On Wednesday, 14/09/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (26760) dated 14/06/1442 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 24/05/2021 AD.

The facts of this Case are summed up that ..., holder of Passport No. (...), in his capacity as the legal representative of ... Company, and ... and ... For Engineering Consultations, C.R. No. (...), filed an objection to ZATCA tax assessment for May 2017 and December 2018. Plaintiff's objection is limited to two items: Item First: Withholding Tax on Dividends Distributed to a Non-Resident Shareholder: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on dividends to the non-resident shareholder without allowing deduction of income tax paid for non-resident shareholder's share. Plaintiff argues that this contradicts ZATCA guidelines, which state that withholding tax should be calculated on the net dividends, i.e., after deducting tax that has already been paid. In addition, Paragraph (6.C) of Article (68) of Income Tax Law stipulates: "The imposition of income tax on the distributing company does not prevent the withholding tax from being imposed on the amounts distributed by the company" which is governed by calculating the withholding tax after deducting paid income tax.

Item Second: Late Payment Fine: Plaintiff objects to Defendant's procedure outlined in imposing a late payment fine on the additional withholding tax for 2017 and 2019, calculated at 1% for every 30 days of delay from the due date until the date of payment of the additional withholding tax liability. Plaintiff argues that no late payment fine shall be imposed on any additional tax levied, asserting that they consistently pay the due withholding tax. Given that Plaintiff has fulfilled its financial obligations, thus, there is no justification for ZATCA to impose late payment fine, especially since the additional withholding tax is currently under dispute between Plaintiff and ZATCA and is subject to an objection. Therefore, this fine shall not be imposed. In addition, Plaintiff argued that they took advantaged from ZATCA initiative of waiving fines. Therefore, Plaintiff requests their cancellation.

Having presented the statement of claim to Defendant, it answered by a memorandum stating that regarding the withholding tax on dividends distributed to Plaintiff, the tax was imposed based on the fact that these amounts were distributed as dividends to a non-resident shareholder, as confirmed by Plaintiff's representatives during their meeting with ZATCA on 25/05/2021 AD. Since Plaintiff requests deducting paid income tax from dividends to the resident shareholder, ZATCA stated that the company distributing dividends is subject to income tax, which does not exempt the distributed amounts from withholding tax. As for the late payment fine, ZATCA answered that it was imposed due to Plaintiff's failure to pay tax variances within the statutory deadline.

On Wednesday, 14/09/2022 AD, the Department, having called the parties, it was found that Plaintiff's attorney did not appear despite of being duly notified. In addition, ..., holder of National ID No. (...), appeared in his capacity as Defendant (ZATCA) representative under ZATCA Vice Governor for Legal Affairs POA No. (...) dated 00/10/1443 AH. Having asked Defendant's attorney about Plaintiff's claim, he gave answers that do not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having asked Defendant's representative if he had any other statements, he answered "no". Therefore, the Department decided to close the pleadings and deliberation.



Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2015. Given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves Defendant's procedure outlined in issuing tax assessment for 2017 and 2018. Plaintiff's objection is limited to two items:

Item First: Withholding Tax on Dividends Distributed to a Non-Resident Shareholder: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on dividends to the non-resident shareholder without allowing deduction of income tax paid for the non-resident shareholder's share. On the other hand, Defendant argued that this tax was imposed on the ground that such amounts were distributed as dividends to a non-resident shareholder. Article (68) of Income Tax Law and Article (63), Paragraph (6.C) of the Implementing Regulations stipulate: "Dividends means: any distribution by a resident company to a non-resident shareholder, and any profits transferred by a permanent establishment to related parties. The following shall be taken into consideration: (c) Subjection of a distributing company to income tax shall not preclude imposition of withholding tax on its dividends". Based on the foregoing, since there is no double taxation in ZATCA procedure outlined in imposing withholding tax on dividends to a non-resident, as well as subjecting income of resident enterprise to income tax, as the income tax is levied on the net taxable profit resulting from enterprise's operations, while the withholding tax is imposed on the distributed portion of the profits. In addition, the permanent establishment of a non-resident is entitled to deduct the withholding tax paid on expenses related to the activity from the tax owed by Taxpayer. However, this does not apply to Plaintiff's case, as Plaintiff seeks to deduct withholding tax paid on dividends distributed to a non-resident shareholder, which is not consistent with the Law. Therefore, the Department dismisses Plaintiff's objection.

Item Second: Late Payment Fine:

Plaintiff objects to Defendant's procedure outlined in imposing additional withholding tax for failing to pay tax variances by the statutory deadline. On the other hand, Defendant argued that Defendant imposed late payment fines for failure to pay tax variances by the statutory deadline. In addition, Paragraph (A) of Article (77) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be Income Tax Law withheld and advance payments. It shall be calculated from the tax due date until the date of payment". As such, and since this item is related to the first item hereof, and since the Department decided to



dismiss Plaintiff's objection to the first item. Since the related matters shall have the same effect. Therefore, the Department dismisses Plaintiff's objection.

Decision

- Dismiss Plaintiff's objection regarding the two items in dispute.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination of Income
Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-
2167)

Delivered in Case No. (W-
2021-56969)

Keywords:

Withholding Tax – Lack of Knowledge of Reasons for Amendment – Canceling Withholding Tax Imposition – Imposing Withholding Tax on Related Parties – Late Payment Fine.

Abstract

Plaintiff moves for annulling ZATCA decision regarding withholding tax assessment for December 2016 and November 2017. Plaintiff' objection is limited to the following items: Item First: The amendment letters for December 2016 and November 2017 did not include reasons for amendments: Plaintiff objects to Defendant's procedure outlined failure to elaborate reasons for amendment. On the other hand, Defendant maintains that it abided by the regulatory procedures. Item Second: Applying withholding tax on related parties (...) for December 2016 and November 2017: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on transactions with related party. On the other hand, Defendant maintains rejecting Plaintiff's objection due to the lack of evidence that the balance was not paid during the subsequent period. In addition, Plaintiff did not provide any supporting documents for the outstanding balance for November 2017. Item (3): Late Payment Fines: Plaintiff objects to Defendant's procedure outlined in imposing late payment fine on the items contested above. On the other hand, Defendant justifies imposing fine on tax variances that were not paid by the statutory deadline. The Department finds, regarding the first item, that Plaintiff was aware of the amendments made to the withholding tax for December 2016 but was not informed of the reasons for amendments to November 2017. Since Defendant did not provide Plaintiff with reasons for the amendment to tax assessment notification and violated the procedural requirement in issuing its administrative decision. Therefore, the Department dismisses Plaintiff's objection to December 2016 and annuls Defendant's decision for November 2017. Item Second: It turns out that Plaintiff attached an account statement generated from accounting system. Since Defendant did not provide evidence on the existence of a payment transaction or reconciliation between accounts, it turns out that Defendant's procedure outlined in levying withholding tax on such services is incorrect. Item (3): Since the dispute between the parties is document-based, rather than arising from a significant difference in the interpretation of statutory provisions. Therefore, the Department believes that the late payment penalty should be waived regarding the items where Defendant's decision was overturned due to invalidity of underlying tax imposition. Therefore, the Department rules to: Dismiss Plaintiff's objection regarding the lack of knowledge of reasons for amendment for December 2016, annul Defendant's decision regarding all other items and consider the decision as final and enforceable.



Instruments:

- Articles (59.7) and (63.1) [of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 13/09/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (26760) dated 14/06/1442 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 29/05/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), (Residence No....), in his capacity as the Representative of the Plaintiff/ ..., (C.R. No. ...), filed an objection to ZATCA withholding tax assessment for December 2016 and November 2017. Plaintiff's objection is limited to the following items: Item First: The amendment letters for December 2016 and November 2017 did not include reasons for amendments: Plaintiff objects to Defendant's procedure outlined in failure to elaborate reasons for amendment. Plaintiff stated in the statement of claim that Defendant did not provide reasons for imposing withholding tax for December 2016 and November 2017, which is contrary to inspection and assessment procedures, in addition to Paragraphs (B) and (C) of Article (62) of the Implementing Regulations of Income Tax Law, as the assessment did not include reasons for amendments. Therefore, Plaintiff requests annulling assessment, as it is marred by a defect in form. Item Second: Applying withholding tax to related parties - ... for December 2016 and November 2017: Plaintiff objects Defendant's procedure outlined in imposing withholding tax on transactions with related parties (...) Company of 15% for December 2016 and November 2017, amounting to SAR 367,809 and SAR 880,516 respectively. In the statement of claim, Plaintiff stated that Defendant imposed withholding tax on the amounts due to ... Company for December 2016, despite these amounts being outstanding and unpaid. Regarding November 2017, Plaintiff argues that Plaintiff is unaware of how Defendant calculated this amount, which makes it difficult to reply to Defendant's claims. Accordingly, Plaintiff requests that no withholding tax be imposed on such outstanding amounts. Item (3): Late Payment Fines: The Plaintiff objects to Defendant's procedure of imposing a delay fine on the above contested items. In its statement of claim, Plaintiff stated that tax returns were filed within the statutory deadlines and that the late payment fines related to tax variance resulted from errors and differing interpretations, not from any deliberate attempt to avoid paying tax on time. Therefore, Plaintiff moves for annulling any additional tax liability arising from the same, which is not subject to late payment fine. Having presented the statement of claim to Defendant, Defendant answered by a memorandum stating that regarding the lack of reasons for amendments in the letters of amendment for December 2016 and November 2017: Defendant stated that it had issued a primary assessment sent to Plaintiff on September 15, 2020 AD, giving Plaintiff a deadline to reply to the primary assessment. The document detailed the non-resident entities and the amounts subject to withholding tax. In addition, Taxpayer replied to the primary assessment and provided documents that were studied before issuing the final assessment. Therefore, Defendant adhered to the regulatory procedures and rejected Plaintiff's objection. Regarding the application of withholding tax on related parties - ... for



December 2016 and November 2017: Defendant stated that Plaintiff was asked to provide proof that such amounts are due, either through supporting invoices or confirmation letters from ... Company stating that the amounts are still due. In addition, Plaintiff provided an account statement from ... Company generated from the accounting system for 2016 with a balance of SAR 97,260,465, in addition to a confirmation letter from ... Company for the balance of 2016 signed on March 23, 2017 AD. Accordingly, this confirmation was outdated, while Plaintiff stated, during the hearing session, that the amount is still due as of the current date, but did not provide evidence that the balance had not been paid in the subsequent period, nor did it provide any supporting documents for the balance due for November 2017. Dismiss Plaintiff's objection. Late Payment Fines: Defendant stated that the late payment fine was imposed on tax variances that were not paid by the statutory deadline. In addition, Defendant insists on validity of its procedure. On Tuesday, 13/09 AD, the Department held e-hearing session to consider the Case. At that session, ..., holder of National ID No. (...), appeared in his capacity as attorney under POA No. (...). In addition, ..., holder of National ID No. (...), appeared in his capacity as Defendant (ZATCA) representative under ZATCA Vice Governor for Legal Affairs POA No. (...) dated 18/10/1443 AH. Having asked Plaintiff's Attorney regarding his claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having confronted Defendant's representative with the same, he answered by insisting on the reply previously lodged with the General Secretariat of Zakat, Tax and Customs Committees and does not accept any new documents that were not provided during the objection and examination stages. Having asked both parties if they had further statements, they replied by reiterating their earlier submissions presented to the Department. Therefore, the Department decided to close the pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff aims with its claim to annul ZATCA decision regarding withholding tax assessment for December 2016 and November 2017. Given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves Defendant's procedure outlined in issuing withholding tax assessment for December 2016 and November 2017. Plaintiff's objection is limited to the following items:

Item First: The amendment letters for December 2016 and November 2018 did not include reasons for amendments:

Plaintiff objects to Defendant's procedure outlined in failure to elaborate reasons for amendment. On the other hand, Defendant maintains that it abided by the regulatory procedures and rejected Plaintiff's objection. Paragraph (7) of Article (59) of the Implementing Regulations of Income Tax Law related to inspection and assessment



procedures stipulates: “If the Department does not agree with the taxpayer’s return, it shall notify the taxpayer of its modifications on the return, the reasons thereof, the amount of tax and subsequent penalties, and of the taxpayer's right to object and the statutory period specified for objection. The notice to the taxpayer shall be sent by registered mail or by any other means that proves the taxpayer’s receipt of such notice”. As such, and having reviewed data provided by both parties, including correspondence between Plaintiff and Defendant, as well as the objection memorandums submitted to Defendant and the General Secretariat of Zakat, Tax and Customs Committees, it turned out that Plaintiff was aware of the amendments made to the withholding tax for December 2016, but not the reasons for amendment for November 2017. Since Defendant did not inform Plaintiff of reasons for amendment in assessment letter. Since Defendant violated the procedural requirement in issuing its administrative decision, as Paragraph (7) of Article (59) of the Implementing Regulations of Income Tax Law requires Defendant to specify reasons for amendment. Since the Saudi administrative jurisprudence and judicial rulings have established that if the Law explicitly requires an administrative body to issue its administrative decision in accordance with specific formalities and procedures. Therefore, adherence to such essential formalities is a prerequisite for validity of administrative decision. Therefore, the Department dismisses Plaintiff’s objection for December 2016 and annuls Defendant’s decision for November 2017.

Item Second: Applying withholding tax to related parties - ... for December 2016 and November 2017:

Plaintiff objects Defendant’s procedure outlined in imposing withholding tax on transactions with related parties (...) Company of 15% for December 2016 and November 2017, amounting to SAR 367,809 and SAR 880,516 respectively. On the other hand, Defendant maintains rejecting Plaintiff’s objection due to the lack of evidence that the balance was not paid during the subsequent period. In addition, Plaintiff did not provide any supporting documents for the outstanding balance for November 2017. Article (63.1) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1438 AH stipulates that: “1. A non-resident is subject to tax that any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: - Any royalty or rent, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company ... 15%”. As such, it turns out from the above-mentioned statutory provisions that the withholding tax is imposed based on actual payment or its equivalents, such as account settlements and offsets. Having taken cognizance of Defendant’s stance, the Department found that the disputed amounts were subjected to tax from the date of accounting entry on the basis that such amounts outline services provided by related entities and that the accounting entry constitutes a settlement between accounts. Having taken cognizance of documents included in Case file, it turns out that Plaintiff attached an account statement generated from the accounting system for the account of ... Company - Abu Dhabi shows that the outstanding balance at the end of December 2016 was SAR 465,261 and SAR 465,388 at the end of November 2017. Having reviewed the financial statements for 2016 and 2017, it turns out that the generated balances match, and that such amounts are outstanding balances that are not subject to withholding tax, as the accounting entry does not solely constitute sufficient evidence on a settlement between receivables and payables of affiliated companies. Since Defendant has not provided supporting documents for actual payment or account settlement, it turns out that imposing withholding tax on such services is incorrect. Given that Defendant failed to prove the occurrence of payment, settlement or its equivalent. Therefore, the Department annuls Defendant’s decision regarding this item.

Item (3): Late Payment Fines:



Plaintiff objects to Defendant's procedure outlined in imposing a late regarding the above contested items and requests its cancellation. On the other hand, Defendant argued that the late payment fine was imposed on tax variances that were not paid by the statutory deadline. Whereas Paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment" and in accordance with Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: Delay in payment of due tax as per the Department's assessment". Moreover, Paragraph (3) of Article (67) of the Implementing Regulations of Income Tax Law stipulates: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations including contested cases, where the fine shall be due from the due date for return filing and payment". As such, the Department, having taken cognizance of Case file, arguments and documents included therein, found that the late payment fine is calculated from the deadline for filing return until the date of paying due tax resulting pursuant to provisions of the Law and any subsequent amendments made by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in interpreting statutory provisions. Therefore, the Department finds that the late payment fine is deemed null and void for the items where ZATCA decision was nullified, as the basis for imposing tax was nullified. For these grounds and after deliberation, the Department unanimously decided as follows:

Decision

1. Dismiss Plaintiff's objection regarding the lack of knowledge of reasons for amendment for December 2016.
2. Annul Defendant's decision regarding the lack of knowledge of reasons for amendment for November 2017, and annul imposing related withholding tax.
3. Annul Defendant's decision regarding (Imposing Withholding Tax on Related Entities for December 2016) item.
4. Cancel the Defendant's decision regarding late payment fine.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-2099)

Delivered in Case No. (W-48794-2021)

Keywords:

Withholding Tax – Paid Software Licenses Abroad – Training Programs – Failure to Provide Supporting Documents – Dismissing Plaintiff's Objection.

Abstract

Plaintiff's requests annulling ZATCA decision regarding withholding tax assessment for July 2019. On Merits: The Department found that Plaintiff's objection involves (Paid Software Licenses Abroad of 15%). Plaintiff objects to Defendant's procedure outlined in imposing withholding tax of 15% on licenses. On the other hand, Defendant rejected Plaintiff's objection, as such payments constitute royalties for the right to use software. In addition, the Department found that Plaintiff's classification is incorrect, as subscription to software falls under royalties for intellectual property rights, rather than renting digital data storage spaces. Since Plaintiff failed to provide the purchase agreement to substantiate its claim that the payments were not for exclusive intellectual property rights. Therefore, the Department dismisses Plaintiff's objection. Therefore, the Department ruled to: Dismiss Plaintiff's objection to (Paid Software Licenses Abroad of 15%) item.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 04/09/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (26760) dated 14/05/1442 AH, held e-hearing session to consider above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 26/04/2021 AD. The facts of this Case are summed up as follows: Mr. (...), (ID No. ...), in his capacity as the Owner of (... Enterprise), (C.R. No. ...), filed an objection to ZATCA withholding tax assessment for July 2019. Plaintiff's objection is limited to the following Item: Software License Fees paid to Offshore Company at 15%: The Plaintiff objects to the Defendant's procedure outlined in imposing withholding tax of 15% on licenses. In his statement of claim, Plaintiff stated that such amounts are an annual subscription of one of his clients and not new licenses, as the client pays such annual subscription in the amount of SAR 737,199.83. Since the Enterprise has paid the value of the annual subscription in the same amount received from the client and believed that no tax is applicable to such payments; otherwise, it would have taken account of. Therefore, Plaintiff requests annulling ZATCA assessment. Having presented the case to Defendant, it answered by wherein replied that



regarding Plaintiff's objection to imposing withholding tax: Defendant stated that they inquired about the nature of the service, as Plaintiff stated that such payments outline the annual subscription fees for the Saudi Post to use ... Platform. In addition, Plaintiff provided correspondence with the Platform to confirm service type. Having reviewed the invoice, it turned out that the service is a license for a subscription to ... Platform "Swiss Company". Therefore, Taxpayer's objection was rejected as such payments are considered as royalties that had been paid as license fees for using computer software in accordance with Article (63) of the Implementing Regulations of Income Tax Law.

On Sunday, 04/09/2022 AD, the Department held e-hearing session to consider the Case. At that session, ..., holder of National ID No. (...), appeared in his capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, dated .../10/1443 AH. Having asked Plaintiff's attorney about his claim, he gave an answer that does not differ from the statements included in the statement of claims lodged with the General Secretariat of Zakat, Tax and Committees. Having confronted Defendant's representative with the same, he answered by insisting on the reply previously lodged with the General Secretariat of Zakat, Tax and Customs Committees and does not accept any new documents that were not provided during the objection and examination stages. Having asked both parties if they had further statements, they replied by reiterating their earlier submissions presented to the Department. Therefore, the Department decided to close the pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Plaintiff filed this Case moving for annulling ZATCA decision regarding withholding tax assessment for July 2019. Since this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves ZATCA withholding tax assessment for July 2019. Plaintiff's objection is limited to (Paid Software Licenses Abroad of 15%) item. Plaintiff objects to Defendant's procedure outlined in imposing withholding tax of 15% on licenses. On the other hand, Defendant rejected Taxpayer's objection arguing that such amounts are paid as license fees for using computer software in accordance with Article (63) of the Implementing Regulations of Income Tax Law. Article (1) of Income Tax Law issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH defined Royalties as "Payments received for the use of or the right to use intellectual rights, including, but not limited to, copyrights, patents, designs, industrial secrets, trademarks and trade names, know-how, trade and business secrets, goodwill, and payments received against the use of information related to industrial, commercial, or scientific expertise, or against granting the right to exploit natural and mineral resources". As such, and having taken cognizance of Case file, arguments and documents included therein, ZATCA maintains that the use of intellectual property rights for software is subject to withholding tax and qualifies as royalties of 15%. This position



aligns with the answer to Question (82) of the Frequently Asked Questions regarding the purchase of computer systems and training programs. If such systems and software are considered goods that can be resold in the local market, they are not subject to withholding tax. However, if such systems and software are purchased from abroad for use by the purchaser under a license granted by the seller, without the purchaser being allowed to resell or transfer such systems and software, and remain permanently linked to ongoing development by the producing company, such transaction is considered as licenses for the use of intellectual rights (royalties) and are subject to a withholding tax of 15%. Having taken cognizance of documents included in Case file, it turns out that Plaintiff's classification of the service is incorrect, as the subscription to computer software is classified as payments for the use of ownership right (royalties) rather than as renting digital data storage space. Since Plaintiff did not provide an agreement for the purchase of such software to verify service classification and confirm that it was not for the use or exploitation of seller's exclusive intellectual property rights in the Kingdom. Therefore, the Department dismisses Plaintiff's objection. For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss Plaintiff's objection to (Paid Software Licenses Abroad of 15%) item. This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination of Income
Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-
2273)

Delivered in Case No. (IW-
2021-59152)

Keywords:

Withholding Tax – Tax Assessment – Use of Group Statement – Depreciation Variances – Maintenance and Repair Variances – Import Variances – Operational Supplies – Carried Forward Loss Balance – External Services.

Abstract

Plaintiff requests annulling ZATCA decision regarding tax assessment for years from 2015 to 2018 and withholding tax for December of years from 2015 to 2019. Plaintiff's objection is limited to the following items: Item First: Using Group Statement (Depreciation Variances + Maintenance and Repair Variance): Plaintiff objects to Defendant's procedure regarding claim that the Company filled out depreciation schedule for all years based on group system. Item Second: Import Variances: Plaintiff objects to Defendant's procedure, arguing that the Company is a service-oriented entity rather than a commercial one. Therefore, imports are operational supplies rather than goods. On the other hand, Defendant believes that adjusting net profit is made based on external purchases according to the procurement report generated from the automated system. Item (3): Carried Forward Loss Balance for 2015: Plaintiff objects to Defendant's procedure regarding the carried forward loss balance for 2015. On the other hand, Defendant stated that no tax assessment was made for 2013 and 2014. In addition, the carried forward losses were not deducted as such losses did not primarily exist. Item (4): Withholding Tax (External Services for December of 2015, 2016, 2017, 2018 and 2019): Plaintiff objects to Defendant's procedure outlined in imposing tax on non-residents (withholding tax) regarding any amounts received from any source in the Kingdom. On the other hand, Defendant believes that withholding tax should apply to amounts owed to external entities due to the fact that they are related parties, regardless of whether the amounts have been paid or not. The Department found that Plaintiff attached a depreciation schedule (Schedule No. 4 of tax return), showing that the classification of fixed assets was in accordance with Article (17) of Income Tax Law. Therefore, it turns out that the depreciation variances reported in tax returns are valid. Since the burden of proof in this case lies with ZATCA to prove Plaintiff's incorrect depreciation expense calculation, and ZATCA did not present its own depreciation expense calculation. Item Second: It turned out that Plaintiff's business activity does not involve the sale of goods, and that imports are considered operational supplies used in the business activity, not goods. Item (3): Having reviewed ZATCA procedure, the Department found that ZATCA relied on the Implementing Regulations for the Collection of Zakat, which do not apply to Taxpayer, as Taxpayer is a foreign company 100% and is considered not subject to zakat collection. Item (4): It turns out that ZATCA has not provided evidence on payment or settlement between the accounts, as the accounting entry date solely is not sufficient proof of a



settlement between the receivable accounts and the accounts of related companies. Since the amounts are still owed to related parties, and due to ZATCA failure to provide evidence on completing payment or settlement process, or any equivalent procedure. Therefore, the Department rules to: Annul Defendant's decision regarding all items in question and consider the decision as final and enforceable.

Instruments:

- [Articles \(17\), \(21.A and B\) and \(64.2.C\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- [Articles \(11.1\) and \(63.1\) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)
- [Ministerial Resolution No. \(1776\) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Saturday, 08/10/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (13957) dated 26/02/1444 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 14/07/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), (ID No. ...), in his capacity as Attorney of Plaintiff/ (C.R. No. ...), under the attached POA, filed objection to tax assessment for years from 2015 to 2018 and ZATCA withholding tax for December of years from 2015 to 2019. Plaintiff's objection is limited to the following items: Item First: Using Group Statement (Depreciation Variances + Maintenance and Repair Variance): Plaintiff objects to Defendant's procedure and stated that the Company filled out depreciation schedule for all years according to group system (Article 17), as the Company is a taxable entity and is not permitted to use fixed installment method. In addition, the Company is committed to the instructions and laws of income tax and files its returns based on the same. According to ZATCA assessment for 2012, there was no indication that the Company uses fixed installment method. Furthermore, according to ZATCA e-system for years from 2015 to 2019, the Company cannot file the return unless it fills out depreciation schedule according to group system. Since the Company filed its returns for years from 2015 to 2019 within the statutory deadlines, and according to ZATCA e-system, it is required to complete depreciation form according to Article (17), which the system allows the Company to do. In addition, in objection discussion session with ZATCA regarding (Depreciation) item, it was elaborated to Objection Officer that the auditor, when making assessment, took the opening balance based on the financial statements for 2015, rather than from group system depreciation schedule's closing balance for 2014. Moreover, Objection Officer asked for depreciation schedules in accordance with Article (17) provided in returns for years from 2011 to 2019, and such schedules were provided. It is worth noting that depreciation variances, maintenance and repair variances for 2011 + 2012 mentioned in the schedules sent to ZATCA are identical to those noted in ZATCA



assessment for 2011 + 2012, a copy of which was provided to the Committee. This indicates that the schedule sent by the Company is correct and in compliance with the regulations. Regarding Maintenance and Repair Variance: Plaintiff stated that since depreciation schedule for years 2011 from to 2019 was sent and prepared in accordance with Article (17): The group system and maintenance and repair expenses were recorded as reflected in the financial statements and Company's return, the variances related to maintenance and repair, as stated in the escalation memorandum, are accurate and not those added by ZATCA. Item Second: Import Variances: Plaintiff objects to Defendant's procedure, stating that the Company is a service-oriented entity rather than a commercial one. Therefore, the imports are considered operational supplies rather than goods. As such, they were not included under import item in the return but rather under operational items. This was elaborated to Objection Officer during the discussion, as indicated by Company's Financial Manager. In addition, ZATCA was provided with customs statement. The matter was elaborated to Objection Officer, who had no observations to the explanation provided by Company's Financial Manager. Item (3): Carried Forward Loss Balance for 2015: Plaintiff objects to Defendant's procedure regarding the carried forward loss balance for 2015. According to ZATCA statement, the carried forward losses should be based on ZATCA assessment attached to escalation document for the Company for the period from 2006 to 2012. In addition, ZATCA approved Company's losses for 2012, amounting to SAR 5,155,923 (as per the decision issued and communicated by ZATCA). Item (4): Withholding Tax (External Services for December of 2015, 2016, 2017, 2018 and 2019): Plaintiff objects to Defendant's procedure outlined in imposing tax on non-resident (withholding tax) on any amounts received from any source within the Kingdom. In addition, Paragraph (A) of Article (68) of Income Tax Law stipulates "Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount". ZATCA, in its answer, stated that offsetting balances and settlements are treated as payments. However, the amounts added by ZATCA in withholding tax assessment are balances recorded in the financial statements as liabilities for the Company, which have neither been paid nor settled through offsets or adjustments. Therefore, these amounts should not be subject to withholding tax, as they remain outstanding liabilities for the Company.

Having presented the statement of claim to Defendant, it replied by a memorandum that addressed (Using Group Statement) item: Defendant stated that it filled out fixed assets statement for years from 2015 to 2018 in accordance with group schedule. ZATCA had accounted Taxpayer up to 31/12/2012 AD, but did not make assessment for 2013 and 2014. In addition, Taxpayer filed its return based on the financial statements for 2015 and 2016 without using group schedule. Since Taxpayer is taxable entity, ZATCA filled out depreciation schedule for group method in 2015 based on the financial statements. The formula used was: $(\text{Net Group Value for Previous Year}) = \text{Net Fixed Assets for Previous Year} + \text{Derecognizing Assets Under Construction from Additions} + \text{Compensations}$, which outline proceeds from asset derecognition (Cash Flows). Upon objection and reviewing return for 2014 to verify the accuracy of group schedule, ZATCA found that depreciation in the return amounted to SAR 389,170, and adjustments to net profit were - SAR 78,558 and -SAR 310,612 (negative). Comparing this amount to the net depreciation for the year, it was determined to be SAR 310,612 and SAR 389,170. According to group schedule provided by Taxpayer, ZATCA found the total depreciation for 2014 to be SAR 2,326,204, revealing a variance of SAR 2,015,592. As such, ZATCA adjusted Taxpayer's return and filled out group schedule with SAR 2,326,204 and applied this schedule for years from 2015 to 2019. As for maintenance variances, they have no impact requiring any adjustments. Regarding (Import Variance for 2015) item: ZATCA stated that it adjusted



net profit based on external purchases. According to purchase report generated from the automated system, an adjustment in the amount of SAR 414,131 was made as follows: = $15\% * 2,760,874$. When reviewing objection, Taxpayer provided a report of external purchases issued by Customs Authority. A comparison was made between the amounts declared in tax return and figures provided by customs. Since the amount of imports exceeded import amount used by ZATCA to adjust the net profit, and the variance was negligible, the adjustment initially made by ZATCA during the examination was accepted. On Wednesday, 21/10/1442 AH, a meeting was held with Taxpayer's representatives, including Mr. ..., regarding the Group, Mr. ..., Company's Financial Manager and Mr. ..., from ... Office Chartered Accountants. They were informed of ZATCA procedures regarding this item. Taxpayer's objection was rejected in accordance with Article (57) of the Implementing Regulations of Income Tax Law. Regarding (Carried Forward Loss Balance for 2015) item: ZATCA stated that the assessment was not made for the Company for 2013 and 2014, and the carried forward losses were not deducted due to the lack of such losses primarily. It is important to note that the carried forward losses are taken based on ZATCA assessment in the previous year, not as shown by Taxpayer in its return. On Wednesday, 21/10/1442 AH, a meeting was held with Taxpayer's representatives, including Mr. ..., Group Supervisor, Mr. ..., Company's Financial Manager and Mr. ..., from ... Office Chartered Accountants. They were informed of ZATCA procedures regarding this item. Taxpayer's objection was rejected in accordance with Article (4), Second, Paragraph (9) of the Implementing Regulations for the Collection of Zakat. As for (External Services for December of Years from 2015 to 2019) item: ZATCA stated that it imposed withholding tax on amounts owed to external entities due to the fact that they are related parties, regardless of whether such amounts have been paid or not. Having reviewed the objection, Taxpayer acknowledges such amounts, and that the objection is limited to non-payment only. Having approached the entities with which contracts were made, ZATCA elaborates that these entities are related parties, and withholding tax is imposed on them regardless of whether payment has been made to such entities or not. Referring to the frequently asked questions, Question No. (17) that states: "Are settlements between resident and non-resident entities subject to withholding tax for settling accounts payable and receivable, considering that non-resident entities provide services to resident entities even without actual payments being made? What is the date that should be adopted in such cases for the purpose of settling withholding tax? A: The withholding tax is due when a payment event occurs, or in situations equivalent to payment, such as offsetting or settling accounts. The date of settlement is considered the payment date unless the entities (payer and payee) are related parties. In such case, the date of entry or registration in the books shall be the decisive factor.

On Saturday, 08/10/2022 AD, the Department held e-hearing session to consider the Case. At that session, ..., (Saudi national), holder of National ID No. (...), appeared in his capacity as Plaintiff's attorney under external POA No. (...). In addition, ..., a Saudi National, holder of National ID No. (...), appeared in his capacity as ZATCA representative under Authorization Letter No. (...) dated .../10/ 1443 AH issued by Vice Governor for Legal Affairs. Having asked Plaintiff's attorney about his claim, he maintained his statements contained in the statement of claim submitted to the General Secretariat of Zakat, Tax and Customs Committees. Having asked Defendant's representative about his answer, he maintained his statements included in his answer. Having asked parties to the Case if they would like to add further statements or documents, they satisfied with the earlier submissions. Therefore, the Department decided to close pleadings and deliberation.

Grounds:





Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Plaintiff filed this Case moving for annulling ZATCA decision regarding tax assessment for years from 2015 to 2018 and withholding tax for December of years from 2015 to 2019. Since this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, found that the dispute involves Defendant's procedure outlined issuing tax assessment for years from 2015 to 2018 and withholding tax for December of years from 2015 to 2019. Plaintiff's objection is limited to the following items:

Item First: Using Group Statement (Depreciation Variances + Maintenance and Repair Variance):

Plaintiff objects to Defendant's procedure regarding the fact that the Company filled out depreciation schedule for all years according to Group System. Regarding maintenance and repair variance, Plaintiff stated that the depreciation schedule for years from 2011 to 2019 was sent in accordance with Article (17): Group System, with maintenance and repair expenses as reflected in the financial statements and Company's return. On the other hand, Defendant insists on filling out fixed assets statement for years from 2015 to 2018 according to group statement. Article (17) of Income Tax Law stipulates: "B. Depreciable assets are classified into groups and depreciation rates as follows: 1. Stationary buildings: 5%. 2. Movable industrial and agricultural buildings: 10%. 3. Factories, machines, engines, hardware, software (computer software), and equipment, including passenger and cargo vehicles: 25%. 4. Expenses for geological surveying, drilling, exploration, and other preliminary work to exploit natural resources and develop their fields: 20%. 5. All other tangible and intangible depreciable assets not included in the previous categories, such as furniture, planes, ships, trains, and goodwill: 10%". As such, it turns out that the dispute involves calculating depreciation variances. Having taken cognizance of documents included in Case file, it turns out that Plaintiff provided a depreciation calculation schedule and tax return, showing that its classification of fixed assets was in accordance with Article (17) of Income Tax Law. Therefore, the depreciation variances reported in its tax returns are valid. Having taken cognizance of Defendant's memorandum, it turns out that Defendant applied depreciation method correctly but failed to provide detailed calculations or reasons for adjudicating Plaintiff's calculations. Given that the burden of proof in this case lies with Defendant to demonstrate invalidity of Plaintiff's depreciation calculations, and since Defendant did not provide its own depreciation expense calculations. Therefore, the Department annuls Defendant's decision.

Item Second: Import Variances:

Plaintiff objects to Defendant's procedure, arguing that the Company is a service-oriented entity rather than a commercial one. Therefore, imports are operational supplies rather than goods. On the other hand, Defendant believes that adjusting net profit is made based on external purchases according to the procurement report generated from the automated system. As such, since the dispute between the parties is document-based. Having taken



cognizance of documents provided by Plaintiff, which include customs statement of total imports, it turns out that the variances in external purchases outline machinery and equipment. Having reviewed Company's Articles of Association "AOA", it turned out that establishment's business activity is limited to repair and maintenance of pipes and pipelines. Therefore, Plaintiff's business activity is not related to the sale of goods, and the imports are considered operational supplies used in the business activity rather than goods. Therefore, the Department annuls Defendant's decision regarding this item.

Item (3): Carried Forward Loss Balance for 2015:

Plaintiff objects to Defendant's procedure regarding the carried forward loss balance for 2015. On the other hand, Defendant stated that no tax assessment was made for 2013 and 2014. In addition, the carried forward losses were not deducted as such losses did not primarily exist. Paragraphs (A and B) of Article (21) of Income Tax Law, which governs loss carryforward, stipulates: "A. 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. B. A net operating loss is the deductions allowed under this Chapter which are in excess of the taxable income for the taxable year". In addition, Paragraph (1) of Article (11) of the Implementing Regulations of Income Tax Law, which governs loss carryforward, stipulates: "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". As such, and in accordance with provisions of the above-mentioned articles, Plaintiff is entitled to deduct the carried forward losses from taxable profit, provided that the deduction does not exceed 25% of the annual profit as reported in Plaintiff's return. Having taken cognizance of Plaintiff's return, it turns out that Plaintiff has reported a loss in tax returns filed to ZATCA. Therefore, in application of Paragraph (1) of Article (11) of the Implementing Regulations of Income Tax Law. Having reviewed ZATCA procedure, it turned out that ZATCA relied on the Implementing Regulations for the Collection of Zakat, which does not apply to Taxpayer, as Taxpayer is a foreign company 100% and is not subject to zakat. Therefore, the Department annuls Defendant's decision regarding this item.

Item (4): Withholding Tax (External Services for December of 2015, 2016, 2017, 2018 and 2019):

Plaintiff objects to Defendant's procedure outlined in subjecting non-residents to (withholding tax) on any amounts received from any source within the Kingdom. On the other hand, Defendant levies withholding tax applicable to amounts payable to external entities on the basis that such entities are related parties, regardless of whether such amounts have been paid or not. Ministerial Resolution No. (1776) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH to be as follows: "First: I: The second and third boxes of the following table included in Paragraph (1) of Article (63) of the Regulations shall be added to be as follows: "(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: - Any royalty or rent, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... 15%". Technical or consultancy services, international telecommunications services other than the amounts paid to the head office or an affiliated company, rent, airline tickets, air cargo or freight transport,



profits distributed, loans returns or insurance or reinsurance premiums. 5%”. In addition, Paragraph (C.2) of Article (64) of the Implementing Regulations of Income Tax Law stipulates: “C. Companies and agencies shall be deemed under common control if the same person or related persons control 50% or more according to this Article as follows: 2. With respect to capital companies, control means ownership of the voting rights therein or ownership of its value, either directly or indirectly, through a subsidiary company or companies of any type”. As such, it turns out from the statutory provisions above-mentioned that levying withholding tax is contingent upon the occurrence of an actual payment or its equivalent, such as account settlements or offsets. Having reviewed ZATCA stance, it turns out that it subjected the amounts in dispute from the date of accounting entry, considering them services provided by related parties and deeming accounting entry as an account settlement. However, having reviewed the documents included in Case file, it turns out that ZATCA did not provide evidence on an actual payment or account settlement, as the accounting entry date solely is insufficient to substantiate the existence of a settlement between receivables and related-party accounts. Since the amounts remain outstanding to related parties. Since ZATCA did not provide evidence confirming payment, settlement or its equivalent. Therefore, the Department annuls Defendant’s decision regarding this item.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Annul Defendant’s decision regarding all items subject matter of the Case. This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

Appeal Committee:

Appeal Committee has decided to uphold the Department’s decision.



(Withholding Tax)

Primary Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
1736)

Delivered in Case No. (W-
56975-2021)

Keywords:

Withholding Tax - External Purchases - Imposing Withholding Tax as Royalties or Rent - Late Payment Fines - Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding the withholding tax for June of years from 2015 to 2018. Plaintiff's objection is limited to two items. Regarding the first item: (Imposing Withholding Tax as Royalties or Rent) item: This is due to the fact that such amounts outline external purchases for years from 2015 to 2018, consisting of goods sold in the local market. On the other hand, Defendant argued that it imposed withholding tax on amounts paid abroad as specified under (Local Purchases) item, where goods are purchased for resale purposes. Second: (Late Payment Fine) Item: Defendant argued that it imposed a late payment fine on tax variances that were not paid by the statutory deadline. The statutory provisions stipulate that if the lawsuit is filed by a party having capacity and within the statutory period, it should be accepted in form. The Department found, regarding the first item, that Plaintiff imports such goods through other entities and sometimes through the client themselves, as the client does not have an import license. In addition, Plaintiff did not provide an approved statement detailing cost of device separately from the software to enable ZATCA to calculate the amounts accurately. Regarding the applicability of transaction, ZATCA provided evidence that the software constitutes a subscription rather than a sale. Accordingly, the supply process is subject to withholding tax. Thereupon, the Department dismisses Plaintiff's objection. Regarding the second item, it turns out that the unpaid tax resulted from adjustments to items not governed by clear statutory provisions. Since the fine ensues from Item (1) regarding imposition of withholding tax as royalties or rent. Since the ancillary obligation does not lapse unless the principal obligation is no longer existing. Therefore, the Department dismisses Plaintiff's objection. Since Plaintiff did not provide a valid excuse for failure to appear at Department's session convened to consider the Case. Since the Department found that the Case is ripe for adjudication based on the documents available in its file. Therefore, the Department concludes to deliver its decision in the Case at hand as if in Plaintiff's presence. Therefore, the Department rules to: Dismiss the Case filed by Plaintiff, and consider the decision as final and enforceable.

Instruments:

- Articles (76) and (77.A) [of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (68.1) of [the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)



- [Ministerial Resolution No. \(1776\) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Saturday, 29/01/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 29/06/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), (Legal Residence No. ...) in his capacity as the legal representative of Company's Branch, pursuant to the commercial register attached to Case file, filed on behalf of the Branch of ... Company, C.R. No. (...), an objection to the withholding tax for June of years from 2015 to 2018 issued by ZATCA. Plaintiff's objection is limited to two items. Regarding the first item: Withholding tax as a royalty or rent. The second item: Late Payment Fine:

Having presented the statement of claim to Defendant, it submitted an answer wherein replies the Case involves an objection to two items. Regarding the first item: Withholding tax as a royalty or rent, ZATCA states that it imposed withholding tax on the amounts paid abroad. Regarding the second item: Late payment fine, ZATCA states that its decision was delivered in accordance with provisions of Paragraph (A) of Article (77) of Income Tax Law. Therefore, ZATCA requests dismissing the Case, while reserving its right to provide further responses and clarifications before the committees.

On Saturday, 29/01/1444 AH, the Department held e-hearing session to consider the Case. Plaintiff's attorney did not appear despite of being duly notified of session date of session. On the other hand, ..., appeared in his capacity as Defendant's representative under POA, a copy of which is included in case file. Having asked Defendant's representative about Plaintiff's claim, he answered by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not submitted to Defendant during examination and objection stage. Having asked Defendant's representative if he had any other statements, he answered "no". Therefore, the Department decided to close pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding withholding tax for June of years from 2015 to 2018. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established



from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves the fact that Defendant issued withholding tax for June of years from 2015 to 2018. In addition, Plaintiff objects to two items as follows:

First: (Imposing Withholding Tax as Royalties or Rent) item:

Since the dispute involves Plaintiff's objection to Defendant's procedure outlined in imposing withholding tax for June of years in question. Plaintiff stated that such amounts outline external purchases for years from 2015 to 2018, in total amount of SAR 8,367,756.48, and added that such goods are goods sold in the local market. On the other hand, Defendant argued that it imposed withholding tax on amounts paid abroad, as recorded under local purchases, where goods are purchased for resale. In addition, Defendant stated that Plaintiff claimed to use the periodic inventory system despite the fact that Plaintiff does not typically hold inventory, as goods are ordered from suppliers on demand. Defendant based its position on Ministerial Resolution No. (1776) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH to be read as follows: "First: I: The second and third boxes of the following table included in Paragraph (1) of Article (63) of the Regulations shall be added to be as follows: "(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: - Any royalty or rent ... 15%". In addition, Paragraph (7) of Article (5) of the Implementing Regulations of Income Tax Law stipulates: "The following types of income shall be considered derived from an activity in the Kingdom and are therefore from a source in the Kingdom:

7. Contracts for delivery of goods to the Kingdom, including freight and insurance contracts of such goods shall not be considered as derived from an activity in the Kingdom unless it includes associated work performed in the Kingdom, such as transportation, installation, maintenance, training and the like. In such a case, only the associated work shall be considered as derived from an activity in the Kingdom".

As such, and having reviewed statements provided by both parties, it turns out that Plaintiff claims that such goods are software intended for resale. In addition, ZATCA found that Plaintiff imports such goods through other entities, and sometimes through the client due to the lack of an import license. However, Plaintiff did not provide an official statement breaking down cost of hardware and software so that Defendant can accurately calculate the amounts. Instead, Plaintiff provided an Excel file showing value of hardware and software, but failed to provide supporting documents for Excel data. In addition, a general ledger generated from the accounting system was submitted. Regarding taxability of transaction, ZATCA provided evidence that software constitutes a subscription rather than a sale. Therefore, the supply transaction is subject to withholding tax. Thereupon, the Department dismisses Plaintiff's objection.

Second: (Late Payment Fine) Item:

Since the dispute involves Defendant's procedure outlined in imposing late payment fine on the contested Item. On the other hand, Defendant argued that it imposed late payment fine on tax variances that were not paid by the statutory deadline. In addition, Paragraph (A) of Article (77) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425AH stipulates: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment"



and in accordance with Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: (b). Delay in payment of due tax as per the Department’s assessment. e) 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”. As such, it turns out from the relevant statutory provisions that the late payment fine is calculated from the date in which tax becomes due by Taxpayer until the date of payment. However, having taken cognizance of Case file, the Department found that the unpaid tax resulted from adjustments to items not governed by explicit statutory provisions. Since the fine ensues from Item (1) regarding imposition of withholding tax as royalties or rent. Since the ancillary obligation does not lapse unless the principal obligation is no longer existing. Therefore, the Department dismisses Plaintiff’s objection.

As for failure of Plaintiff’s attorney to appear at the hearing session and Department’s decision in the Case subject matter of consideration in absentia without an excuse acceptable to the Department, the Department relied on Paragraph (1) of Article (20) of Tax Dispute and Violation Committee Procedures that stipulates: “If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the circuit, the circuit must decide the suit if it is ripe for judgment”. In addition, the decision rendered in this case shall be deemed as if rendered in presence of Plaintiff in accordance with Article (56) of the Law of Civil Procedure that stipulates: “If the plaintiff fails to attend the court hearings, in accordance with Article 55 of this Law, the defendant may petition the court to rule on the merits of the case. The court shall rule on the case if it is ripe for judgment and such judgment shall be deemed as if rendered in the presence of the plaintiff”. Since Plaintiff did not submit an acceptable excuse for failure to attend the hearing session, and that the Department has deemed that the Case is ripe for adjudication according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

For these grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss objection filed by Plaintiff (Branch of ... Company), TIN (...), to Defendant (ZATCA) decisions regarding assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Sunday, 20/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
1742)

Delivered in Case No. (W-
2021-48057)

Keywords:

Withholding Tax – Tax Assessment – Related Parties – Loan Interests – Financial Statements – Late Payment Fine – Annuling ZATCA Decision.

Abstract

Plaintiff requests annulling ZATCA decision regarding tax assessment for 2018. Plaintiff's objection involves two items. Regarding the first item: Withholding Tax on Services Provided by Related Parties: Plaintiff objects Defendant's procedure outlined in imposing withholding tax on the amounts paid to related parties in return for technical services. Plaintiff argues that the amounts paid for services during the disputed period were duly reported in the annual withholding tax returns and that the balances related to fees and taxes, including VAT and similar charges, are not subject to withholding tax. Plaintiff further asserts that, during the objection phase on March 22, 2021 AD, it provided comprehensive transaction details, distinguishing taxable and non-taxable transactions for withholding tax purposes, along with reasons and evidence of payments as reflected in the annual withholding tax return. These details included a summary of related party transactions and financial statements, including general ledger. Therefore, Plaintiff requests annulling ZATCA procedure. Item Second: Withholding Tax on Loan Interests: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on loan interest, arguing that the assessed amounts reflect the year-end cash balance of ... Company, which outlines the outstanding balance of total funding provided by ... Group to the Company throughout the year. Item (3): Fines: Plaintiff objects to Defendant's procedure outlined in imposing late payment fine on the above contested items. In its memorandum, Plaintiff stated that it filed tax returns by the statutory deadlines and that the late payment fines imposed due to tax variance arose from errors and differences in perspective rather than intentional failure to pay tax by the statutory deadline. Therefore, Plaintiff requests annulling any additional tax obligation that is not subject to late payment fine. ZATCA answered regarding (Withholding Tax) item, Plaintiff did not provide supporting documents for its claims. Defendant requested Plaintiff to provide the general ledger of non-resident entities to verify the amounts paid, as well as supporting documents for payment of withholding tax on technical services and interest. However, Plaintiff did not comply with providing necessary supporting documents for its stance. Regarding (Fines) item, a late payment fine was imposed on the unpaid tax differences by the statutory deadline. Accordingly, ZATCA insists on validity and correctness of its procedure and requests the Department to dismiss the Case. The Department found that the dispute involves Defendant's procedure outlined in issuing zakat assessment for 2019, consisting of two main items. Regarding the first item: (Accounts Payable) Item: The Department found that the dispute between the parties to the Case is resolved when Defendant



accepted Plaintiff's requests according to its answer, which included: "... ZATCA accepted Plaintiff's objection". Second: (Dividends) Item: The Department found that the dispute involves Defendant's procedure outlined in issuing tax assessment for 2018, outlined in the following items: First: Withholding Tax on Services Provided by Related Parties: It turned out that Plaintiff attached supporting documents for its stance regarding withholding tax variances. In addition, Taxpayer argues that ZATCA procedure assuming that the balances reflected in the financial statements outline amounts due for services provided to the Company and imposing withholding tax on such amounts is invalid. Second: Withholding Tax on Loan Interests: It turned out that Defendant rejected Plaintiff's objection to the withholding tax in general due to failure to provide the general ledger. Having taken cognizance of Case file, the Department found that Plaintiff's argument that it submitted the complete documents to Defendant during objection phase is valid. Third: Fines: Since the late payment fine is calculated from the deadline for filing return until the date of paying due tax resulting pursuant to provisions of the Law and any subsequent amendments made by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in interpreting statutory provisions. Therefore, the Department finds that the late payment fine is deemed null and void for the items where ZATCA decision was nullified, as the basis for imposing tax was nullified. Therefore, the Department ruled to Annul ZATCA decision regarding assessment subject matter of the Case.

Instruments:

- Articles (76.B) and (77.A) [of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (57.3), (67.3), (68.1.B) and (71.2) [of the Implementing Regulations of Income Tax Law issued by Minister of Finance Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Saturday, 07/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the Case filed by ... Company against ZATCA. Since the case met the prescribed legal requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees on 20/04/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), in his capacity as the attorney of Plaintiff (... Company), (C.R. No. ...), filed an objection to ZATCA tax assessment for 2018. Plaintiff's objection is limited to the following items: Item First: Withholding Tax on Services Provided by Related Parties: Plaintiff objects to Department's procedure outlined in imposing withholding tax on amounts paid to related parties for technical services. The amounts paid for such services were reported in the annual withholding tax return for the relevant period, and the balance related to payments for fees and taxes, including VAT and similar taxes, which are not subject to withholding tax, was not accounted for. During the objection phase, on March 22, 2021 AD, Plaintiff sent the full details of transactions subject to and exempt from withholding tax, reasons for the same and proof of payment in the annual withholding tax form, in addition to a summary explaining the movement of related parties in the financial statements, including general ledger (Exhibit No. 3). Therefore, Plaintiff requests annulling Department's



procedure. Item Second: Withholding Tax on Loan Interests: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on loan interest, as it outlines the cash balance at the end of each year for ... Company that is the outstanding balance of total funding provided by ... Group. to the Company throughout the year. Item (3): Fines: Plaintiff objects to Defendant's procedure outlined in imposing late payment fine on the above contested items. In its statement of claim, Plaintiff stated that tax returns were filed within the statutory deadlines and that the late payment fines related to tax variance resulted from errors and differing interpretations, not from any deliberate attempt to avoid paying tax on the due date. Therefore, Plaintiff moves for annulling any additional tax liability arising from the same, which is not subject to late payment fine.

Having presented the statement of claim to Defendant, it submitted an answer dated 05/07/2021 AD wherein replied as follows: Regarding (Withholding Tax) item, Plaintiff failed to provide supporting documents for its claim. Defendant asked Plaintiff to provide the general ledger for non-resident entities to verify the amounts paid, in addition to supporting documents for paying withholding tax for technical services and interests. However, Plaintiff did not comply with providing supporting documents for its position, thereby violating Paragraph (3) of Article (57) of the Implementing Regulations of Income Tax Law. Regarding (Fines) item, a late payment fine was imposed on tax variances that were not paid by the statutory deadline in accordance with Paragraph (A) of Article (77) of Income Tax Law and Paragraph (1.B) of Article (68) of the Implementing Regulations of Income Tax Law. Therefore, the Department insists on validity and correctness of its procedure and requests dismissing the Case.

On Saturday, 07/02/1444 AH, the Department held e-hearing session to consider the Case. Having called the litigants, the Department found that ... appeared in his capacity as attorney of Plaintiff under the POA attached to Case file. In addition, ... appeared in his capacity as the representative of Defendant (ZATCA) under the POA attached to Case file. Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having asked Defendant's representative about Plaintiff's claim, he replied by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked both parties if he have further statements, they answered "no". Therefore, the Department decided to close pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding tax assessment for June of years from 2015 to 2018. Given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.



On Merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that the dispute involves Defendant's procedure outlined in issuing tax assessment for 2018, including the following items:

First: Withholding Tax on Services Provided by Related Parties:

Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on the amounts paid to related parties in return for technical services. The amounts paid for such services were reported, while the balance related to payments for fees and taxes, including VAT, which are not subject to withholding tax, was not accounted for. On the other hand, Defendant argued that it did not deduct the item due to Plaintiff's failure to provide supporting documents for its claim, as Paragraph (3) of Article (57) of the Implementing Regulations of Income Tax Law issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH stipulates: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". As such, and having reviewed the statements provided by both parties, it turned out that Plaintiff provided supporting documents for its position regarding withholding tax variances. In addition, Plaintiff argues that ZATCA assumption that the balances reflected in Note (7) to the financial statements outline amounts due for services rendered to the Company and were subject to withholding tax is invalid. Therefore, the Department accepts Plaintiff's objection and annuls Defendant's decision.

Second: Withholding Tax on Loan Interests:

Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on loan interest, as it outlines the cash balance at the end of each year for (... Company) of total funding provided by ... Group to the Company throughout the year. On the other hand, Defendant argued that it did not deduct the item due to Plaintiff's failure to provide supporting documents for its claim, as Paragraph (3) of Article (57) of the Implementing Regulations of Income Tax Law issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH stipulates: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". As such, and having cognizance of statements provided by both parties, it turned out that Defendant rejected Plaintiff's objection to the withholding tax in general due to failure to provide the general ledger. Having taken cognizance of Case file, the Department found that Plaintiff's argument that it submitted the complete documents to Defendant during objection stage is valid. Therefore, the Department accepts Plaintiff's objection and annuls Defendant's decision.

Third: Fines:

Plaintiff objects to Defendant's procedure outlined in imposing a fine despite the fact that there is a technical disagreement regarding the items on which it was based. On the other hand, Defendant argued that it added a late payment fine to tax variances that were not paid by the statutory deadline in accordance with Paragraph (A) of Article (77) of Income Tax Law and Paragraph (1.B) of Article (68) of the Implementing Regulations of Income Tax Law. In addition, Paragraph (A) of Article (77) of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: "In addition to the fines stipulated in



Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. In addition, Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH 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: B. Delay in payment of due tax as per the Department’s assessment”. In addition, Paragraph (3) of Article (67) of the Implementing Regulations of Income Tax Law stipulates: “Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations including contested cases, where the fine shall be due from the due date for return filing and payment”. As such, the Department, having taken cognizance of Case file, arguments and documents included therein, found that the late payment fine is calculated from the deadline for filing return until the date of paying due tax resulting pursuant to provisions of the Law and any subsequent amendments introduced by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in interpreting statutory provisions. Therefore, the Department finds that the late payment fine is deemed null and void regarding the items where ZATCA decision was nullified, as the basis for imposing tax was nullified.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Annul Defendant (ZATCA) decision against Plaintiff (... Company), (TIN No.), related to the assessment subject matter of this Case.

This decision was delivered in presence of the parties. The Department set Sunday, 06/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2020-
1749)

Delivered in Case No. (W-
2021-52672)

Keywords:

Withholding Tax – Tax Assessment – Late Payment Fine – Other Payments.

Abstract

Plaintiff requests annulling ZATCA decision regarding tax assessment for 2015. Plaintiff grounded its objection to (Withholding Tax) item, Plaintiff objects to Defendant's procedure outlined in imposing withholding tax, asserting that there were no external payments amounting to this amount. In addition, the outgoing transfers amounted only SAR 900,000, which were payments for external technical services, rather than other payments of 15%. Moreover, Plaintiff objects to Defendant's procedure outlined in imposing late payment fine. - ZATCA answered regarding objection to (Withholding Tax) item: ZATCA calculated the withholding tax at a rate of 15% on an amount of SAR 3,369,346.59 for July 2015 based on external transfer records and the account statements provided by the General Administration, which breaks down the total external transfers made by Taxpayer. Given the lack of clarification by Taxpayer regarding the purpose of external transfers, it turns out that ZATCA procedure outlined in imposing amounts of external transfers to withholding tax of 15% is deemed valid. Having reviewed statements provided by ... Bank, it was confirmed that there were amounts involved, thus supporting validity of ZATCA procedure. Regarding (Late Payment Fines) item, the late payment fine was imposed on tax variances that were not paid by the statutory deadline. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing the Case. - The Department found that the dispute involves Defendant's procedure outlined in issuing tax assessment for 2015 outlined in the following items: Withholding Tax: As such, imposing withholding tax on amounts paid to non-resident entities is triggered by the occurrence of an actual payment or an equivalent event such as settlements, offset or any other means. Having taken cognizance of the attached documents, it turns out that Plaintiff provided an account statement elaborating that the amount of SAR 900,000 transferred to an external entity has had tax withheld. Therefore, Plaintiff attached the withholding tax return that includes the amount. As for Defendant's argument that the amount transferred was SAR 3,369,346 as reported by ... Bank, Plaintiff has not provided any supporting documents for transfer of the amount in question. Since Defendant did not provide evidence on the actual payment, settlement or any equivalent transaction. Therefore, the Department accepts Plaintiff's objection and annuls Defendant's decision. Regarding fines, the late payment fine is imposed due to delay in paying tax due. Since item No. (1) related to imposing withholding tax on the amounts transferred to external entities. Therefore, the Department found that Defendant's procedure outlined in levying withholding tax in this regard is invalid. Thereupon, the Department annuls late payment fine due to invalidity of levying tax and accepts Plaintiff's objection. Therefore, the



Department ruled to Annul ZATCA decision regarding assessment subject matter of the Case.

Instruments:

- [Articles \(65.A\), \(76.B\) and \(77.A\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (68.1.B.) of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Saturday, 07/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the Case filed by ... Company against ZATCA. Since the case met the prescribed legal requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees on 01/06/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), holder of Resident ID No. (...), in its capacity as the legal representative of Plaintiff (Branch of ... Company), (C.R. No. ...), under the commercial register, filed an objection to ZATCA tax assessment for 2015. Plaintiff's objection is limited to the following items: Item First: Withholding Tax: Plaintiff objects to Defendant's procedure outlined in imposing withholding tax, arguing that there are no external payments for the amount in question. In addition, the transfers made amounted to only SAR 900,000, which were payments for external technical services, rather than other payments of 15%. Item Second: Late Payment Fines: Plaintiff objects to Defendant's procedure outlined in imposing a late payment fine.

Having presented the statement of claims to Defendant, it submitted an answer dated 13/09/2021 AD wherein objects to (Withholding Tax) item: The Department calculated the withholding tax at a rate of 15% on the amount of SAR 3,369,346.59 for July 2015 based on external transfer records and according to account statements provided by the General Administration, which elaborate the total external transfers for Taxpayer. Given the lack of clarification by Taxpayer regarding the purpose of external transfers, it turns out that ZATCA procedure outlined in imposing amounts of external transfers to withholding tax of 15% is valid. Having reviewed statements provided by ... Bank, it was confirmed that there were amounts. In addition, in accordance with provisions of Article (68) of Income Tax law, ZATCA confirms that its procedure is valid. Regarding (Fines) item, a late payment fine was imposed on tax variances that were not paid by the statutory deadline in accordance with Paragraph (A) of Article (77) of Income Tax Law and Paragraph (1.B) of Article (68) of the Implementing Regulations of Income Tax Law. Therefore, the Department insists on validity and correctness of its procedure and requests dismissing the Case.

On Saturday, 07/02/ 1444 AH, the Department held e-hearing session to consider the Case. Having called the parties, the Department found that Plaintiff's attorney did not appear despite of being duly notified of session date. On the other hand, ..., appeared in his capacity as Defendant (ZATCA) representative under POA, a copy of which is attached to Case file. Having asked Defendant's representative about Plaintiff's claim, he answered by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's representative if he had any



other statements, he answered “no”. Therefore, the Department decided to close pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding tax assessment for 2015. Given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that the dispute involves Defendant’s procedure outlined in issuing tax assessment for 2015, including the following items:

First: Withholding Tax:

Plaintiff objects to Defendant’s procedure outlined in imposing withholding tax, as there are no external payments of this amount, and that the transfers made were, in essence, for external technical services rather than other payments of 15%. On the other hand, Defendant argued that it calculated a withholding tax of 15% based on the flow of external transfers and account statements provided by the General Administration, which elaborate the total external transfers. Given Plaintiff’s failure to elaborate the purpose of such external transfers and having reviewed statements provided by ... Bank, and through which it was confirmed that amounts were present, for which the objection was rejected. Since Paragraph (A) of Article (68) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: “Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: 6. Any other payments specified in the Regulations...”. As such, imposing withholding tax on amounts paid to non-resident entities is triggered by the occurrence of an actual payment or an equivalent event such as settlements, offset or any other means. Having taken cognizance of the attached documents, it turns out that Plaintiff provided an account statement elaborating that the amount of SAR 900,000 transferred to an external entity has had tax withheld. Therefore, Plaintiff attached the withholding tax return that includes the amount. As for Defendant’s argument that the amount transferred was SAR 3,369,346 as reported by ... Bank, Plaintiff has not provided any supporting documents for transfer of the amount in question. Since Defendant did not provide evidence on the actual payment, settlement or any equivalent transaction. Therefore, the Department accepts Plaintiff’s objection and annuls Defendant’s decision.

Second: Fines:

Plaintiff objects to Defendant’s procedure outlined in imposing a late payment fine despite. On the other hand, Defendant argued that it added a late payment fine to tax variances that were not paid by the statutory deadline in accordance with Paragraph (A) of Article



(77) of Income Tax Law and Paragraph (1.B) of Article (68) of the Implementing Regulations of Income Tax Law. In addition, Paragraph (A) of Article (77) of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: “In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. In addition, Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH 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 due tax as per the Department’s assessment”.

As such, the late payment fine is imposed due to delay in paying tax due. Since item No. (1) related to imposing withholding tax on the amounts transferred to external entities. Therefore, the Department found that Defendant’s procedure outlined in levying withholding tax in this regard is invalid. Thereupon, the Department annuls the late payment fine due to invalidity of levying tax and accepts Plaintiff’s objection. Therefore, the Department accepts Plaintiff’s objection and annuls Defendant’s decision.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Annul Defendant (ZATCA) decision against Plaintiff (Branch of ... Company), (TIN No.), related to the assessment subject matter of this Case.

This decision was delivered in presence of the parties. The Department set Sunday, 06/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
1616)

Delivered in Case No. (W-
40549-2021)

Keywords:

Withholding Tax – Late Payment Fine – Reinsurance – Tax Variance – Due Date.

Abstract

Plaintiff requests annulling ZATCA decision regarding withholding tax for years from 2016 to 2018. In addition, Plaintiff requests annulling ZATCA procedure regrading additional withholding tax and late payment fine. ZATCA answered that the claim is limited to two items. Regarding the first item: Withholding Tax on Reinsurance Premiums: Defendant states that during the assessment, a withholding tax of 5% was levied on reinsurance premium amounts ceded to foreign reinsurers based on figures reflected in the financial statements and for which withholding tax had not been paid throughout the years in question. Regarding the second item: Late Payment Fine: It was imposed on the resulting tax variance. The Department found that the dispute involves Defendant's procedure outlined in issuing withholding tax for May 2018, outlined in two items as follows: (Withholding Tax on Reinsurance Premiums) item: It was found that Plaintiff provided a confirmation letter from intermediaries, including (... Saudi Arabia Insurance Brokerage and ...), (...) Company and (... Insurance and Reinsurance) affirming their commitment to pay the withholding tax. In addition, Plaintiff provided contracts with the said intermediaries (in English). However, Defendant did not allow deduction of withholding tax related to local intermediaries, as the confirmation letter did not include a detailed statement of the reinsurance companies with which the contracts were made, the amounts from which tax was withheld or supporting documents. Accordingly, Defendant is entitled to reject Plaintiff's request and levy withholding tax on amounts not reported by Plaintiff in withholding tax returns due to insufficient supporting documents provided by Plaintiff. Regarding late payment fine: Since the late payment fine is calculated from the deadline for filing return until the date of paying due tax resulting from the application of provisions of the Law and amendments introduced by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in the interpretation of statutory provisions. Therefore, the Department ruled to: Dismiss Plaintiff's objection regarding the assessment subject matter of the Case.

Instrument:

- **Articles (68.A and C) and (77.A and B) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH.**
- **Articles (67.3), (63.1) and (68.B.1) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH.**

Facts:





Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 02/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 07/03/2021 AD.

The facts of this Case are summed up that (...), holder of National ID No. (...) in his capacity as attorney of Plaintiff (... Company for Cooperative Insurance), C.R. No. (...), under POA No. (...) dated 23/07/1442 AH issued from ... Notary, filed an objection to ZATCA withholding tax for years from 2016 to 2018. In addition, Plaintiff requests annulling ZATCA procedure regarding additional withholding tax and late payment fine. Having presented the statement of claim to Defendant, it submitted an answer wherein replies that the Case involves an objection to two items. Regarding the first item: Withholding Tax on Reinsurance Premiums: Defendant states that during the assessment, a withholding tax of 5% was levied on reinsurance premium amounts ceded to foreign reinsurers based on figures reflected in the financial statements and for which withholding tax had not been paid throughout the years in question. Regarding the second item: Late Payment Fine: The late payment fine was imposed on the resulting tax variance. Accordingly, Defendant requests the Department to dismiss the Case, while reserving right to submit additional replies and clarifications before the Committees.

On Monday, 02/02/1444 AH, the Department held e-hearing session to consider the Case. At that session, (...), holder of National ID No. (...), appeared in his capacity Defendant's attorney under ZATCA Vice Governor for Legal Affairs POA No. (...) dated .../10/1443 AH. Having asked Defendant's representative about Plaintiff's claim, he answered by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's representative if he had any other statements, he answered "no". Therefore, the Department decided to close pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding withholding tax for years from 2016 to 2018. Given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that the dispute



involves Defendant's procedure outlined in issuing tax assessment for May 2018, including the following items:

First: (Withholding Tax on Reinsurance Premiums) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in imposing withholding taxes in the amount of SAR 13,567,538.11 on all foreign reinsurers appearing in the financial statements for years from 2016 to 2018, without considering insurance intermediaries. Plaintiff believes that it followed the instructions of ... Saudi Reinsurance Company regarding reinsurance with both local and foreign parties, whether through intermediaries or directly. In addition, Plaintiff adds that Defendant failed to consider that the Company had made payments to registered local intermediaries who submit their tax returns. On the other hand, Defendant argued that it asked Plaintiff to provide a certificate from the intermediaries to whom these amounts were transferred. Moreover, Plaintiff provided a certificate confirming that the insurance intermediary bore the withholding tax, but the certificate did not specify any amounts. Defendant further states that the reinsurance premiums paid to foreign reinsurance companies are commission-based and must be transferred within (7) business days, as they are on behalf of Taxpayer. Accordingly, such funds are subject to withholding tax of 5% in accordance with Income Tax Law and its Implementing Regulations. In addition, Paragraphs (A) and (C) of Article (68) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425H stipulate: "A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: ... C. 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 Responsible Person 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. 3. If he fails to report withholding statements to the Department as stipulated under subparagraph (3) of paragraph (b) of this Article". In addition, Paragraph (1) of Article (63) of the Implementing Regulations of Income Tax Law stipulates: "1. A non-resident is subject to tax that any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: ...". As such, and since it turns out from Article (68) of Income Tax Law that the resident person "Taxpayer" is obligated and responsible for withholding tax from the amount paid to non-resident and must remit it to ZATCA by the statutory deadline stipulated by the Law, through monthly withholding tax returns. Since the dispute between the parties involves ZATCA procedure outlined in calculating withholding tax on (premiums reinsured through local insurance intermediaries), as Plaintiff handled the amount of premiums reinsured through local intermediaries as international reinsurance but did not withhold tax on the amount, as it was paid to a local intermediary rather than a foreign one, with the intermediary being responsible for withholding tax on such amounts. Since these amounts are governed by Article (68) of Income Tax Law and Article (63) of its Implementing Regulations, and having taken cognizance of Case file, it turns out that Plaintiff provided a confirmation letter from intermediaries (... Saudi Arabia Insurance and Reinsurance Brokerage), (... Company) and (... The Kingdom Insurance and Reinsurance) affirming their commitment to pay the withholding tax. In addition, Plaintiff provided contracts with the said intermediaries (in English). However, Defendant did not allow deduction of withholding tax related to local intermediaries, as the confirmation letter did not include a detailed statement of the reinsurance companies with which the contracts were made, the amounts from which tax was withheld or supporting documents. Accordingly, Defendant is entitled to reject Plaintiff's request and levy withholding tax on amounts not reported by Plaintiff in withholding tax returns due to insufficient supporting



documents provided by Plaintiff. Therefore, the Department dismisses Plaintiff's objection.

Second: Late Payment Fine:

Since the dispute involves Plaintiff's objection to Defendant's procedure outlined in imposing late payment fine. In addition, Plaintiff stated that it had filed tax returns within the statutory deadlines in accordance with Paragraph (A) of Article (77) of Income Tax Law that stipulates: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". In addition, Paragraph (1.B) of Article (68) of the Implementing Regulations of Income Tax Law stipulates: "1. In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: (b) Delay in payment of due tax as per the Department's assessment". In addition, Paragraph (3) of Article (67) of the Implementing Regulations of Income Tax Law stipulates: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". As such, and having taken cognizance of Case file, arguments and documents included therein, the Department found that the late payment fine is calculated from the deadline for filing return until the date of paying due tax resulting from the application of provisions of the Law and amendments introduced by Defendant. Since the dispute between the parties is document-based and did not arise from a significant discrepancy in the interpretation of statutory provisions. Therefore, the Department dismisses Plaintiff's objection regarding (Late Payment Fine) item due to the fact that Defendant's procedure outlined in imposing late payment fine is valid.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss the objection filed by Plaintiff (... Company for Cooperative Insurance), C.R. No. (...), to Defendant (ZATCA) decision regarding assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 17/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



Income Tax / Withholding Tax

Primary Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
1886)

Delivered in Case No. (IW-
50216-2021)

Keywords:

Withholding Tax – Tax Assessment – Expiry of Five-Year Statutory Period for Assessment – Overstated Basic Salaries and Housing Allowance Over Social Insurance Contributions – Profits on External Purchases – Life Insurance Expenses – Net Book Loss and Royalty Expenses – Overstated Social Insurance Contributions – Carried Forward Tax Losses – Loan Interest Exceeding Permissible Limit – Reversal of Inventory Provisions – Late Payment Fines.

Abstract

Plaintiff requests annulling ZATCA decision regarding tax assessment for years from 2011 to 2014 and withholding tax for December of years from 2005 to 2014. Plaintiff's objection is limited to thirteen items. Regarding the First Item: Expiry of Five-Year Statutory Period for Tax Assessment for Years from 2011 to 2014. Second Item: Overstated Basic Salaries and Housing Allowance Over Social Insurance Contributions for Years from 2011 to 2014. Item (3): Profits on External Purchases of 15% for Years from 2011 to 2014. Item (4): Life Insurance Expense for 2014. Item (5): Net Book Loss and Royalty Expenses for 2012. Sixth Item: Overstated Social Insurance Contributions for 2014. Seventh Item: Adjusted Carried Forward Tax Losses for 2012. Eighth Item: Loan Interest Exceeding Permissible Limit. Ninth Item: Reversal of Inventory Provisions for 2011. Tenth Item: Expiry of Five-Year Statutory Period for Tax Assessment for Years from 2005 to 2014. Eleventh Item: ZATCA Failure to Abide by Assessment Procedures. Twelfth Item: Withholding Tax for Years from 2005 to 2014. Thirteenth Item: Late Payment Fines - ZATCA answered as follows: First: Expiry of Five-Year Statutory Period for Tax Assessments for Years from 2011 to 2014. Defendant argues that Plaintiff's tax returns were prepared incorrectly. Therefore, Defendant amended such returns. In addition, Defendant argues that provisions of Paragraph (B) of Article (65) of Income Tax Law apply to the years in question. Second: Overstated Basic Salaries and Housing Allowances Over Social Insurance Contributions for Years from 2011 to 2014. Defendant states that it asked Plaintiff to elaborate certain settlement items, such as distributions and benefits, and to provide a sample of employment contracts along with Work Organization Regulation approved by the Ministry of Human Resources. Plaintiff provided settlement statements in Excel format and a sample of contracts for workers of a drilling rig only after the deadline, without providing Work Organization Regulation. Having considered the settlement, Defendant found that the types of allowances, benefits and distributions were unclear and could not be compared to the contracts. Third: Profits from External Purchases of 15% for Years from 2011 to 2014. Defendant states that it compared the settlements provided with the returns and customs declarations. In addition, Defendant found that there are discrepancies between the settlements and the returns or customs



declarations. In addition, Defendant found that Plaintiff had not recorded some clarifications in Company's books. Thereupon, Defendant rejected Plaintiff's objection. Fourth: Life Insurance Expense for 2014. Defendant states that it rejected deducting this expense, as it is not deductible and statutory. Fifth: Net Book Loss and Royalty Expense for 2012. Defendant states that it adjusted the net loss by royalty expenses to align with the net loss with the figures reflected in the financial statements. Sixth: Overstated Social Insurance Expense for 2014. Defendant states that it refunded the variance for overstated social insurance contributions. Seventh: Adjusted Carried Forward Tax Losses for 2012. Defendant states that, having taken cognizance of the objection, it turned out that there was no provision for obsolete inventory in the statement of financial position or the statement of cash flow. In addition, no such provision was noted in the inventory disclosure, and the inventory disclosure did not include any net amount. Eighth: Overstated Loan Interest Exceeding Permissible Limit. Defendant states that during objection examination stage, it was found that no adjusted carried-forward losses were deducted within (25%) limit. In addition, ZATCA relied on Plaintiff's disclosure in this regard. Ninth. Regarding (Withholding Tax for Years from 2005 to 2010) item, Defendant states that it asked Plaintiff to provide a sample of material purchases that are subject to withholding tax. Therefore, Plaintiff provided a set of invoices, which were found to pertain to purchased materials. However, Plaintiff did not provide a general ledger that elaborates such amounts and their descriptions. Tenth: Imposing Withholding Tax for Years from 2012 to 2014: Defendant states that it asked Plaintiff to provide a statement of amounts due, amounts paid and supporting documents. However, Plaintiff provided Excel sheets that did not clearly show the amounts due or the amounts paid. Eleventh: Imposing Late Payment Fine on Income Tax and Withholding Tax: Defendant states that it imposed a late payment fine on tax variances. Thereupon, ZATCA requests that the Case is dismissed in form, while reserving right to provide additional replies and clarifications before the Committees. The Department found that the dispute involves Defendant's procedure outlined in issuing tax assessment for years from 2011 to 2014 and withholding tax for December of years from 2005 to 2014. This dispute involves thirteen items. Regarding first item: (Expiry of Five-Year Statutory Period for Tax Assessment for Years 2011 to 2014) item: Since it turns out from the statutory provisions that Defendant's entitlement to make tax assessments expires after (5) years from the deadline for filing tax return. Since the Department found that Defendant made tax assessment for years in question on 30/11/2020 AD, while the statutory period expired on 30/04/2020 AD. Therefore, it turns out that Defendant made assessment after expiry of the statutory period. Therefore, Defendant's right to make tax assessment for such years is extinguished according to the statutory provisions. This is not undermined by Defendant's claim that it is entitled to make tax assessment within (10) years from the deadline for filing tax return, as this right is limited to cases where it is proven that tax return was incomplete or incorrect with the intent of tax evasion. Having taken cognizance of Defendant's answer, it turns evident that no substantive evidence has been provided to show that the tax return was incorrect with the intent of tax evasion. Therefore, and since Defendant did not provide evidence that the tax returns were incomplete or incorrect with the intent of tax evasion, it turns out that Defendant is not entitled to make such assessments, considering that the five-year period from the deadline for filing tax returns has expired. Therefore, the Department annuls Defendant's decision. Regarding the items (Overstated Basic Salaries and Housing Allowance Over Social Insurance Contributions for Years from 2011 to 2014), (Profits from External Purchases of 15% for Years from 2011 to 2014), (Life Insurance Expenses for 2014), (Net Book Losses and Royalty Expenses for 2012), (Overstated Social Insurance Expenses for 2014), (Adjusted Carried Forward Tax Losses for 2012), (Overstated Loan Interests Exceeding Permissible Limit), (Reversal of



Inventory Provisions for 2011), and since the Department, regarding (Expiry of Five-Year Statutory Period for Tax Assessment for Years from 2011 to 2014) item, accepted Plaintiff's objection due to the fact that Defendant is not entitled to amend the assessment after expiry of the statutory period. Since the related matters shall have the same effect. Therefore, the Department annuls Defendant's procedure regarding such items. Second: (Expiry of Five-Year Statutory Period for Tax Assessment for Years 2005 to 2014) item: It turned out that Plaintiff did not withhold tax on payments made to non-resident entities for the years in question, in violation of the statutory provisions. Since the resident person "Plaintiff" is obligated and responsible for withholding tax from the amount paid to a non-resident given that there is no statutory provision that exempts ZATCA from claiming withholding tax after a certain period. Third: (ZATCA Failure to Abide by Assessment Procedures) item: Since it turns out from the statutory provisions that tax assessment must include several key elements to be considered valid. Having taken cognizance of assessments made by Defendant, it turns out that such assessment did not include the key elements, as Defendant did not state reasons for amendment, legal reasons for the same, amount of tax and fines. Since ZATCA assessment included in Case file did not meet the formal requirements, including reasons for amendment, amount of tax and fines. Therefore, ZATCA assessment is flawed. Regarding (Withholding Tax for Years from 2005 to 2014) item, the Department concluded regarding (ZATCA Failure to Abide by Assessment Procedures) item to accept Plaintiff's objection regarding this item, as the related matters shall have the same effect. Fourth: (Late Payment Fine) Item: Since the late payment fine is imposed on Taxpayer due to delay in paying tax due. Regarding Item No. (1) and Item No. (11): Since the Department annulled Defendant's procedure, subject matter of the Case. Therefore, the late payment fine shall be annulled due to the fact that the basis for imposing tax is nullified. Therefore, the Department ruled to Dismiss Plaintiff's objection to (Expiry of Statutory Period for Withholding Tax Assessment for Years from 2005 to 2014) item, and annul other Defendant's decisions.

Instruments:

- [Articles \(65.A and B\), \(67.A.1\) and \(68.A and C\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- [Articles \(59.7 and 8\), \(63.B.3\) and \(68.1\) of the Implementing Regulations of Income Tax Law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- [Article \(65.B\) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. \(2082\) dated 01/06/1438 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Saturday, 29/01/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the Case filed by ... Company against ZATCA. Since the case met the prescribed legal requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees on 06/05/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), appeared on behalf of Plaintiff Company under POA attached to Case file, and on behalf of ... Saudi Arabia LTD, C.R. No. (...), filed an objection to tax assessment for years from 2011 to 2014 and ZATCA withholding tax assessment for December of years from 2005 to 2014. Plaintiff's



objection is limited to thirteen items. Regarding the First Item: Expiry of Five-Year Statutory Period for Tax Assessment for Years from 2011 to 2014. Second Item: Overstated Basic Salaries and Housing Allowance Over Social Insurance Contributions for Years from 2011 to 2014. Item (3): Profits on External Purchases of 15% for Years from 2011 to 2014. Item (4): Life Insurance Expense for 2014. Item (5): Net Book Loss and Royalty Expenses for 2012. Sixth Item: Overstated Social Insurance Contributions for 2014. Seventh Item: Adjusted Carried Forward Tax Losses for 2012. Eighth Item: Loan Interest Exceeding Permissible Limit. Ninth Item: Reversal of Inventory Provisions for 2011. Tenth Item: Expiry of Five-Year Statutory Period for Tax Assessment for Years from 2005 to 2014. Eleventh Item: ZATCA Failure to Abide by Assessment Procedures. Twelfth Item: Withholding Tax for Years from 2005 to 2014. Thirteenth Item: Late Payment Fine:

Having presented the statement of claim to Defendant, it responded with an answer summarized as follows: Expiry of Five-Year Statutory Period for Tax Assessment for Years from 2011 to 2014. Defendant argues that Plaintiff's tax returns were prepared incorrectly. Therefore, Defendant amended such returns. In addition, Defendant argues that provisions of Paragraph (B) of Article (65) of Income Tax Law apply to the years in question. Second: Overstated Basic Salaries and Housing Allowances Over Social Insurance Contributions for Years from 2011 to 2014. Defendant states that it asked Plaintiff to elaborate certain settlement items, such as distributions and benefits, and to provide a sample of employment contracts along with Work Organization Regulation approved by the Ministry of Human Resources. Plaintiff provided settlement statements in Excel format and a sample of contracts for workers of a drilling rig only after the deadline, without providing Work Organization Regulation. Having considered the settlement, Defendant found that the types of allowances, benefits and distributions were unclear and could not be compared to the contracts. Third: Profits from External Purchases of 15% for Years from 2011 to 2014. Defendant states that it compared the settlements provided with the returns and customs declarations. In addition, Defendant found that there are discrepancies between the settlements and the returns or customs declarations. In addition, Defendant found that Plaintiff had not recorded some clarifications in Company's books. Thereupon, Defendant rejected Plaintiff's objection. Fourth: Life Insurance Expense for 2014. Defendant states that it rejected deducting this expense, as it is not deductible and statutory. Fifth: Net Book Loss and Royalty Expense for 2012. Defendant states that it adjusted the net loss by royalty expenses to align with the net loss with the figures reflected in the financial statements. Sixth: Overstated Social Insurance Expense for 2014. Defendant states that it refunded the variance for overstated social insurance contributions in accordance with provisions of Paragraph (3) of Article (57) of Income Tax Law. Seventh: Adjusted Carried Forward Tax Losses for 2012. Defendant states that, having taken cognizance of the objection, it turned out that there was no provision for obsolete inventory in the statement of financial position or the statement of cash flow. In addition, no such provision was noted in the inventory disclosure, and the inventory disclosure did not include any net amount. Eighth: Overstated Loan Interest Exceeding Permissible Limit. Defendant states that during objection examination stage, it was found that no adjusted carried-forward losses were deducted within (25%) limit. In addition, ZATCA relied on Plaintiff's disclosure in this regard. Ninth. Regarding (Withholding Tax for Years from 2005 to 2010) item, Defendant states that it asked Plaintiff to provide a sample of material purchases that are subject to withholding tax. Therefore, Plaintiff provided a set of invoices, which were found to pertain to purchased materials. However, Plaintiff did not provide a general ledger that elaborates such amounts and their descriptions. Tenth: Imposing Withholding Tax for Years from 2012 to 2014: Defendant states that it asked Plaintiff to provide a statement of



amounts due, amounts paid and supporting documents. However, Plaintiff provided Excel sheets that did not clearly show the amounts due or the amounts paid. Eleventh: Imposing late payment fine on income tax and withholding tax: Defendant states that it imposed a late payment fine on tax variances in accordance with provisions of Paragraph (A) of Article (77) of Income Tax Law. Accordingly, ZATCA requests that the Case is dismissed in form, while reserving its right to provide further responses and clarifications before the Committees.

On Saturday, 29/01/1444 AH, the Department held e-hearing session to consider the Case. At that session, the Department found that ... appeared in his capacity as attorney of Plaintiff under POA attached to Case file. In addition, ... appeared in his capacity as the representative of Defendant (ZATCA) under POA attached to Case file Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having asked Defendant's representative about Plaintiff's claim, he replied by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked both parties if he have further statements, they answered "no". Therefore, the Department decided to close pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and 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 Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding tax assessment for years from 2011 to 2014 and withholding tax for December of years from 2005 to 2014. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, found that the dispute involves Defendant's procedure outlined in issuing tax assessment for years from 2011 to 2014 and withholding tax for December of years from 2005 to 2014. Plaintiff's objection is limited to thirteen items as follows:

First: (Expiry of Five-Year Statutory Period for Tax Assessment for Years 2011 to 2014) item: Since the dispute involves Plaintiff's objection to Defendant's procedure outlined in issuing tax assessment after expiry of the statutory period from the date of filing tax return for years in question. On the other hand, Defendant argued that provisions of Paragraph (B) of Article (65) of Income Tax Law govern the subject matter of dispute over this item. In addition, Defendant adds that Plaintiff filed the tax return incorrectly. Moreover, Paragraph (A) of Article (65) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425H stipulates: "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".



In Addition, Paragraph (B) of Article (65) of Income Tax Law stipulates: “The Department may make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year if a taxpayer does not file its tax declaration, or it is found that the declaration is incomplete or incorrect with the intent of tax evasion”. In addition, Paragraph (8) of Article (59) of the Implementing Regulations of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: “Without prejudice to Paragraph (b) of Article (65) of the Law, the return shall be considered accepted by the Department after five years from the end of the due date of filing the return without the taxpayer receiving any notice in this regard from the Department.” As such, and since it turns out from the statutory provisions that Defendant’s entitlement to make tax assessments expires after (5) years from the deadline for filing tax return. Since the Department found that Defendant made tax assessment for years in question on 30/11/2020 AD, while the statutory period expired on 30/04/2020 AD. Therefore, it turns out that Defendant made assessment after expiry of the statutory period. Therefore, Defendant’s right to make tax assessment for such years is extinguished according to the statutory provisions. This is not undermined by Defendant’s claim that it is entitled to make tax assessment within (10) years from the deadline for filing tax return in accordance with Paragraph (B) of Article (65) of the Implementing Regulations for the Collection of Zakat, as this right is limited to cases where it is proven that tax return was incomplete or incorrect with the intent of tax evasion. Having taken cognizance of Defendant’s answer, it turns out that no substantive evidence has been provided to elaborate that the tax return was incorrect with the intent of tax evasion. Since Defendant did not provide evidence that the tax returns were incomplete or incorrect with the intent of tax evasion, it turns out that Defendant is not entitled to make such assessments, considering that the five-year period from the deadline for filing tax returns has expired. Therefore, the Department annuls Defendant’s decision.

Regarding the items (Overstated Basic Salaries and Housing Allowance Over Social Insurance Contributions for Years from 2011 to 2014), (Profits from External Purchases of 15% for Years from 2011 to 2014), (Life Insurance Expenses for 2014), (Net Book Losses and Royalty Expenses for 2012), (Overstated Social Insurance Expenses for 2014), (Adjusted Carried Forward Tax Losses for 2012), (Overstated Loan Interests Exceeding Permissible Limit), (Reversal of Inventory Provisions for 2011), and since the Department, regarding (Expiry of Five-Year Statutory Period for Tax Assessment for Years from 2011 to 2014) item, accepted Plaintiff’s objection due to the fact that Defendant is not entitled to amend the assessment after expiry of the statutory period. Since the related matters shall have the same effect. Therefore, the Department annuls Defendant’s procedure regarding the items (Overstated Basic Salaries and Housing Allowance Over Social Insurance Contributions for Years from 2011 to 2014), (Profits from External Purchases of 15% for Years from 2011 to 2014), (Life Insurance Expenses for 2014), (Net Book Losses and Royalty Expenses for 2012), (Overstated Social Insurance Expenses for 2014), (Adjusted Carried Forward Tax Losses for 2012), (Overstated Loan Interests Exceeding Permissible Limit) and (Reversal of Inventory Provisions for 2011).

Second: (Expiry of Five-Year Statutory Period for Tax Assessment for Years 2005 to 2014) item:

Since the dispute involves Plaintiff’s objection to Defendant’s procedure outlined in imposing withholding tax after expiry of the statutory period from the date of filing tax return for years in question. On the other hand, Defendant argued that there is no statutory provision that forfeits its right to impose withholding tax after a certain period. In addition, Paragraphs (A) and (B) of Article (65) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: “The Department may, with a reasoned notification, make or amend a tax assessment within five years of the deadline specified



for filing the tax declaration for the taxable year, or at any time, upon the written consent of the taxpayer. B. The Department may make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year if a taxpayer does not file its tax declaration, or it is found that the declaration is incomplete or incorrect with the intent of tax evasion”. In addition, Paragraphs (A) and (C) of Article (68) of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states: “A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: ... C. 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. 3. If he fails to report withholding statements to the Department as stipulated under subparagraph (3) of paragraph (b) of this Article”. As such, it turns out that Article (68) of Income Tax Law stipulates that the resident person (Taxpayer) is obligated and responsible for withholding tax from the amounts paid to non-residents and must remit such tax to ZATCA within the prescribed deadlines in accordance with monthly withholding tax returns. Furthermore, Article (65) of Income Tax Law, cited by Plaintiff, directly pertains to the assessments made by ZATCA based on tax returns filed by taxpayers for the taxable year. However, the dispute between the parties involves ZATCA procedure outlined in imposing withholding tax on amounts paid by Plaintiff to non-resident entities, which does not pertain to tax assessments but rather falls under the purview of Article (68) of Income Tax Law and Article (63) of the Implementing Regulations of Income Tax Law. Having taken cognizance of Case file, it turned out that Plaintiff did not withhold tax on payments made to non-resident entities for the years in question contrary to the statutory provisions. Since the resident person (Plaintiff) is obligated and responsible for withholding tax from amounts paid to non-residents, and given that there is not statutory provision extinguishes ZATCA right to claim withholding tax after a certain period. Therefore, the Department dismisses Plaintiff's objection.

Third: (ZATCA Failure to Abide by Assessment Procedures) item:

Since the dispute involves Plaintiff's objection to Defendant's procedure outlined in failure to abide by the statutory assessment procedures. Plaintiff claims that Defendant did not abide by provisions of Paragraph (7) of Article (59) of the Implementing Regulations of Income Tax Law, as Defendant did not notify Plaintiff of reasons for amendments introduced to the assessment or elaborate the legal grounds therefor. Furthermore, Defendant's answer did not include any argument regarding this item. In addition, Paragraph (7) of Article (59) of the Implementing Regulations of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: “7. If the Department does not agree with the taxpayer's return, it shall notify the taxpayer of its modifications on the return, the reasons thereof, the amount of tax and subsequent penalties, and of the taxpayer's right to object and the statutory period specified for objection. The notice to the taxpayer shall be sent by registered mail or by any other means that proves the taxpayer's receipt of such notice”. As such, and since it turns out from the statutory provisions above-mentioned that tax assessment must include several key elements to be considered valid. Having taken cognizance of assessments made by Defendant, it turns out that such assessment did not include the key elements in accordance with Paragraph (7) of Article (59) of the Implementing Regulations of Income Tax Law, as Defendant did not state reasons for amendment, legal reasons for the same, amount of tax and fines. Since ZATCA assessment included in Case file did not meet the formal requirements, including



reasons for amendment, amount of tax and fines. Therefore, ZATCA assessment is flawed. Thereupon, the Department annuls Defendant's procedure.

Regarding (Withholding Tax for Years from 2005 to 2014) item: Since the Department concluded, regarding (ZATCA Failure to Abide by Assessment Procedures) item, to accept Plaintiff's objection to this item. Since the related matters shall have the same effect. Therefore, the Department annuls Defendant's procedure regarding (Withholding Tax for Years from 2005 to 2014) item.

Fourth: (Late Payment Fine) Item:

Since the dispute involves Plaintiff's objection to Defendant's procedure outlined in imposing late payment fine on the unpaid tax variances. On the other hand, Defendant argued that its procedure aligns with provisions of Paragraph (A) of Article (77) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH that stipulates: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". In addition, Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH 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 due tax as per the Department's assessment". As such, and since the late payment fine is imposed on Taxpayer due to delay in paying tax due. Regarding Item No. (1) and Item No. (11): Since the Department annulled Defendant's procedure, subject matter of the Case. Therefore, the late payment fine shall be annulled due to the fact that the basis for imposing tax is nullified. Thereupon, the Department annuls Defendant's procedure.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss the objection filed by Plaintiff (... Company), Saudi Arabia LTD, TIN (...), to Defendant (ZATCA) procedure regarding (Expiry of Statutory Period for Withholding Tax Assessment for Years from 2005 to 2014) item, subject matter of the Case.

Second: Annul Defendant (ZATCA) otherwise decisions against Plaintiff (... Company), Saudi Arabia LTD, TIN (...), regarding assessments, subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 17/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1668)

Delivered in Case No. (W-2021-52970)

Keywords:

Withholding Tax – Tax Dispute – Double Taxation – Failure to Provide Supporting Documents for Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding Plaintiff's objection to withholding tax for years from 2019 to 2020. Plaintiff grounded the claim on the fact that it submitting a refund request on behalf of ... Company in accordance with Article (8) of Double Taxation Avoidance Agreement. In addition, Plaintiff asserted fulfilling all legal requirements. Defendant answered that the contract lasted for more than (182) days, establishing a permanent establishment, and argued that the burden of proof regarding the return lies with Plaintiff. In the event of failure to prove correctness of tax return, the Department may impose any other statutory penalties. The Department found, from Case documents, that Plaintiff failed to provide the contract that confirms the existence of a permanent establishment or any supporting documents. Therefore, the Department ruled to Dismiss the Case filed by Plaintiff, and consider the decision as final and enforceable.

Instruments:

- Article (8) of [Convention between the Government of the Republic of India and the Government of the Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income, signed on 25/01/2006 AD and entered into force on 01/11/2006 AD.](#)
- Articles (57) [of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 24/01/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 02/06/2021 AD.

The facts of this Case are summed up that ..., holder of National ID No. (...), in his capacity as the legal representative of Plaintiff Company, under the commercial registration attached to Case file, filed an objection on behalf of Plaintiff (Branch of ... Company),



C.R. No. (...), to ZATCA withholding tax assessment for November 2019 to March 2020. Plaintiff's objection is limited to the following item: Refunding Withholding Tax.

Having presented the statement of claim to Defendant, Defendant replied with an answer wherein raises a plea to inadmissibility of the Case in form in accordance with Paragraph (1) of Article (22) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. In addition, Defendant submitted a supplementary wherein elaborates that Defendant rejected Plaintiff's request for refunding withholding tax on behalf of ... Company due to continuity of business activities between the parties for a period exceeding (182) days, establishing a permanent establishment. Accordingly, Defendant requests dismissing the Case, while reserving right to submit further replies and clarifications before the Committees.

On Monday, 24/01/1444 AH, the Department held e-hearing session to consider the Case. At that session, the Department found that ... appeared in his capacity as attorney of Plaintiff under POA attached to Case file. In addition, ... appeared in his capacity as the representative of Defendant (ZATCA) under POA attached to Case file. Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having asked Defendant's representative about Plaintiff's claim, he replied by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked both parties if he have further statements, they answered "no". Therefore, the Department decided to close the pleadings and deliberation.

Grounds:

Having perused Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH as amended, Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, and its Implementing Regulations issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH as amended and Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding withholding tax for November 2019 to March 2020. Given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves Plaintiff's objection to Defendant's procedure outlined in rejecting refund request for withholding tax for years in question. Plaintiff stated that it submitted the refund request on behalf of Indian Company (...) in accordance with Article (8) of Double Taxation Avoidance Agreement, asserting that it had fulfilled all legal requirements. On the other hand, Defendant argued that it rejected Plaintiff's request for refunding withholding tax on behalf of Indian Company (...) due to the continuity of business activities between the parties for a period exceeding (182) days. Furthermore, Defendant added that Plaintiff failed to provide evidence proving that the business activities lasted for less than (182) days and in accordance with Paragraph (3) of Article (57) of the Implementing Regulations of Income Tax Law that stipulates: "The burden of proof of correctness of information in



the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information".

As such, and having taken cognizance of Case file, documents and defense included therein, it turns out that Plaintiff requests refunding withholding tax amounts. Having taken cognizance of provided documents and correspondence, the Department found that Defendant argued that the contract continued for more than (182) days. On the other hand, Plaintiff did not provide the contract made with the Indian Company (...) to elaborate its term and determine whether it constitutes a permanent establishment. Since Plaintiff did not provide supporting documents and the burden of proof regarding the validity of claims included in the statement of claim and other related data lies with Plaintiff. Therefore, the Department dismisses Plaintiff's objection.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss the objection filed by Plaintiff (Branch of ... Company), TIN (...), to Defendant (ZATCA) decision regarding assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 17/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

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

Appeal Committee:

Appeal Committee has decided to uphold the Department's decision.



(Withholding Tax)

Primary Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-
1640)

Delivered in Case No. (W-
63883-2021)

Keywords:

Withholding Tax – Remaining Dividends Transferred Abroad – Failure to Provide Evidence Contradicting Settlement between Accounts.

Abstract

Plaintiff requests annulling ZATCA decision regarding withholding tax for September 2016 due to the fact that Defendant imposed withholding tax on the remaining dividends transferred abroad. On the other hand, Defendant argues that it imposed withholding tax on the remaining amount of dividends amounting to SAR 425,591 for September 2016. The Department found that the amount in dispute of SAR 425,591 was settled on a bookkeeping basis according to documents provided to Defendant, which Plaintiff did not deny or challenge. Plaintiff satisfied that the withholding tax was paid on the amounts actually remitted. Since Plaintiff did not provide evidence to contradict the settlement between accounts. Therefore, the Department dismisses Plaintiff's objection and upholds Defendant's procedure regarding this item. Therefore, the Department rules: Accept the case in form, dismiss it on merits, and consider the decision as final and enforceable.

Instruments:

- Article (63.1) of [the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 21/09/2022 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (68) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 09/08/2021 AD.

The facts of this Case are summed up that Plaintiff (Branch of ... Company for Construction, C.R. No. (...), filed an objection to the withholding tax for September 2016. Plaintiff's objection is limited to (Dividend Variance) item. Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on the amounts transferred as dividends, arguing that Plaintiff has paid the withholding tax due on the amounts transferred abroad. Therefore, Plaintiff requests annulling Defendant's procedure, subject matter of the Case.



Having presented the statement of claim to Defendant, it submitted an answer summarized as follows: Defendant stated that it calculated withholding tax on the remaining part of dividends amounting to SAR 425,591 for September 2016. This calculation followed Plaintiff's declaration that an amount of SAR 978,591 had been distributed, including SAR 553,000, which was transferred and had withholding tax paid on it. Regarding the remaining amount of SAR 425,591, it was settled in the accounts, and withholding tax was imposed on this remaining amount as of settlement date, which is considered the distribution date. Having taken cognizance of objection and reviewed the financial statements and data provided by Plaintiff, Defendant rejected the objection. Therefore, Defendant requests dismissing the Case.

On Wednesday, 21/09/2022 AD, the Department held e-hearing session to consider the Case. At that session, ..., holder of National ID No. (...), appeared in his capacity as Plaintiff's attorney under POA attached to Case file. In addition, ..., appeared in his capacity as Defendant's attorney under Authorization No. (...). Therefore, the Department decided to open pleadings. Having asked the Plaintiff's Attorney about the claim, he answered: I object to withholding tax for September 2016 and satisfy with the statement of claim uploaded on the portal of the General Secretariat of Zakat, Tax and Customs Committees, maintaining arguments and requests included therein. Having presented the same to the Defendant's Representative, he answered: I satisfy with the memorandum uploaded on the portal of the General Secretariat of Zakat, Tax and Customs Committees, and maintain the arguments and requests included therein. Having asked both parties if they would like to add any statements, they satisfied with the earlier submissions. Therefore, the Department decided closing pleadings and adjourn the Case for deliberation.

Grounds:

Having perused the Income Tax Law, issued under 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 Rules of Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In Form: Since Plaintiff filed the Case moving for annulling Defendant's decisions regarding withholding tax for September 2016. Given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests and arguments raised by the parties, the Department found that the dispute is limited to (Dividend Variance) item. Plaintiff objects to Defendant's procedure outlined in imposing withholding tax on the remaining part of dividends transferred abroad. On the other hand, Defendant argues that it imposed withholding tax on the remaining part of dividends amounting to SAR 425,591 for September 2016 after Plaintiff declared that an amount of SAR 978,591 had been distributed, including SAR 553,000, which was transferred and on which withholding tax had already been paid.

In addition, Paragraph (1) of Article (67) of the Implementing Regulations of Income Tax Law stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Dividends 5%". Having pursued provisions of Income Tax Law, which clearly outline the conditions and requirements for determining obligation of withholding tax on amounts paid to a Taxpayer outside the Kingdom, it turns out that the obligation of paying and



remitting such amount arises only upon actual payment or its equivalent, such as account settlements between the head office and branch, offsets, or any other means that fulfill the obligation for such amounts paid by the service requester to the non-resident service provider. Since the amount in dispute of SAR 425,591 was settled through accounting entries according to the documents submitted to Defendant, which Plaintiff neither contested nor refuted, instead limiting its argument to the fact that withholding tax was remitted only on amounts actually paid. Since the payment event is not confined to material transactions and account settlements constitute a discharge of liability for such amounts. Since Plaintiff did not provide evidence to refute the existence of such account settlements. Therefore, the Department dismisses Plaintiff's objection and upholds Defendant's procedure regarding this item.

For those grounds and after deliberation, the Department unanimously decided to:

Decision

- Accept the Case filed by Plaintiff (Branch of ... Company for Contracting), C.R. No. (...), against Defendant (ZATCA) in form and dismiss it on merits.

This decision was delivered in presence of both parties. The Department set Thursday, 03/11/2022 AD for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

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

(Judgment has become final by expiration of objection period in accordance with Paragraph (2) of Article (33) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Primary Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1781)

Delivered in Case No. (W-64178-2021)

Keywords:

Withholding Tax – International Shipping – Refunding Amounts Transferred by Agent – Plaintiff Provided Supporting Documents for its Position – Annuling Defendant's Procedure.

Abstract

Plaintiff requests annulling ZATCA decision regarding withholding tax for years from 2014 to 2018. Plaintiff objects to Defendant's decision of rejecting refund of paid withholding tax. ZATCA argues for inadmissibility of the case in form, stating that Plaintiff's objection was previously rejected due to failure to provide the supporting documents. The Department found that Plaintiff had submitted the supporting documents for its position, which Defendant did not challenge for validity. Therefore, the Department upholds Plaintiff's position, affirming its right to refund the amounts transferred by the agent to ... Company related to international shipping. Therefore, the Department ruled to Annul Defendant's procedure regarding (Refunding Share of ... Shipping Company) item, and consider the decision as final and enforceable.

Instruments:

- Article (8.1 and 3) of [the Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital that came into effect as of 01/10/2006 AD.](#)
- Articles (35) and (66.1) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (57.3) of [the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 28/09/2022 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (13957) dated 26/02/1444 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 10/08/2021 AD.



The facts of this Case are summed up that Plaintiff (Al-Haj ... and Partners Co. Ltd.), C.R. No. (...), filed an objection to withholding tax for years from 2014 to 2018. Plaintiff's objection is limited to (Refunding Share of ... Shipping Company in Withholding Tax for Years from 2014 to 2018) item. Plaintiff objects to Defendant's decision outlined in rejecting refund of withholding tax paid in the amount of SAR 16,697,792.21 related to ... Shipping Company Ltd for years from 2014 to 2018. Plaintiff argues that, in accordance with Article (8) of the Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital, ZATCA had previously discussed the refund request for part of 2014, during which Company's previous agent was (... Company for Trading and Shipping) before the shipping agency was transferred to (Al-Haj ... and Partners). In addition, ZATCA approved the refund request submitted by the previous agent in accordance with Article (8) of Double Taxation Avoidance Agreement and Article (35) of Income Tax Law. Regarding what ZTACA mentioned that (... Shipping Company) was the agent of (... Company), this is incorrect. It seems there has been some confusion on the part of ZATCA, as ... is an abbreviation for the name of (...), (... Company for Shipping and Trading), a Saudi company registered under C.R. No. (...). This Company is a sister company to ... Shipping Company. Therefore, the previous agent of ... Company was ... Company for Trading and Shipping, and the current agent is Al-Haj ... and Partners Ltd Co. As for changing name of the Company, ZATCA has previously been provided with evidence that the name was modified from (Chinese Ocean Shipping Group) to the current name, which is (... Shipping Company). Regarding the remaining tax to be refunded for 2014 and years from 2015 to 2018, the Company submitted a refund request for the withheld tax, in addition to all documents required by ZATCA. In addition, the Company responded to all inquiries via e-mail and attached (a letter requesting refund for years from 2014 to 2018, elaborating value of works and tax along with all supporting documents, and a letter of responding to ZATCA inquiries along with the supporting documents), as shown in Exhibits Nos. (3, 4, 5, 6, 7). In addition, Plaintiff stated attaching (the agreement between the agent in the Kingdom, Al-Haj ... and Partners, and the company), which defines the duties of (maritime agent in the Kingdom) and confirms that the agent is independent and manages agency's affairs separately from the Company. In addition, the Company is non-resident, with its head office in the People's Republic of China, and its decisions are made in China. Accordingly, this does not result in a permanent establishment. Thereupon, these profits are exempt from tax in the Kingdom of Saudi Arabia. This view is supported by form (Q7-B) signed and stamped by Chinese State Taxation Administration and authenticated by the Saudi Embassy, which confirms that the headquarters of ... Company is located in China. Therefore, the amounts transferred from the agent to ... Company related to (international shipping) are not subject to withholding tax to avoid conflicting with the Double Taxation Avoidance Agreement. Regarding internal shipping fees, the Company provided ZATCA with a letter from the Saudi agent that elaborates that there are no internal shipping fees, as domestic transportation activities are restricted to the Saudi entities according to the law, and ... Company is not permitted to carry out internal transportation between ports and regions within the Kingdom of Saudi Arabia. Therefore, all shipping fees that ... Company claimed to refund are related solely to international shipping, which can be refunded in accordance with Article (8) of the Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital.

Having presented the statement of claim to Defendant, it submitted an answer summarized as follows: First: ZATCA argues that the Case should be dismissed in form in accordance



with Paragraph (1) of Article (66) of Income Tax Law. Second: On merits: Defendant states that it rejected refund request submitted by Al-Haj ... regarding withholding tax on behalf of (... Shipping Company Ltd) after reviewing Plaintiff's letters. It turns out that all decisions regarding the business activity of ... Company in the Kingdom are under the supervision and management of the shipping agent, Al-Haj ..., who is authorized to make decisions. This negates the condition of having actual management in China. In addition, Defendant relies on provisions of Paragraph (1) of Article (8) of the Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital, which stipulates "Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management or head office of the enterprise is situated". Defendant also adds that during objection stage, a meeting was held with Plaintiff's representatives on 07/03/2021 AD, where it was stated that Defendant had previously accepted a refund request from the previous agent of ... Company (... Shipping Company), TIN (...). Having reviewed the file of ... Shipping Company, it turned out that the Company was the agent of ... Company and not (...). Therefore, Defendant requested clarification from Plaintiff, and Plaintiff stated that (... Company) was previously named the Chinese Ocean Shipping Group, but failed to provide evidence of changing name. In addition, it turned out that ... Company had been the agent in the Kingdom since 1995 according to the provided agreement. Moreover, Defendant states that it previously rejected Plaintiff's objection for failure to provide supporting documents, and a primary decision upholding Defendant's position was rendered. Defendant added that having taken cognizance of the agreement between Al-Haj ... (referred to as the "Agent") and ... Company (referred to as the "Manager"), it turns out that all decisions by the agent are only made with the approval of the manager, and all information of transactions, movements, expenses and obligations shall be submitted to the manager. Therefore, it turns out that the agent in the Kingdom is not independent. However, this does not negate the fact that the management and headquarters of ... Company are situated in China, and that Al-Haj ... is merely an agent for that company. Defendant asked Plaintiff to provide evidence that the management of ... Company is situated in China. Plaintiff provided form (Q7-B) signed and stamped by State Taxation Administration in China and authenticated by the Saudi Embassy, confirming that the headquarters of ... Company is located in China. Therefore, the amounts transferred from the agent to ... Company which are exclusively related to international shipping, are not subject to withholding tax to avoid conflict with the Double Taxation Avoidance Agreement, specifically Article 8, paragraphs 1 and 3, which pertain to maritime and air transport. The Defendant points out that this agreement has been effective for withholding taxes since 01 January 2007, meaning it applies to the period for which the Plaintiff is claiming a refund of the withholding tax paid. Regarding the Plaintiff's argument concerning ZATCA's inquiries, upon which the assessment was made, it was clarified that the Agent, Al Hajj Company, has the right to make decisions to manage the activity within the Kingdom as authorized in the agency agreement. The Plaintiff clarified this in one of its responses to the Defendant, and all of them relate to the operations and services of operating the agency in the Kingdom on behalf of the principal. When the Defendant requested the Plaintiff to provide a detailed statement differentiating between international and domestic shipping carried out by the Company as an agent, supported by documents such as sample invoices and customs clearance documents dated 31 May 2021, the Plaintiff provided data that did not match the request. The Plaintiff submitted an Excel spreadsheet summarizing the withholding tax paid from 2014 to 2018, detailing shipping fees, container booking fees, and the withheld tax thereon, with a breakdown of ... share. Additionally, the Plaintiff submitted



withholding tax returns previously submitted to ZATCA and letters from Al Hajj Company requesting ... Company to pay its share of the withholding tax. The Defendant further asserts that they repeatedly requested the Plaintiff to submit the aforementioned data and documents, emphasizing the necessity of compliance. However, the Plaintiff failed to provide all the required documents until this date. The Defendant also emphasizes the importance of these data and documents in clarifying the amounts that the Plaintiff may be entitled to recover, specifically related to the exempt international shipping as per the Double Taxation Avoidance Agreement. Nevertheless, the Plaintiff ignored the repeated requests to submit these documents to enable a decision on the matter. Therefore, the objection was rejected based on Article (57.3) of the Implementing Regulations of the Income Tax Law.

On Wednesday, 28/08/2022 AD, the Department held its session remotely to hear the case. The session was attended by Mr. ..., ID No. ..., in his capacity as the Plaintiff's Attorney under POA No. (...). It was also attended by/ ..., in his capacity as the Defendant's Representative under Authorization No. (...). Accordingly, the Department decided to open pleadings. Upon asking the Plaintiff's Attorney about the Case, he replied: "I object to the withholding tax imposed for the period from 2014 to 2018. My objection is specifically related to the refund of the share belonging to ... Shipping Company. I satisfy with the statement of claim submitted via the portal of the General Secretariat of Tax Dispute and Violation Committees and insist on the arguments and requests included therein. Having presented the same to the Defendant's Representative, he answered: I satisfy with the memorandum uploaded on the portal of the General Secretariat of Zakat, Tax and Customs Committees, and maintain the arguments and requests included therein. When both parties were asked about their responses, they replied that they were satisfied with what had already been submitted, so the pleadings were closed and the case was adjourned for study and deliberation.

Grounds:

Having perused the Income Tax Law, issued under 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 Rules of Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In form: The Plaintiff intended by filing its case to cancel the Defendant's decision regarding the Withholding Tax for the period from 2014 to 2018, and this dispute is considered one of the tax disputes that fall within the jurisdiction of the committee of the determination for income tax violations and disputes, moreover, the case was filed by a person with legal capacity, therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of papers and documents included in the Case file, as well as requests and pleas initiated by parties to the Case, the Department found that the dispute lies in the following:

Regarding item: Refund of ... Shipping Company's share of withholding tax for the period from 2014 to 2018:

Article 8, paragraph 1, of the Double Taxation Avoidance Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the People's Republic of China, specifically concerning maritime and air transport, stipulates that: "Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated". Additionally, paragraph (3) of the same Article stipulates that: "The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency". Moreover, Article (35) of the Income Tax Law,



concerning international agreements, stipulates that: “In case the conditions of a treaty or an international agreement to which the Kingdom is party are inconsistent with the articles and provisions of this Law, the conditions of the treaty or international agreement shall prevail except for the provisions of Article 63 of this Law which are related to anti-tax avoidance procedures”.

Upon reviewing the agreement concluded between the Kingdom of Saudi Arabia and the Government of the People's Republic of China to avoid double taxation, effective as of 01/10/2006, we find that Article (8) stipulates that “profits derived from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated”. The Plaintiff presented (the agreement between the Saudi agent, Al-Hajj ... Company, And Co and ... Shipping Company Limited, as well as Form Q7-B signed and stamped by the Chinese tax authority and authenticated by the Saudi Embassy, which confirms that the headquarters of ... Company is located in China), therefore, there is no dispute that the headquarters of ... Company is located in China. Consequently, the amounts transferred from the agent to ... Company that pertain to international shipping are not subject to withholding tax, so as not to conflict with the Double Taxation Avoidance Agreement. As such, the dispute is a documentary dispute in this item, as the Defendant requested the submission of (an analytical statement detailing the international transportation from the domestic transportation carried out by the Company as an agent, supported by documents such as sample invoices and customs clearance documents). Upon reviewing the attached documents to the Case, it is clear that the Plaintiff submitted (detailed Excel sheets for domestic and international shipping fees for the period from 2014 to 2018, specifying international shipping fees, domestic container booking fees, and domestic shipping fees, along with sample invoices and customs clearance statements). Therefore, the Plaintiff has provided supporting documents for its viewpoint, which the Defendant has not challenged the validity of. As such, the Department concludes by upholding the Plaintiff's claim to a refund of the amounts transferred from the Agent to ... Company that pertain to international shipping, in accordance with the Double Taxation Avoidance Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the People's Republic of China.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept the Case filed by Plaintiff/ Al-Hajj Company and Co. Ltd Company, CR No. (...), against the Defendant/ ZATCA in form.

Second: On Merits:

- Annul Defendant's procedure regarding (Refunding Share of ... Shipping Company's share, according to the reasons mentioned.

This decision was issued in the presence of both parties and was read publicly at the hearing. The Department has set Wednesday, 16/11/2022, as the date for receipt of the copy of the decision. Any of the parties to the case may request to appeal it within (thirty) days from the day following the date specified for its receipt, so that it becomes final and enforceable after the expiration of this period if it is not appealed.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-
1626)

Issued in Case No. (W-
35620-2021)

Keywords:

Withholding Tax - Consulting, Technical and Technological Services - Foreign Transactions.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding withholding tax for February and June 2017. On merits, the Department found that the Plaintiff's objection centers on two items: Withholding tax for February 2017 and withholding tax for June 2017. The Plaintiff argues that the relationship between the Institution and Company is limited to consulting, technical, and engineering services. The Plaintiff asserts that it paid withholding tax at a rate of 5%. However, the Defendant argues that it amended the tax return after discovering that there were external transactions (programs) and that they had been filing monthly tax returns at a rate of 5% for all consulting services and programs. The Defendant also discovered that the amounts paid to non-resident entities were for programs and therefore did not qualify as consulting services. Consequently, the tax return was amended to 15% instead of 5%. Since the amounts derived from "the programs" are considered among other payments subject to a 15% withholding tax, the Department decided to reject the Plaintiff's objection. As such, the Department ruled to: Accept the Case in form, and reject it on merits.

Instruments:

- Article (63.1) of [the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 07/09/2022 AD, the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh, convened a remote session via video conference to consider the aforementioned case. This session was held in accordance with Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH. The case met the prescribed legal requirements, it was deposited with the General Secretariat of the Tax Committees under the above number on 08/08/2021 AD.

The facts of this Case are summed up as follows: the Plaintiff/...., ID No. (...), Owner of (...), CR. No. (...), submitted an objection to withholding tax for February and June 2017, limiting its objection to the following items: Item First: (Withholding tax for February 2017). The Plaintiff is contesting the withholding tax assessed for February 2017, arguing



that the Defendant improperly adjusted the tax return to increase the tax rate to 15%. The Plaintiff maintains that the relationship between ... Technology Institution (Resident entity) and Company (Non-resident entity) was strictly limited to providing consulting services. The Plaintiff further asserts that it previously issued invoice no. (...) to the Defendant, on 30 October 2016, for SAR (327,328.62), specifically for technical, consulting, and technological services, and paid the corresponding 5% withholding tax. Based on these facts, the Plaintiff contends that the correct withholding tax rate is 5% and not 15%, citing Article (63.4) of the Implementing Regulations of the Income Tax Law. Item Second: (Withholding tax for June 2017). The Plaintiff is contesting the withholding tax assessed for June 2017, arguing that the Defendant improperly adjusted the tax return to increase the tax rate to 15%. The Plaintiff maintains that the relationship between ... Technology Institution (Resident entity) and Company (Non-resident entity) was strictly limited to providing consulting, technical, and technological services. Consequently, the withholding tax rate should be 5% rather than 15%, as stipulated in Article (63.4) of the Implementing Regulations of the Income Tax Law. Accordingly, the Plaintiff is requesting to amend the Defendant's action in this respect.

Having presented the statement of claim to the Defendant, it responded with a memorandum summarized as follows: Upon assessment, the Defendant adjusted the withholding tax return after discovering foreign transactions (programs) for which a monthly withholding tax of 5% had been applied to all consulting services, programs, and other services. Consequently, the return was adjusted, and the withholding tax on amounts paid for programs was adjusted to 15% instead of 5%, in accordance with Article (63.1) of the Implementing Regulations of the Income Tax Law and its amendments. Upon reviewing the objection, the Taxpayer claimed that "Programs are part of the consulting services, and therefore these payments should be subject to a 5% tax rate, not 15%, as stated in Article (63) of the Income Tax Law Regulations". However, upon examining the substance of the transaction, it was found that these were payments made to non-resident entities for programs. Additionally, the Taxpayer's response to ZATCA's email on 27/01/1442 AH stated, "As for the description on the invoices as software licenses, this is due to the technical nature of the activity and the specific terms used by the supplier". Therefore, these payments should be subject to a 15% withholding tax, as they do not meet the definition of consulting services. Article (63.7) specifies that consulting services and software licenses or programs should be detailed separately on invoices. The term "other payments" in the Regulations refers to payments made to non-residents from a source in the Kingdom for services other than those listed in Paragraph 1 of this Article, and therefore, these payments for programs would fall under other services, not as consulting services. Accordingly, it requests that the Case be dismissed.

On Wednesday, 07/09/2022, the Department held its session remotely to hear the Case, attended by the Plaintiff/ ..., ID No. (...), and also attended by/..., in his capacity as the Defendant's Representative by virtue of Authorization No. (...). Accordingly, the Department decided to open pleadings. Upon asking the Plaintiff about the Case, they replied: "I object to the withholding tax for February and June for 2017 and satisfy solely with the statement of claim uploaded on the portal of the General Secretariat of Tax Committees, maintaining the defenses and claims raised therein". Upon showing this to the Defendant's Representative, they responded: I satisfy with the memorandum uploaded on the portal of the General Secretariat of Zakat, Tax and Customs Committees, and maintain the arguments and requests included therein. When the Plaintiff was asked about the nature and substance of the payments made to a non-resident that were subject to withholding tax, they replied: "These payments are for the purchase of electronic software that we sell to our clients, such as...". When both parties were asked if they wished to add anything further, they responded that they were satisfied with their previous submissions.



Accordingly, the Department closed the pleading and adjourned the Case for review and deliberation.

Grounds:

Having perused the Income Tax Law, issued under 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 Rules of Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In form: As for form, since the Plaintiff aims to cancel the Defendant's decision regarding withholding tax for February and June 2017, and since this dispute is one of the tax disputes within the jurisdiction of the Tax Committee for Resolution of Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 AH, and since the case was filed in a reasoned manner, by a competent person, and within the legally prescribed period, the case shall be accepted in form.

On merits: Upon careful consideration of the Case file, as well as requests and arguments of the parties, the Department finds as follows: The dispute centers on the Plaintiff contesting the Defendant's action regarding items (Withholding tax for February 2017) and (Withholding tax for June 2017). The Plaintiff argues that the relationship between the Institution and ... Company is limited to consulting, technical, and technological services, and asserts that they have already paid a 5% withholding tax.

The Plaintiff claims that the relationship between Technology Institution and Company is limited to providing consulting, technical, and technological services, and therefore, it is subject to a 5% withholding tax rather than 15%. However, the Defendant contends that it adjusted the withholding tax return after discovering that there were foreign transactions involving software for which a monthly withholding tax of 5% had been applied to all consulting services and software. Furthermore, it discovered that the payments made to non-resident entities were for software, and thus, do not meet the definition of consulting services. Consequently, it adjusted the tax rate to 15% instead of 5%. Moreover, Article (63.1) of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH states: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount" Technical or consulting services; international telephone services other than payments made to the head office or an affiliated company; rent; airline tickets; air or maritime freight; dividends; loan charges; insurance or reinsurance premiums at 5% i.e., other payment at 15%".

It is established in the hearing held on Wednesday, 07 September 2022, that when the Plaintiff was asked about the nature and substance of the payments made to non-residents and subject to withholding tax, they responded that they were for the purchase of electronic software to be sold to their customers. And whereas the amounts received from the software are considered among other payments subject to a 15% withholding tax according to (63.1) of the Implementing Regulations of the Income Tax Law, the Department therefore concludes by rejecting the Plaintiff's objection and upholding the Defendant's action regarding this item.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Accept the Case filed by the Plaintiff/ ..., ID No. (...), Owner of (...), C.R No. (...), against the Defendant/ ZATCA in form, and dismiss it on merits.



This decision was issued in the presence of both parties and was read publicly at the hearing. The Department has set Wednesday, 19/10/2022, as the date for receipt of the copy of the decision. Any of the parties to the case may request to appeal it within (thirty) days from the day following the date specified for its receipt, so that it becomes final and enforceable after the expiration of this period if it is not appealed.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



(Withholding Tax)

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
2109)

Issued in Case No. (W-
59224-2021)

Keywords:

Tax Assessment – Amounts Paid to Foreign Company for Purchasing Goods – Sales and Purchase Contracts for Resale Purposes – Adjustment Rights on Purchased Software Fall Within the Concept of Royalties – Income Subject to Withholding Tax at a Rate of (15%) – Dismissal of Objection.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the imposition of a withholding tax in the amount of (SAR 194,078.21) at a rate of (15%) on equipment, considering the same a royalty, wherein Plaintiff stated that the amounts were paid to a foreign company in exchange for purchasing goods, and it has the right to resell and adjust these goods, and that they were not related to any modification or development made by the producer after the date of sale at all, i.e. they are sales and purchase contracts for resale purposes, while Defendant argued that its decision came in compliance with the provisions of the Income Tax Law and its Implementing Regulations.

The Department Found That:

The adjustment rights on the purchased software provided to Plaintiff fall within the concept of royalties and that the amount paid for royalties, including intellectual property, is considered income generated from a source within the Kingdom for non-resident parties; accordingly, it is considered income subject to withholding tax at a rate of (15%), as it is paid as a royalty. **The Department Decided To:**

Dismiss Plaintiff’s objection – The Decision is deemed final and enforceable.

Instruments:

- Articles (1), (5/A), (6.2) and (68/A) [of Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 09/03/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 14/07/2021 AD under the above number.



Facts of the Case are summarized as follows: Mr., holder of National ID No., in his capacity as Plaintiff's (..... Company, C.R. No.) Legal Representative, by virtue of its Articles of Association; has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding the Tax Assessment of December of 2017 – 2020 AD.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Withholding Tax):

Defendant clarifies that it had subjected the amounts paid to non-resident parties "..... Company" to a withholding tax in exchange for software licenses for the years in question at a rate of (15%), considering that the service is for the use of intellectual rights (royalty), after referring to the financial statements, which showed that Plaintiff's legal entity was a Sole Proprietorship in 2017 and became a Single-Person Company after 2017 that purchases software from "..... Company" and then sells the same to its customers within the Kingdom, as Plaintiff's activity is represented in executing contracts for the installation and maintenance of computer systems and software and providing training thereto, as well as providing technical support under the license of the General Authority for Investment. In addition, the notes to the financial statement have shown that the Egyptian Company is a sister company and that Plaintiff concludes contracts with local customers in the Kingdom to sell the Egyptian Company's products after adjusting the same to conform to the requirements of local customers pursuant to the contracts submitted by Plaintiff. Accordingly, Article (68) of Income Tax Law and Article (63) of its Implementing Regulations apply to Plaintiff's case.

2. Item (Late Payment Fine):

Defendant clarifies that it had imposed a late payment fine due to Plaintiff's non-payment of the tax differences pursuant to Article (77) of Income Tax Law and Article (68) of its Implementing Regulations. Defendant concluded by requesting dismissal of Plaintiff's Case for the stated grounds, while preserving its right to present further responses and clarifications until pleadings closure.

On Tuesday, 08/03/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Representative; and Ms., holder of National ID No., appeared in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. Having asked Plaintiff's Attorney Representative his Case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having asked Defendant's Representative regarding her response, she maintained the statements contained in Defendant's Reply and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked Parties hereto whether they had further statements, they responded with denial. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures



promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Tax Assessment of December of 2017 – 2020 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case documents has established that Plaintiff filed the Case within the prescribed statutory period, the Case is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision for imposing a withholding tax in the amount of (SAR 194,078.21) at a rate of (15%) on equipment, considering the same a royalty, wherein Plaintiff stated that the amounts were paid to a foreign company in exchange for purchasing goods, and it has the right to resell and adjust these goods, and that they were not related to any modification or development made by the producer after the date of sale at all, i.e. they are sales and purchase contracts for resale purposes, while Defendant argued that its decision came in compliance with the provisions of the Income Tax Law and its Implementing Regulations; and since Article (1) of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, which defined the royalty as: "Payments received for the use of or the right to use intellectual rights, including, but not limited to, copyrights, patents, designs, industrial secrets, trademarks and trade names, know-how, trade and business secrets, goodwill, and payments received against the use of information related to industrial, commercial, or scientific expertise, or against granting the right to exploit natural and mineral resources;" and since Article (5/A) of the same Law stipulates: "A. Income shall be considered accrued in the Kingdom in any of the following cases: 5. If it is derived from the sale or license for use of industrial or intellectual properties in the Kingdom;" and since Article (68) also of the same Law stipulates: "A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: 2. Royalty or proceeds: 15%;" and since the dispute is over the imposition of a withholding tax at a rate of (15%) on Plaintiff's procurements (software and systems), wherein Plaintiff stated that that software were purchased for resale purposes; thus, they represent goods and should not be subject to a withholding tax, while Defendant argued that software were purchased from abroad, as Plaintiff concludes contracts with local customers in the Kingdom to sell the products of the Egyptian Company "IT Blocks" after adjusting these products to conform to the requirements of local customers pursuant to these contracts; accordingly, they fall within the definition of royalty; and since the software purchase contract with the non-resident company "....." stipulated in Article No. (6.2) that: "Second Party may adjust the sold system conform to the requirements of its customers;" and since the adjustment rights on the purchased software provided to Plaintiff fall within the concept of royalties; and since the amount paid for royalties, including intellectual property, is considered income generated from a source within the Kingdom for non-resident parties; accordingly, it is considered income subject to withholding tax at a rate of (15%), as it is paid as a royalty; Therefore, the Department satisfies to dismiss Plaintiff's objection since the amounts paid for software are considered property rights.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision



- Dismiss Plaintiff's (..... Company, TIN.) objection to Defendant's (ZATCA) decision regarding the Tax Assessment in question.

This Decision was rendered in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of a copy of the Decision. Parties hereto may appeal against the Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah Blessings and Peace be upon our Prophet Muhammad and his Family and Companions.

Appeal Committee:

The Appeal Committee has decided to uphold the Department's decision.



(Withholding Tax)

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
2112)

Issued in Case No. (W-
74345-2021)

Keywords:

Tax Assessment – Imposition of Withholding Tax at a Rate of (15%) on Transactions with Related Parties and Loan Returns – Late Payment Fine – Unpaid Tax – Abolishment of Defendant’s Decision.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding Tax Assessment of December of 2017 and 2018 AD, which included its objection, represented by the following

1. Item (Imposition of Withholding Tax at a Rate of 15% on Transactions with Related Parties and Loan Returns):

Plaintiff objected to Defendant’s decision for imposing a withholding tax in the amount of (SAR 6,458,553) at a rate of (15%) on transactions concluded with related parties and loan returns for 2017 and 2018, wherein Plaintiff stated that the withholding tax, according to statutory provisions set forth in the Income Tax Law and its Implementing Regulations, is related to payment or the like, while Defendant argued that it had subjected the services provided with related parties during the year to a withholding tax of (15%) and also subjected its share of the loan returns in excess of the permissible limit as shown in Tax Returns of 2017 and 2018 to a withholding tax of (5%).

2. Item (Late Payment Fine):

Plaintiff objected to Defendant’s decision for imposing a late payment fine, while Defendant argued that it had imposed a late payment fine on the due but unpaid tax pursuant to Article (77) of Income Tax Law and Article (67) of its Implementing Regulations.

The Department Found That:

As for item (Imposition of Withholding Tax at a Rate of 15% on Transactions with Related Parties and Loan Returns), the statutory provisions indicated that the imposition of a withholding tax on is based on the existence of an actual payment or the like, such as settlements, offsetting, or any other mean. Also, Plaintiff submitted the supporting documents proving the unpaid amounts, while Defendant failed to provide evidence of the occurrence of the payment or settlement or the like.

As for item (Late Payment Fine), Article (68.1) of Implementing Regulations of Income Tax Law stipulated: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: (b) Delay in payment of due tax as per the Department’s Assessment;” (e) 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.”



Article (67.3) of the same Implementing Regulations stipulated: “Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment.”

Article (77/A) of Income Tax Law stipulated: “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.”

The Department Decided To:

Abolish Defendant’s decision regarding the Tax Assessment in question. – The decision is deemed final and enforceable pursuant to Article (42) of Tax Dispute and Violation Committee Procedures.

Instruments:

- Article (77/A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH.](#)
- Articles (63.8), (63/A), (67.3), (68.1), and (71.2) [of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 09/03/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 06/10/2021 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of National ID No., in his capacity as Plaintiff’s (..... Company, C.R. No.) Attorney, under POA No. (4218456) of 18/10/1442 AH, ratified by the Ministry of Justice’s Branch in Eastern Province, has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Tax Assessment of December of 2017 and 2018 AD.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Imposition of Withholding Tax at a Rate of 15% on Transactions with Related Parties and 5% on Loan Returns for 2017 – 2018 of “SAR6,458,553”):

Defendant clarifies that it had subjected the services provided with related parties during the year to a withholding tax of (15%) and also subjected its share of the loan returns in excess of the permissible limit as shown in Tax Returns of 2017 and 2018 to a withholding tax of (5%). In addition, the essence of the payment lies in paying amounts by any means, whether through the known regular direct payment operations, off-set or settlement operations between creditor and debit accounts, the provision of mutual services, or any other means that ultimately achieves the financial discharge between the transacting parties, indicating that offsetting between accounts is a method of payment that can be used as an alternative to regular payment operations. Moreover, Plaintiff did not submit a



full account statement for 2018, showing the opening balance and all the transactions that took place, but merely provided details of procurements during the year, which renders validity of Defendant's procedure pursuant to Article (68) of Income Tax Law.

2. Item (Late Payment Fine):

Defendant clarifies that it had imposed a late payment fine on the due but unpaid tax pursuant to Article (77) of Income Tax Law and Article (67) of its Implementing Regulations. Defendant concluded by requesting dismissal of Plaintiff's Case for the stated grounds, while preserving its right to present further responses and clarifications until pleadings closure.

On Wednesday, 09/03/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, under POA No. (4218456) of 18/10/1442 AH, ratified by the Ministry of Justice's Branch in Eastern Province; and Ms., holder of National ID No., appeared in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. Having asked Plaintiff's Attorney regarding the Case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having asked Defendant's Representative regarding her response, she maintained the statements contained in Defendant's Reply and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked parties hereto whether they had further statements, they responded with denial. Therefore, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of December of 2017 and 2018 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case documents has established that Plaintiff filed the Case within the prescribed statutory period, the Case is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Tax Assessment of December of 2017 and 2018 AD, which included the following:

1. Item (Imposition of Withholding Tax at a Rate of 15% on Transactions with Related Parties and Loan Returns):

Plaintiff objected to Defendant's decision for imposing a withholding tax in the amount of (SAR 6,458,553) at a rate of (15%) on transactions concluded with related parties and loan returns for 2017 and 2018, wherein Plaintiff stated that the withholding tax, according to statutory provisions set forth in the Income Tax Law and its Implementing Regulations, is related to payment or the like, such as offset or settlement between accounts; thus, the



criterion for the amounts being subject to withholding tax is the occurrence of the actual or statutory payment by any means ultimately achieves the financial discharge. In addition, Plaintiff submitted the supporting documents that the payment or the like did not occur during the periods in question and requested abolishment of Defendant's decision, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that, since Article (63.8) of the Implementing Regulations of Income Tax Law stipulates: "The withholding tax as per rates stated in Paragraph (1) of this Article shall be levied on total amount paid to the non-resident, regardless of expenses incurred to make such income, and notwithstanding full or partial allowance/disallowance, as a deduction, of such payment; it shall also be even imposed on payments attributed to contracts concluded before the effective date of the Law;" and since the imposition of a withholding tax on is based on the existence of an actual payment or the like, such as settlements, offsetting, or any other mean in accordance with the said Article; and since dispute lies in Defendant's imposition of a withholding tax of (15%) on transactions with related parties and loan returns for 2017 and 2018 on the accrued amounts and not paid; and since Defendant has failed to provide any evidence of the existence of the actual or statutory payment, but merely an indication of Plaintiff's failure to submit a full account statement for 2018, which does not constitute payment or settlement in the accounts between parties; and since Plaintiff has submitted supporting documents proving the unpaid amounts; and since Defendant has failed to provide evidence of the occurrence of the payment or settlement or the like; Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question.

2. Item (Late Payment Fine):

Plaintiff objected to Defendant's decision for imposing a late payment fine, while Defendant argued that it had imposed a late payment fine on the due but unpaid tax pursuant to Article (77) of Income Tax Law and Article (67) of its Implementing Regulations.

The Department, having taken cognizance of the subject of dispute, found that, since Article (68.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, 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: (b) Delay in payment of due tax as per the Department's Assessment;" (e) 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;" and since Article (67.3) of the same Implementing Regulations stipulates: "Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment;" and since Article (77/A) of Income Tax Law stipulates: "In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;" and since the Department has decided to abolish Defendant's decision regarding item (Imposition of Withholding Tax at a Rate of 15% on Transactions with Related Parties and Loan Returns); Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question due to absence of grounds on which the tax is imposed.



In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Abolish Defendant's (ZATCA) decision against Plaintiff (..... Company, TIN) regarding the Tax Assessment in question.

This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of a copy of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the decision shall be final and enforceable.

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

Appeal Committee:

The Appeal Committee has decided to uphold the Department's decision.



(Withholding Tax)

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
2126)

Issued in Case No. (W-
72686-2021)

Keywords:

Tax Assessment – Imposition of Withholding Tax on Offshore Procurement – Goods Pending Resale – Integral Devices and Software – Procurement of Software for Resale in Local Market – Documentary Dispute – Dismissal of Objection.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding Tax Assessment of December of 2019 and 2020 AD, which included its objection, represented by the following:

1. Item (Imposition of Withholding Tax on Offshore Procurement):

Plaintiff objected to Defendant’s decision for imposing a withholding tax at a rate of (15%) amounting to (SAR 9,881,045) on offshore procurement as a royalty, wherein it stated that these procurements represent goods that are resold by the Plaintiff to customers, as they contain integral devices and programs represented in goods, and that it is not entitled to make any amendments thereto, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

2. Item (Late Payment Fine):

Plaintiff objected to Defendant’s decision for imposing a late payment fine.

The Department Found That:

As for item (Imposition of Withholding Tax on Offshore Procurement), Plaintiff has failed to submit the agreement to verify its statement of claim and that the purpose of purchasing the programs was to resell the same in the local market

As for item (Late Payment Fine), the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions.

The Department Decided To:

Dismiss Plaintiff’s objection – The Decision is deemed final and enforceable.

Instruments:

- Article (77/A,B) [of Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH.](#)
- Articles (55) and (56) of Law [of Civil Procedure promulgated by Royal Decree No. \(M/1\) of 22/01/1435 AH.](#)
- Articles (57.3), (67.3), (68.1), and (71.2) [of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH.](#)
- [Ministerial Decision No. \(1776\) of 18/05/1435 AH.](#)



Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday, 10/03/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 28/09/2021 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of Iqama ID No., in his capacity as Director of Plaintiff (Branch of Company, C.R. No.); has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding Tax Assessment of December of 2019 and 2020 AD.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Imposition of Withholding Tax on Offshore Procurement):

Defendant clarified that it imposed a withholding tax on offshore procurement in the amount of (SAR 34,860,714) and an amount of (SAR 31,012,916) for the months of December of 2019 and 2020; where the withholding tax was imposed on transactions with non-resident parties as stated in the statements of the cost of goods sold from licenses purchased from abroad and classified as a royalty, as defined in Article (1) of Income Tax Law. In addition, having reviewed the contract, Defendant found that the intellectual property of the purchased licenses belongs to the supplier company and cannot be modified, and its design or other entries cannot be copied. Accordingly, they were considered as a royalty pursuant to Article (63) of Implementing Regulations of Income Tax Law.

2. Item (Late Payment Fine):

Defendant clarifies that it had imposed a late payment fine on the due but unpaid tax pursuant to Article (77) of Income Tax Law and Article (67) of its Implementing Regulations. Defendant concluded by requesting dismissal of Plaintiff’s Case for the stated grounds, while preserving its right to present further responses and clarifications until pleadings closure.

On Thursday, 10/03/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Ms., holder of National ID No., appeared in her capacity as Defendant’s “ZATCA” Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA’s Deputy Governor for Legal Affairs and Compliance. Neither Plaintiff nor its Representative appeared at the session, despite being legally served of the session date. Having asked Defendant’s Representative regarding Plaintiff’s Case, she maintained Defendant’s statements contained in the Reply previously submitted to General Secretariat of Tax Committees, and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked Defendant’s Representative whether she had further statements, she responded with denial. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance’s Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law



promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of December of 2019 and 2020 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed by a person with capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Tax Assessment of December of 2019 and 2020 AD, which included the following:

1. Item (Imposition of Withholding Tax on Offshore Procurement):

Plaintiff objected to Defendant's decision for imposing a withholding tax at a rate of (15%) amounting to (SAR 9,881,045) on offshore procurement as a royalty, wherein it stated that these procurements represent goods that are resold by the Plaintiff to customers, as they contain integral devices and programs represented in goods, and that it is not entitled to make any amendments thereto, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

The Department, having taken cognizance of documents included in Case file, since the Ministerial Decision No. (1776) of 18/05/1435 AH, regarding the amendment of some Paragraphs of Articles of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, to stipulate the follows: "First: I. The second and third boxes of the following table included in Paragraph (1) of Article (63) of the Regulations shall be added to be as follows: A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: - Royalty or proceeds 15%;" and since Article (57) of Implementing Regulations of Income Tax Law stipulates: "The burden of proof of correctness of information in Taxpayer's Return regarding its revenues, expenses and any other data, rests on the taxpayer. If Taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by Taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances, facts, and available information;" and since Plaintiff has failed to submit the agreement to verify its statement of claim; and since the purpose of purchasing the programs was to resell the same in the local market; Therefore, the Department satisfies to dismiss Plaintiff's objection to the item in question.

2. Item (Late Payment Fine):

Plaintiff objected to Defendant's decision for imposing a late payment fine, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulations.

The Department, having taken cognizance of the subject of dispute, found that, since Article (68.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, 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: (b) Delay in payment of due tax as per the Department's Assessment;" (e) 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;” and since Article (67.3) of the same Implementing Regulations stipulates: “Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment;” and since Article (77/A) of Income Tax Law stipulates: “In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;” and since the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant; and since the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions; Therefore, the Department satisfies to dismiss Plaintiff’s objection to the item in question.

As for Plaintiff’s Representative failure to appear at the hearing despite being legally served of its date; since Article (20.1) of Tax Dispute and Violation Committee Procedures stipulates: “If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the circuit, the circuit must decide the suit if it is ripe for judgment;” and since Article (56) of Law of Civil Procedures stipulate: “In the cases provided for in Article (55) of this Law, if the defendant attends the hearing from which the plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the plaintiff;” and since Plaintiff’s Representative has failed to provide an excuse justifying his absence from the hearing set for consideration of Plaintiff’s case; and since the Department has concluded that the Case has become ripe for adjudication pursuant to the documents included in its file; Therefore, the Department satisfies to issue its decision in the Case in Plaintiff’s presence.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss Plaintiff’s (Branch of Company, TIN.) objection to Defendant’s decision regarding Tax Assessment in question.

This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah’s Blessings and Peace be upon our Prophet Muhammad and his Family and Companions.

(The Decision is deemed final and imperative by expiration of objection period under Article (42) of Tax Dispute and Violation Committee Procedures).



(Withholding Tax)

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
2138)

Issued in Case No. (W-
72498-2021)

Keywords:

Tax Assessment – Late Payment Fine - Other Payments – Remittances Not for Any Commercial Transactions or Delivery of Services – Current Account of Head Office – Loans for Business Continuity – Documentary Dispute Not Arising from Significant Difference in Interpretation of Legal Provisions.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Withholding Tax of June 2015, which included its objection, represented by the following:

1. (Other Item Payments for “..... Contracting Company, Britain”):

Plaintiff objected to Defendant’s decision, stating that the credit activity between Plaintiff and its Branch in Britain is a financing of operations carried out by “..... Company, Britain” to support Contracting Company, as all remittances are not for any commercial transactions or delivery of services, but rather for financing a Sister Company. Accordingly, Plaintiff requests abolishment of Defendant’s decision, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

2. (Other Item Payments for “..... Contracting Company, Jordan”):

Plaintiff objected to Defendant’s decision, stating that the credit activity between Plaintiff and its Branch in Jordan is a financing of operations carried out by “..... Company, Jordan” to support Contracting Company, as all remittances are not for any commercial transactions or delivery of services, but rather for the current account of the Head Office. Accordingly, Plaintiff requests abolishment of Defendant’s decision, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

3. Item (Late Payment Fine): Plaintiff objected to Defendant’s decision for imposing a late payment fine, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

The Department Found That:

As for item (Other Item Payments for “..... Contracting Company, Britain”), the amounts represent loans to support business continuity provided by “..... Company, Britain;” hence, they represent amounts or payments remitted to the non-resident party, and that they represent amounts obtained by the non-resident party from a source within the Kingdom.

As for item (Other Item Payments for “..... Contracting Company, Jordan”), the amounts represent loans to support business continuity provided by “..... Company, Jordan;” hence, they represent amounts or payments remitted to the non-resident party,



and that they represent amounts obtained by the non-resident party from a source within the Kingdom.

As for item (Late Payment Fine), the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant, and that the dispute between Parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions.

The Department Decided To:

Dismiss Plaintiff's objection to Tax Assessment in question – The Decision is deemed final and enforceable.

Instruments:

- Article (77/A, B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH](#),
- Articles (57), (63.1), (68.1), (67.3), and (71.2) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\), of 11/06/1425 AH](#),

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 13/03/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 27/09/2021 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of Iqama ID No., in his capacity as Director of Plaintiff (Branch of Contracting Company, C.R. No.); has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding the Withholding Tax of June 2015.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Joint Venture Profit of 40%):

Defendant clarified that it had decided that the joint venture is making profit due to the lack of audited financial statements from a certified public accountant and to Plaintiff's failure of registration with Defendant. Also, since the establishment of the joint venture to date, Plaintiff did not submit its Tax Returns. Accordingly, Plaintiff's objection was rejected pursuant to Article (63) of Income Tax Law and Article (57) of its Implementing Regulations.

2. Item (Travel Ticket Allowance):

Defendant clarified that it had refunded the provision to the net profit for failure to meet the conditions for accepting expenses, as the expense will not actually be realized unless the employee enjoys his/her annual leave. In addition, the employee may be compensated with an amount less than the estimated one in the financial statements in the event that he/she did not enjoy his/her leave. Accordingly, the item in question is considered an estimated expense that takes the form of a provision and is processed as one. Moreover, the provision is refunded to the net profit during the year, while the used portion thereof is actually deducted during the year from the net profit included in Tax Files or from the opening balance of the item included in Zakat Files. Accordingly, Plaintiff's objection was rejected pursuant to Article (15) of Income Tax Law.



3. Item (Import Differences):

Defendant clarified that it had compared the imports disclosed in Tax Return with the information included in its system and decided that the differences resulted in profits. In addition, Plaintiff's objection was rejected pursuant to Article (57) of Implementing Regulations of Income Tax Law, due to Plaintiff's failure to clarify where the imports were registered in Tax Return.

4. Item (Other Payments for "..... Contracting Company, Britain"):

Defendant clarified that it had subjected the amounts shown in the Account Ledger as remitted amounts to a related party "..... Company, Britain," to a withholding tax. In addition, Plaintiff's objection was rejected, as Plaintiff submitted the wire transfers showing that the amounts were remitted to London, pursuant to Article (63) of Implementing Regulations of Income Tax Law.

5. Item (Other Payments for "..... Contracting Company, Jordan"):

Defendant clarified that it had subjected the amounts shown in the Account Ledger as remitted amounts to a related party "..... Company, Jordan," to a withholding tax. In addition, Plaintiff's objection was rejected, as Defendant found that the amounts on which it imposed the withholding tax had already been paid, pursuant to Article (63) of Implementing Regulations of Income Tax Law. Based on the foregoing, Defendant requests dismissal of Plaintiff's Case for the stated grounds, while preserving its right to present further responses and clarifications before pleading closure.

On Sunday, 13/03/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of Iqama ID No., appeared in his capacity as Plaintiff's Representative; and Ms., holder of National ID No., appeared in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. Having asked Plaintiff's Attorney Representative his Case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having asked Defendant's Representative regarding her response, she maintained the statements contained in Defendant's Reply, and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked parties hereto whether they had further statements, they responded with denial. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Withholding Tax of June 2015; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed by a person with capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in



Plaintiff's objection to Defendant's decision regarding the Withholding Tax of June 2015, which included the following:

1. (Other Item Payments for “..... Contracting Company, Britain”):

Plaintiff objected to Defendant's decision, stating that the credit activity between Plaintiff and its Branch in Britain is a financing of operations carried out by “..... Company, Britain” to support Contracting Company, as all remittances are not for any commercial transactions or delivery of services, but rather for financing a Sister Company. Accordingly, Plaintiff requests abolishment of Defendant's decision pursuant to Article (63) of Implementing Regulations of Income Tax Law, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since Article (63) of Implementing Regulations of Income Tax Law stipulates: “A non-resident is subject to tax for any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: - Royalties or proceeds; payments for services to the head-office or an affiliated company by (15%);” and since the amounts in question represent loans to support business continuity provided by “..... Company, Britain;” hence, they represent amounts or payments remitted to the non-resident party; and since they represent amounts obtained by the non-resident party from a source within the Kingdom in accordance with the said Article; Therefore, the Department satisfies to dismiss Plaintiff's objection to the item in question.

2. (Other Item Payments for “..... Contracting Company, Jordan”):

Plaintiff objected to Defendant's decision, stating that the credit activity between Plaintiff and its Branch in Jordan is a financing of operations carried out by “..... Company, Jordan” to support Contracting Company, as all remittances are not for any commercial transactions or delivery of services, but rather for the current account of the Head Office. Accordingly, Plaintiff requests abolishment of Defendant's decision pursuant to Article (63) of Implementing Regulations of Income Tax Law, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since Article (63) of Implementing Regulations of Income Tax Law stipulates: “A non-resident is subject to tax for any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: - Royalties or proceeds; payments for services to the head-office or an affiliated company by (15%);” and since the amounts in question represent loans to support business continuity provided by “..... Company, Jordan;” hence, they represent amounts or payments remitted to the non-resident party; and since they represent amounts obtained by the non-resident party from a source within the Kingdom in accordance with the said Article; Therefore, the Department satisfies to dismiss Plaintiff's objection to the item in question.

3. Item (Late Payment Fine):

Plaintiff objected to Defendant's decision for imposing a late payment fine, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

The Department, having taken cognizance of the subject of dispute, found that, since Article (68.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, 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: (b) Delay in payment of due tax as per the Department's Assessment; (e) 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;” and since Article (67.3) of the same Implementing Regulations stipulates: “Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment;” and since Article (77/A) of Income Tax Law stipulates: “In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;” and since the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant; and since the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions; Therefore, the Department satisfies to dismiss Plaintiff’s objection to the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss Plaintiff’s (Branch of Contracting Company, C.R. No.) objection to Defendant’s decision regarding Tax Assessment in question.

This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of a copy of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the decision shall be final and enforceable.

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

Appeal Committee:

The Appeal Committee has decided to uphold the Department’s decision.



Income Tax / Withholding Tax

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
2139)

Issued in Case No. (IW-
72819-2021)

Keywords:

Tax Assessment – Late Payment Fine – Imposition of Withholding Tax on Dividends – Imposition of Estimated Tax – Failure to Provide Proof of Payment or Existence of Dividends.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding Tax Assessment of 2017 – 2019, and the Withholding Tax of June 2016, July 2017, and July 2018, which included its objection, represented by the following:

1. Item (Estimated Revenues of 40%):

Plaintiff objected to Defendant’s decision, stating that Defendant had assumed estimated revenues for its Branch that do not exist.

2. Item (Imposition of Withholding Tax on Dividends for June 2016, July 2017, and July 2018):

Plaintiff objected to Defendant’s decision for imposing a withholding tax on the estimated net profits under the Tax Assessment, after imposing the tax calculated on an estimated basis, stating that Defendant considered the estimated profits to be dividends that are subject to a withholding tax of (5%), while no revenues were realized by the Branch, and the estimated profits assumed by Defendant were not remitted to the Head Office. Accordingly, there is no valid justification for imposing a withholding tax under the Tax Assessment.

3. Item (Late Payment Fine).

The Department Found That:

As for item (Estimated Revenues of 40%), Plaintiff has failed to submit the agreement concluded with the Head Office to verify the true nature of the transaction in question, as the Head Office has business within the Kingdom through the Branch and that the Branch is a supportive entity to the Head Office, which determines that the Head Office has business with local authorities, and that the Branch’s revenues represent the profit margin stated by Plaintiff in its statement of claim, indicating that all the business carried out by Plaintiff is for the benefit of the Head Office, in addition to Plaintiff’s failure to submit the supporting documents.

As for item (Imposition of Withholding Tax on Dividends for June 2016, July 2017, and July 2018), Plaintiff stated that the imposition of a withholding tax shall be upon proof of existence of revenues and not on an estimated basis; and since Defendant has failed to provide proof of payment or evidence of the existence of dividends.

As for item (Late Payment Fine), the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due



arising under the application of the provisions of the Law and the amendments made by Defendant; Therefore, the Department satisfies to amend Defendant's decision.

The Department Decided To:

Dismiss Plaintiff's objection to item (Estimated Revenues of 40%); abolish Defendant's decision item (Imposition of Withholding Tax on Dividends for June 2016, July 2017, and July 2018); and amend Defendant's decision regarding item (Late Payment Fine) for the grounds stated herein. – The Decision is deemed final and enforceable.

Instruments:

- Articles (77/A,B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/1/1425 AH](#)
- Articles (55) and (56) of [Law of Civil Procedure promulgated by Royal Decree No. \(M/1\) of 22/01/1435 AH.](#)
- Articles (16.4), (63.1), (63.6), (67.3), (68.1), and (71.2) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 13/03/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 28/09/2021 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of National ID No., in his capacity as Director of Plaintiff (..... Company, C.R. No.); has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding Tax Assessment of 2017 – 2019, and the Withholding Tax of June 2016, July 2017, and July 2018.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Estimated Revenues of 40%):

Defendant clarified that it had imposed an estimated tax on Plaintiff for failure to submit all contracts concluded between the Head Office and the local authorities. In addition, having examined Plaintiff's objection, Defendant found that Plaintiff did not submit documents supporting its argument. Therefore, Defendant adheres to the validity and soundness of its procedure pursuant to Article (16) of Implementing Regulations of Income Tax Law.

2. Item (Withholding Tax):

Defendant clarified that these amounts are subject to a withholding tax of (5%) as dividends and due to Plaintiff's failure to submit all contracts concluded between the Head Office and the local authorities. Accordingly, Plaintiff's objection was rejected pursuant to the provisions of Article (68) of Income Tax Law and Article (63) of its Implementing Regulations.

3. Item (Late Payment Fine): Defendant clarified that it had imposed a late payment fine on the due but unpaid tax pursuant to Article (77) of Income Tax Law and Article (67) of its Implementing Regulations. Based on the foregoing, Defendant requests



dismissal of Plaintiff's Case for the stated grounds, while preserving its right to present further responses and clarifications before pleading closure.

On Sunday, 13/03/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Ms., holder of National ID No., appeared in her capacity as Defendant's "ZATCA" Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. Neither Plaintiff nor its Representative appeared at the session, despite being legally served of the session date. Having asked Defendant's Representative regarding Plaintiff's Case, she maintained Defendant's statements contained in the Reply previously submitted to General Secretariat of Tax Committees, and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked Defendant's Representative whether she had further statements, she responded with denial. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of 2017 – 2019, and the Withholding Tax of June 2016, July 2017, and July 2018; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case documents has established that Plaintiff filed the Case within the prescribed statutory period, the Case is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Tax Assessment of 2017 – 2019, and the Withholding Tax of June 2016, July 2017, and July 2018, which included the following:

1. Item (Estimated Revenues of 40%):

Plaintiff objected to Defendant's decision, stating that Defendant had assumed estimated revenues for its Branch that do not exist, wherein Defendant considered the Branch's expenses as a basis for calculating the estimated revenues for the years in question, which is contrary to the reality established by the license issued to the Branch and the agreement, according to which the Branch receives a percentage of (4%) until the fiscal year of 2017, which was increased to (8.5%) during the fiscal year of 2018 from the Branch's expenses. Plaintiff added that the branch did not generate income from any source within the Kingdom that does not practice any profit-making activity, as the Branch's activities in the Kingdom are limited to providing administrative services to the Parent Company. Also, the branch keeps regular accounts that include all expenses it had incurred and revenues it had realized and submits its Tax Returns for the years in question to Defendant, which are accurate Tax Returns derived from the Branch's regular accounts and the audited financial statements. Moreover, disregarding Branch's accounts and Tax Returns submitted after the lapse of several years without a legal justification or fundamental grounds to do so is



not acceptable. Furthermore, since the Branch has declared the actual profits realized for the years in question, there is no valid justification for calculating estimated revenues as stated in Tax Assessment, by calculating revenues based on the expenses incurred by the Branch, as such action is in violation of Income Tax Law, while Defendant argued that its decision came in compliance with the provisions of Implementing Regulations of Income Tax Law.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since Article (16.4) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, concerning deductible expenses to determine taxable income, stipulates: “Estimated net profit rate shall be determined based on available facts, evidence and indicators relevant to Taxpayer’s activity, its nature and circumstances. In all cases, it shall not be less than the following rates of Taxpayer’s revenues: 9. Other activities by (15%);” and since and since Plaintiff has failed to submit the agreement concluded with the Head Office to verify the true nature of the transaction in question, as the Head Office has business within the Kingdom through the Branch and that the Branch is a supportive entity to the Head Office, which determines that the Head Office has business with local authorities; and since the Branch’s revenues represent the profit margin stated by Plaintiff in its statement of claim, indicating that all the business carried out by Plaintiff is for the benefit of the Head Office, and since Plaintiff has failed to submit the supporting documents; Therefore, the Department satisfies to dismiss Plaintiff’s objection to the item in question.

2. Item (Imposition of Withholding Tax on Dividends for June 2016, July 2017, and July 2018):

Plaintiff objected to Defendant’s decision for imposing a withholding tax on the estimated net profits under the Tax Assessment, after imposing the tax calculated on an estimated basis, stating that Defendant considered the estimated profits to be dividends that are subject to a withholding tax of (5%), while no revenues were realized by the Branch, and the estimated profits assumed by Defendant were not remitted to the Head Office. Accordingly, there is no valid justification for imposing a withholding tax under the Tax Assessment, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulations.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since Article (63.1) of Implementing Regulations of Income Tax Law, stipulates: “A non-resident is subject to tax for any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: - Rent; technical or consulting services; air tickets, air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums by (5%);” and since Paragraph (6) of the same Article, stipulates: “Dividends means any distribution by a resident company to a non-resident shareholder, and any profits transferred by a permanent establishment to related parties;” and since the imposition of a withholding tax on amounts paid to non-resident parties is conditional upon the occurrence of the actual payment in accordance with the provisions of said Article; and since the dispute was over the imposition of withholding tax on Defendant’s assumptions regarding the estimated revenues; and since Plaintiff stated that the imposition of a withholding tax shall be upon proof of existence of revenues and not on an estimated basis; and since Defendant has failed to provide proof of payment or evidence of the existence of dividends; Therefore, the Department satisfies to abolish Defendant’s decision regarding the item in question.

3. Item (Late Payment Fine):

Plaintiff objected to Defendant’s decision for imposing a late payment fine, while Defendant argued that its decision came in compliance with the provisions of Income Tax



Law and its Implementing Regulations.

The Department, having taken cognizance of the subject of dispute, found that, since Article (68.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, 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: (b) Delay in payment of due tax as per the Department’s Assessment; (e) 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;” and since Article (67.3) of the same Implementing Regulations stipulates: “Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment;” and since Article (77/A) of Income Tax Law stipulates: “In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;” and since the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant; Therefore, the Department satisfies to amend Defendant’s decision by imposing a late payment fine from the due date on items in which Plaintiff’s objection was dismissed, and cancel the late payment fine on items in which Defendant’s decision was abolished.

As for Plaintiff’s Representative failure to appear at the hearing despite being legally served of its date; since Article (20.1) of Tax Dispute and Violation Committee Procedures stipulates: “If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the circuit, the circuit must decide the suit if it is ripe for judgment;” and since Article (56) of Law of Civil Procedures stipulate: “In the cases provided for in Article (55) of this Law, if the defendant attends the hearing from which the plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the plaintiff;” and since Plaintiff’s Representative has failed to provide an excuse justifying his absence from the hearing set for consideration of Plaintiff’s case; and since the Department has concluded that the Case has become ripe for adjudication pursuant to the documents included in its file; Therefore, the Department satisfies to issue its decision in the Case in Plaintiff’s presence.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss Plaintiff’s (..... Company, TIN.) objection to Defendant’s decision regarding item (Estimated Revenues of 40%).

Second: Abolish Defendant’s decision against Plaintiff (..... Company, TIN.) regarding item (Imposition of Withholding Tax on Dividends for June 2016, July 2017, and July 2018).

Third: Amend Defendant’s decision against Plaintiff (..... Company, TIN.) regarding item (Late Payment Fine) for the grounds stated herein.



This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and his Family and Companions.

(The Decision is deemed final and imperative by expiration of objection period under Article (42) of Tax Dispute and Violation Committee Procedures).



Withholding Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-2153)

Issued in Case No. (IW-73255-2021)

Keywords:

Tax Assessment – Late Payment Fine – Lapse of Statutory Period for Assessment – Imposition of Withholding Tax on Salaries of Temporary Personnel – Documentary Dispute Not Arising from Significant Difference in Interpretation of Legal Provisions – Failure to Submit Financial Statements or an Extract from Accounting System to Verify Payment.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Withholding Tax of December 2015 – 2017, which included its objection, represented by the following:

1. Item (Imposition of Withholding Tax on Salaries of Temporary Personnel of December 2015 – 2017):

Plaintiff submitted the documents supporting that the expenses represent salaries for temporary personnel and should not be subject to withholding tax.

2. Item (Lapse of Statutory Period for Assessment of December 2015):

Plaintiff stated that the deadline for submitting the Withholding Tax Return for December 2015 was 10/02/2016 AD, while Defendant made its Final Assessment to the Withholding Tax Return on 06/06/2021 AD. Accordingly, Defendant’s decision was in violation of the provisions of Income Tax Law and its Implementing Regulations.

3. Item (Late Payment Fine):

Plaintiff objected to Defendant’s decision for imposing a late payment fine, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulations.

The Department Found That:

As for item (Imposition of Withholding Tax on Salaries of Temporary Personnel of December 2015 – 2017), Plaintiff has failed to submit the financial statements or an extract from the accounting system to verify the payment to the Head Office, nor did it submit the documents supporting its argument that these amounts were paid by the Branch, or a proof of non-payment by the Head Office, and that the burden of proof falls on Plaintiff.

As for item (Lapse of Statutory Period for Assessment of December 2015), Plaintiff’s failure to deduct the tax on the payments made to non-resident parties for the years in question, represents a violation of the legal provisions, and that the resident party “Plaintiff” is obligated and held liable for deducting the tax from the amount paid to the non-resident parties, with no legal provision that forfeits Defendant’s right to claim the withholding tax after lapse of a certain period.



As for item (**Late Payment Fine**), the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions.

The Department Decided To:

Dismiss Plaintiff's objection – The Decision is deemed final and enforceable.

Instruments:

- Articles (65), (68) and (77/A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH](#),
- Articles (63.1), (67.3), (68.1), and (71.2) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\), of 11/06/1425 AH](#),
- Paragraph (2) of Circular No. (1438/9/8922) of 03/01/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 13/03/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 30/09/2021 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of National ID No., in his capacity as Plaintiff's (..... Company, C.R. No.) Legal Representative, by virtue of its Articles of Association; has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding the Withholding Tax of December of 2015 – 2017 AD.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Imposition of Withholding Tax on Salaries of Temporary Personnel):

Defendant clarified that it had imposed a withholding tax on the salaries of temporary personnel on a visit visa at a rate of (5%) pursuant to Article (63) of Implementing Regulations of Income Tax Law, for failure to meet the residency requirements. In addition, they provide technical and consultancy services and were not registered with General Organization for Social Insurance ("GOSI").

2. Item (Lapse of Statutory Period for Assessment of December 2015):

Defendant clarified that it had imposed a withholding tax on amounts paid by Plaintiff in application of the provisions of Article (68) of Income Tax Law, as the resident party, which in this case is Taxpayer "Plaintiff", is obligated and held liable for deducting the tax from the amount paid to the non-resident party and also is obligated to pay that tax to ZATCA "Defendant" within the deadlines prescribed by Law under the monthly withholding statements. However, if the tax is not deducted as required, it remains a fixed debt owed from the beneficiary and Defendant is entitled to claim the same from Plaintiff, its agent, or sponsor without being bound by a specific period or by the requirement to make an Assessment. Therefore, Defendant adheres to its right to collect the withholding tax without being bound by a specific period. In addition, the Article mentioned in Plaintiff's objection are directly related to the Tax Assessments made by Defendant on Income Tax Returns and do not extend to the withholding tax. Consequently, there is no time limit for claiming the same, nor is it subject to a statute of limitations. Moreover,



Plaintiff is obligated by Law to deduct the tax from service providers upon payment and remit the same to Defendant; thus, it shall be collected from Plaintiff at any time, along with the fine due in the event of failure to deduct and pay the same to Defendant. Accordingly, Plaintiff's objection was rejected.

3. Item (Late Payment Fine):

Defendant clarifies that it had imposed a late payment fine on the due but unpaid tax pursuant to Article (77) of Income Tax Law and Article (67) of its Implementing Regulations. Defendant concluded by requesting dismissal of Plaintiff's Case for the stated grounds, while preserving its right to present further responses and clarifications until pleadings closure.

On Sunday, 13/03/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, under POA No. dated .../.../...; and Ms., holder of National ID No., appeared in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. Having asked Plaintiff's Attorney regarding the Case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having asked Defendant's Representative regarding her response, she maintained the statements contained in Defendant's Reply and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked parties hereto whether they had further statements, they responded with denial. Therefore, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Withholding Tax of December 2015 – 2017 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case documents has established that Plaintiff filed the Case within the prescribed statutory period, the Case is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the Withholding Tax of December 2015 – 2017 AD, which included the following:

1. Item (Imposition of Withholding Tax on Salaries of Temporary Personnel of December 2015 – 2017):

Plaintiff objected to Defendant's decision for imposing a withholding tax on the salaries of temporary personnel in the amount of (SAR 920,622.80) for the month of December 2015 – 2017, stating that the amount (SAR 18,412,456) that Defendant subjected to a withholding tax of (5%) represents the salaries and wages paid to its personnel who came to the Kingdom under temporary visas, and that it had submitted the documents



supporting that the expenses represent salaries for temporary personnel and should not be subject to withholding tax, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulations.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since Paragraph (2) of Circular No. (1438/9/8922) of 03/01/1438 AH stipulates: “2. In return of a work wage resulting from an employment relationship for specific employment contracts (whether the contract is for a year or less), which is not considered a taxable income within the Kingdom, as it represents salaries and wages. A contract is classified as an employment contract if it meets the following controls: (a) Stating Employer’s powers to monitor the method and performance of work; (b) Determining the working hours and monitoring their times and schedules by Employer; (c) Determining the place of service performance by Employer; (d) Determining the work tools and other relevant facilities; (e) Stating the method of receiving work-related instructions from Employer; and (f) Determining the mechanism for disbursing personnel salaries and wages on time;” and since Article (63.1) of Implementing Regulations of Income Tax Law stipulates: “A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds; payments for services to the head office or an affiliated company by 15%;” and since the dispute lies in Plaintiff’s claim that the withholding tax should not be imposed on the salaries of Head Office’s personnel, stating that these amounts represent salaries and wages for personnel came to the Kingdom under temporary visas in the name of the Branch and do not represent services provided by the Head Office to the Branch; and since payment has occurred from the Head Office (a non-resident party) to the temporary personnel who work for Plaintiff within the Kingdom in exchange for salaries; and since Plaintiff has failed to submit the financial statements or an extract from the accounting system to verify the payment to the Head Office, but rather had only submitted a sample of employment contracts, showing that the Head Office is the Employer and the workplace is the Kingdom, as well as an analytical statement of personnel names, their job titles, and salaries; and since Plaintiff has failed to submit the documents supporting its argument that these amounts were paid by the Branch, nor a proof of non-payment by the Head Office; and since the burden of proof falls on Plaintiff; Therefore, the Department satisfies to dismiss Plaintiff’s objection to the item in question.

2. Item (Lapse of Statutory Period for Assessment of December 2015):

Plaintiff objected to Defendant’s decision, stating that the deadline for submitting the Withholding Tax Return for December 2015 was 10/02/2016 AD, while Defendant made its Final Assessment to the Withholding Tax Return on 06/06/2021 AD. Accordingly, Defendant’s decision was in violation of the provisions of Income Tax Law and its Implementing Regulations, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulations.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since Article (65) of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, stipulates: “A. The Department may, with a reasoned notification, make or amend a tax assessment within five years of the deadline specified for filing the tax declaration for the taxable year, or at any time, upon the written consent of the taxpayer; B. The Department may make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year if a taxpayer does not file its tax declaration, or it is found that the declaration is incomplete or incorrect with the intent of tax evasion;” and since Article (68) of the same Law stipulates: “A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the



following rates:.....; C. 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; and 3. If he fails to report withholding statements to the Department as stipulated under subparagraph (3) of paragraph (b) of this Article;” and since Article (68) of Income Tax Law has stipulated above that the resident party (Taxpayer “Plaintiff”) is obligated and held liable for deducting the tax from the amount paid to the non-resident party and also is obligated to pay that tax to ZATCA “Defendant” within the deadlines prescribed by Law under the monthly withholding statements; and since Plaintiff’s inferencing to Article (65) of Income Tax Law is not applicable to the withholding tax, as that Article is directly related to the Tax Assessments made by Defendant on Income Tax Returns submitted by Taxpayers to the taxable year, while the dispute between parties hereto lies in Defendant’s calculation of the withholding tax on the amounts paid by Plaintiff to non-resident parties, which is governed by Article (68) of Income Tax Law and Article (63) of its Implementing Regulations; and since Plaintiff’s failure to deduct the tax on the payments made to non-resident parties for the years in question, represents violation of the legal provisions; and since the resident party “Plaintiff” is obligated and held liable for deducting the tax from the amount paid to the non-resident parties; and since there is no legal provision that forfeits Defendant’s right to claim the withholding tax after lapse of a certain period; Therefore, the Department satisfies to dismiss Plaintiff’s objection to the item in question.

3. Item (Late Payment Fine):

Plaintiff objected to Defendant’s decision for imposing a late payment fine, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulations.

The Department, having taken cognizance of the subject of dispute, found that, since Article (68.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, 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: (b) Delay in payment of due tax as per the Department’s Assessment;” (e) 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;” and since Article (67.3) of the same Implementing Regulations stipulates: “Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment;” and since Article (77/A) of Income Tax Law stipulates: “In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;” and since the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant; and since the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions; Therefore, the Department satisfies to dismiss Plaintiff’s objection to the item in question.



In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss Plaintiff's (..... Company, TIN.) objection to Defendant's decision regarding the Assessment in question.

This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and his Family and Companions.

(The Decision is deemed final and imperative by expiration of objection period under Article (42) of Tax Dispute and Violation Committee Procedures).



Withholding Tax

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
127746)

Issued in Case No. (W-
127746-2022)

Keywords:

Tax Assessment of Withholding Tax – Late Payment Fine – Lack of Supporting Documents – Documentary Dispute Not Arising from Significant Difference in Interpretation of Legal Provisions – Dismissal of Plaintiff's Objection.

Abstract

Plaintiff ("Taxpayer") filed this Case moving to abolish Defendant's ("ZATCA") decision regarding Tax Assessment of 01/07/2019 AD to 31/12/2020 AD, which included its objection, represented by the following:

1. Item (Tax Assessment of Withholding Tax):

Plaintiff objected to Defendant's decision for imposing a withholding tax of (15%) on royalties.

2. Item (Late Payment Fine):

Plaintiff objected to Defendant's decision for imposing a late payment fine, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulations.

The Department Found That:

As for item (Tax Assessment of Withholding Tax), Plaintiff has failed to submit the supporting documents.

As for item (Late Payment Fine), the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions; Therefore, the Department satisfies to uphold Defendant's decision by imposing a late payment fine from the due date on items in which Plaintiff's objection was dismissed.

The Department Decided To:

Dismiss Plaintiff's objection to Defendant's decision regarding the Assessment in question. – The Decision is deemed final and enforceable.

Instruments:

- Articles (68.2/A, C) and (77/A, B) of [Income Tax Law promulgated by \(68 and Article \(M/1\) of 15/01/1425 AH.](#)
- Articles (67.3) and (68.1) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions. ◇



On Tuesday, 20/09/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 30/04/2022 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of National ID No., in his capacity as Plaintiff's (..... Trading Company, C.R. No.) Legal Representative, by virtue of its Articles of Association; has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding Tax Assessment of 01/07/2019 AD to 31/12/2020 AD, which centers in the following items:

1. Item (Tax Assessment of Withholding Tax):

Plaintiff objects to Defendant's decision for imposing a withholding tax of (15%) on royalties, stating that "..... International Ltd." is a resident company located within the United Kingdom in accordance with the provisions of Article (4) of "Convention Between The Government Of The Kingdom Of Saudi Arabia And The Government Of The United Kingdom Of Great Britain And Northern Ireland For The Avoidance Of Double Taxation And The Prevention Of Tax Evasion With Respect To Taxes On Income And On Capital" ("The Convention"). However, Defendant's decision contradicts Article (12.2) of the Convention published on its website, which stipulates: "The tax so charged shall not exceed: b. 8 percent of the gross amount of the royalties in all other cases." Accordingly, the uncontested amounts were paid, and the objection was filed within the prescribed statutory period.

2. Item (Late Payment Fine):

Plaintiff objects to Defendant's decision for imposing a late payment fine.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Tax Assessment of Withholding Tax of 01/07/2019 to 31/12/2020):

Defendant clarified that it had amended Plaintiff's Tax Return of withholding tax due to discovering foreign transactions that were not declared as per the data provided by Plaintiff in its Tax Return, wherein Defendant subjected the amounts remitted to Company at a rate of (15%) representing royalties and proceeds, as Defendant found that they are in exchange for the franchises granted from abroad, while Plaintiff did not provide evidence entitling the same to invoke the provisions of the Convention in accordance with Defendant's Circular, nor did it submit the supporting documents to Defendant or evidence supporting its subjection to the basic rate. In addition, due to Plaintiff's failure to comply with the requirements that must be met to apply the Convention and fill out and certify the forms, as they represent amounts obtained by foreign companies from a source within the Kingdom through Plaintiff. Accordingly, Plaintiff's objection was rejected pursuant to Article (68) of Income Tax Law.

2. Item (Late Payment Fine):

Defendant clarified that it had imposed a late payment fine on the unpaid tax differences pursuant to Article (77) of Income Tax Law and Article (68) of its Implementing Regulations. Based on the foregoing, Defendant requests dismissal of Plaintiff's Case for the stated grounds, while preserving its right to present further responses and clarifications until pleadings closure.

On Tuesday, 20/09/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Representative; and Ms., holder



of National ID No., appeared in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. Having asked Plaintiff's Attorney Representative his Case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having asked Defendant's Representative regarding her response, she maintained the statements contained in Defendant's Reply and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked parties hereto whether they had further statements, they responded with denial. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of 01/07/2019 AD to 31/12/2020 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case documents has established that Plaintiff filed the Case within the prescribed statutory period, the Case is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding Tax Assessment of 01/07/2019 AD to 31/12/2020 AD, which included the following:

1. Item (Tax Assessment of Withholding Tax):

Plaintiff objected to Defendant's decision for imposing a withholding tax of (15%) on royalties, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since Article (68/A) stipulates: "Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: 2. Royalty or proceeds: (15%);" and since Paragraph (C) of the same Article 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; and 3. If he fails to report withholding statements to the Department as stipulated under subparagraph (3) of paragraph (b) of this Article;" and since Plaintiff has failed to submit the supporting documents; Therefore, the Department satisfies to dismiss Plaintiff's objection to the item in question.

2. Item (Late Payment Fine):

Plaintiff objected to Defendant's decision for imposing a late payment fine, while Defendant argued that its decision came in compliance with the provisions of Income Tax



Law and its Implementing Regulations.

The Department, having taken cognizance of the subject of dispute, found that, since Article (68.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, 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: (b) Delay in payment of due tax as per the Department’s Assessment;” (e) 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;” and since Article (67.3) of the same Implementing Regulations stipulates: “Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment;” and since Article (77/A) of Income Tax Law stipulates: “In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;” and since the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant; and since the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions; Therefore, the Department satisfies to uphold Defendant’s decision by imposing a late payment fine from the due date on items in which Plaintiff’s objection was dismissed.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Dismiss Plaintiff’s (..... Trading Company, TIN.) to Defendant’s decision regarding the Assessment in question.

This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of a copy of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the decision shall be final and enforceable.

May Allah’s Blessings and Peace be upon our Prophet Muhammad and his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Riyadh

Decision No. (IFR-2023-
133757)

Issued in Case No. (ZIW-
133757-2022)

Keywords:

Withholding Tax on Administrative Charges – Withholding Tax on Amounts Paid – Payments of Escrow Fees – Payments Not Made by Plaintiff and Duplication in Addition of Amounts by Defendant – End of Service Gratuity

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding to Tax Assessment of 2010 – 2013 AD, which included its objection, represented by the following:

1. Item (Withholding Tax on Administrative “Banking” Charges Paid to “..... Bank”):

Defendant requested the Department to establish a resolution of dispute regarding the item in question.

2. Item (Withholding Tax on Amounts Paid to “..... Company, United Kingdom”):

Defendant argued that Plaintiff did not present such a plea during the objection stage and adhered to the validity of its decision.

3. Item (Payments of Escrow Fees to “..... Company”):

Plaintiff objected to Defendant’s decision for subjecting the payments of escrow fees to “..... Company” to a withholding tax, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulation.

4. Item (Payments Not Made by Plaintiff and Duplication in Addition of Amounts by Defendant):

Plaintiff objected to Defendant’s decision for subjecting payments that have not been made by Plaintiff and duplication in adding amounts to a withholding tax, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulation.

5. Item (End of Service Gratuity).

The Department Found That:

As for item (Withholding Tax on Administrative “Banking” Charges Paid to “..... Bank”), the dispute over the item in question has been resolved with Defendant accepting Plaintiff’s objection as stated in its Rejoinder.

As for item (Withholding Tax on Amounts Paid to “..... Company, United Kingdom”), Plaintiff did not present such a plea during the objection stage and adhered to the validity of its decision and that Article (25) of the said Convention enables Plaintiff to adhere to matters that it deems consistent with the said Convention as permissible and not as compulsory.



As for item (Payments of Escrow Fees to “..... Company”), Plaintiff has submitted documents establishing its non-subjection to the withholding tax, as it submitted a Tax Residency Certificate for “..... Company.”

As for item (Payments Not Made by Plaintiff and Duplication in Addition of Amounts by Defendant), Plaintiff has failed to submit the supporting documents proving the non-payment to suppliers.

As for item (End of Service Gratuity), the dispute over the item in question has been resolved with Defendant accepting Plaintiff’s objection as stated in its Rejoinder.

The Department Decided To:

- Establish resolution of dispute between Plaintiff and Defendant over item (Withholding Tax on Administrative “Banking” Charges Paid to “..... Bank”) with Defendant accepting Plaintiff’s requests in this regard.
- Dismiss Plaintiff’s objection to Defendant’s decision regarding item (Payments Not Made by Plaintiff and Duplication in Addition of Amounts by Defendant).
- Dismiss Plaintiff’s objection to Defendant’s decision regarding item (Withholding Tax on Amounts Paid to “..... Company, United Kingdom”).
- Abolish Defendant’s decision against Plaintiff regarding item (Payments of Escrow Fees to “..... Company) – The Decision is deemed final and enforceable.

Instruments:

- Article (25) of [The Convention Between The Government of The Kingdom of Saudi Arabia And The Government of The United Kingdom of Great Britain And Northern Ireland For The Avoidance of Double Taxation And The Prevention of Tax Evasion With Respect To Taxes on Income And on Capital, signed on 31/10/2007 AD and entered into force on 01/01/2009 AD.](#)
- Article (7) of [The Convention Between The Government of The Kingdom of Saudi Arabia And The Government of The Republic of Korea For The Avoidance of Double Taxation And The Prevention of Tax Evasion With Respect to Taxes on Income, signed on 24/03/2007 AD and entered into force on 01/12/2008 AD.](#)
- Article (70) of [Law of Civil Procedure promulgated by Royal Decree No. \(M/1\) of 22/01/1435 AH.](#)
- Article (70.1) of [Implementing Regulations of Law of Civil Procedure issued by the Minister of Justice’s Decision No. \(39933\) of 19/05/1435 AH.](#)
- Articles (35), (63.1), and (63.8) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday, 24/08/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 16/06/2022 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of National ID No., in his capacity as Plaintiff’s (..... Electricity Company “CJSC”, C.R. No.) Legal Representative, by virtue of its Articles of Association; has filed a petition for reconsideration of Case regarding Tax Assessment of 2010 – 2013 AD, issued by Zakat,



Tax, and Customs Authority (“ZATCA”), in implementation of the decision rendered by the First Appellate Department for Income Tax Violations and Disputes in Case No. (ZIW-2018-1580), which includes the following:

1. Item (Withholding Tax on Administrative “Banking” Charges Paid to “..... Bank”):

Plaintiff objects to Defendant’s decision for subjecting the administrative (banking) charges paid to “..... Bank” from 2010 to 2013, to a withholding tax, stating that these charges represent regular banking services provided outside the Kingdom. Also, the Primary Committee for Zakat and Tax Objections upheld Plaintiff’s argument in its decision that these costs are in exchange for keeping accounts with “..... Bank” and that the payments are not subject to withholding tax. Moreover, the Primary Committee’s decision was limited to 2010 and 2011, despite the fact that the objection was submitted for the years 2010 to 2013. Furthermore, the income realized by “..... Bank” is classified within the scope of Article (7) “Business Profits” of the Tax Convention between the Kingdom of Saudi Arabia and the Republic of China.

2. Item (Withholding Tax on Amounts Paid to “..... Company, United Kingdom”):

Plaintiff objects to Defendant’s decision for subjecting the amounts paid to “..... Company, United Kingdom” to a withholding tax, stating that it is a resident company located within the United Kingdom in accordance with Tax Convention between the Kingdom of Saudi Arabia and the United Kingdom; hence, the tax advantages should be applied to payments made to “..... Company.” Also, the income realized by “..... Company” is classified within the scope of Article (7) “Business Profits” of the said Tax Convention. Accordingly, Plaintiff seeks implementation of that Tax Convention to exclude the withholding tax in question.

3. Item (Payments of Escrow Fees to “..... Company”):

Plaintiff objects to Defendant’s decision for subjecting the payments of escrow fees to “..... Company” to a withholding tax, stating that “..... Company” has obtained a guarantee for a loan from “..... Company,” wherein “..... Company” guaranteed the payment of the principal amount and commission payouts by “..... Company” regarding a loan facility and also provided a guarantee for the payment of the principal amount and the interest resulting therefrom in the amount of (\$571.5) million, which represents fees in exchange for providing a guarantee to the lenders. Also, “..... Company” is a resident company located within the Republic of Korea under the Tax Convention between the Kingdom of Saudi Arabia and the Republic of Korea. Accordingly, Plaintiff seeks implementation of that Tax Convention to exclude the withholding tax in question.

4. Item (Payments Not Made by Plaintiff and Duplication in Addition of Amounts by Defendant):

Plaintiff objects to Defendant’s decision for subjecting payments that have not been made by Plaintiff and duplication in adding amounts to a withholding tax, stating that Defendant has mistakenly subjected the amounts to withholding tax without considering Plaintiff submissions regarding the same.

5. Item (End of Service Gratuity).

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Withholding Tax Administrative “Banking” Charges Paid to “..... Bank”):

Defendant clarifies that during the objection stage, Plaintiff stated that these amounts represent “agency fees” that are not subject to withholding tax, while Defendant adheres to the validity of subjecting those amounts to withholding tax pursuant to Article (68) of Income Tax Law and Article (63) of its Implementing Regulations, as the information and



documents submitted have shown that these amounts represent returns on loans paid to a non-resident party, namely “..... Bank.”

2. Item (Withholding Tax on Amounts Paid to “..... Company, United Kingdom”):

Defendant clarifies that Plaintiff did not submit any documents or information confirming the existence of files for the said companies with Defendant or any evidence indicating that it has been taxed for those amounts. Accordingly, Defendant adheres to the validity of subjecting those amounts to withholding tax pursuant to Article (68) of Income Tax Law and Article (63) of its Implementing Regulations.

3. Item (Payments of Escrow Fees to “..... Company”):

Defendant clarifies that the amounts of the item in question are subject to withholding tax since they represent insurance expenses paid to non-resident parties pursuant to Article (68) of Income Tax Law and Article (63) of its Implementing Regulations.

4. Item (End of Service Gratuity):

Defendant clarifies that Plaintiff’s objection will be accepted and the result of the year will be amended with the end-of-service gratuity provision for 2010, 2011, and 2013 in the amounts of (SAR 19,879), (SAR 31,786), and (SAR -47,488), respectively.

5. (Amounts Paid to Non-Resident Parties by Plaintiff and Paid Tax Accordingly):

Defendant clarifies that, having referred to the Appealed Decision regarding the item in question, it found that the Appealed Decision indicated the amounts paid to “..... Company,” while the Primary Decision indicated the amounts paid to other parties. Also, having referred to the Amended Assessment it had made in implementation of the Primary Decision, it did not state that the amounts paid to “..... Company” had been subjected to withholding tax by Defendant; hence, arguments mentioned by Plaintiff in its statement of claim are groundless of any fact or law for the stated grounds, which renders Defendant’s decision in rejecting Plaintiff’s objection valid. Therefore, Defendant adheres to the validity and regularity of its procedure.

Defendant concluded by requesting dismissal of Plaintiff’s Case for the stated grounds, while preserving its to present further responses and clarifications until pleadings closure.

Defendant also submitted a supplementary memorandum that included its response to the following:

1. Item (Withholding Tax Administrative “Banking” Charges Paid to “..... Bank”):

Defendant clarifies that it has accepted Plaintiff’s objection to the item in question regarding years 2012 and 2013 and requests the Department to establish a resolution of dispute regarding the same.

2. Item (Withholding Tax on Amounts Paid to “..... Company, United Kingdom”):

Defendant clarifies that Plaintiff did not submit any documents or information confirming the existence of files for the said companies with Defendant or any evidence indicating that it has been taxed for those amounts. Accordingly, Defendant adheres to the validity of subjecting those amounts to withholding tax pursuant to Article (68) of Income Tax Law and Article (63) of its Implementing Regulations.

3. Item (Payments of Escrow Fees to “..... Company”):

Defendant clarifies that the amounts of the item in question are subject to withholding tax since they represent insurance expenses paid to non-resident parties pursuant to Article (68) of Income Tax Law and Article (63) of its Implementing Regulations.

4. Items (End of Service Gratuity) and (Amounts Paid to Non-Resident Parties by Plaintiff and Paid Tax Accordingly):

Defendant maintains the statements contained in its Rejoinder previously submitted to the Department.



On Monday, 20/08/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Ms., holder of National ID No., appeared in her capacity as Plaintiff's Attorney; and Ms., holder of National ID No., appeared in her capacity as Defendant's "ZATCA" Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. Having asked Plaintiff's Attorney regarding the Case, she maintained the statements contained in the statement of claim previously submitted to General Secretariat of Tax Committees and requested a continuance to respond to Defendant's supplementary memorandum deposited in Case File. Having asked Defendant's Representative regarding her response, she maintained the statements contained in Defendant's Reply and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. She also requested a continuance to provide further responses to Plaintiff's claim. Accordingly, the Department decided to postpone the continuation of the hearing of the Case to the session on Thursday, 24/08/1444 AH.

On Monday, 20/08/1444 AH, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Ms., holder of National ID No., appeared in her capacity as Plaintiff's Attorney; and Ms., holder of National ID No., appeared in her capacity as Defendant's "ZATCA" Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. Having asked Plaintiff's Attorney regarding the Case, she maintained the statements contained in the statement of claim previously submitted to General Secretariat of Tax Committees and requested a continuance to respond to Defendant's supplementary memorandum deposited in Case File. Having asked Defendant's Representative regarding her response, she maintained the statements contained in Defendant's Reply and requested the Department to dismiss any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked parties hereto whether they had further statements, they responded with denial. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of 2010 – 2013 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case documents has established that Plaintiff filed the Case within the prescribed statutory period, the Case is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding Tax Assessment of 2010 – 2013 AD, which included the following:



1. Item (Withholding Tax on Administrative “Banking” Charges Paid to “..... Bank”):

The Department, having taken cognizance of subject of dispute, found that, since Article (70) of Law of Civil Procedure promulgated by Royal Decree No. (M/1) of 22/01/1435 AH, stipulates: “Litigants may, at any stage of the Case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the Case record, and the court shall issue a deed to that effect;” and since Article (70.1) of Implementing Regulations of Law of Civil Procedures, issued by Minister of Justice’s Decision No. (39933) of 19/05/1435 AH, stipulates: “If an agreement is reached prior to entering the Case, the text of the Case and the answer shall be entered prior to entering such agreement, provided that the original Case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the Case or portion thereof is agreed upon;” and since the dispute between parties hereto has been resolved with Defendant accepting Plaintiff’s objection, in accordance with its Rejoinder, in which it stated: “Defendant clarifies that it has accepted Plaintiff’s objection to the item in question regarding years 2012 and 2013 and requests the Department to establish a resolution of dispute regarding the same;” Therefore, the Department satisfies to establish resolution of dispute on the item in question.

2. Item (Withholding Tax on Amounts Paid to “..... Company, United Kingdom”):

Plaintiff objected to Defendant’s decision for subjecting the amounts paid to “..... Company, United Kingdom” to a withholding tax, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulation.

The Department, having taken cognizance of subject of dispute and documents included in Case File, found that, since Article (35) of Income Tax Law stipulates: “In case the conditions of a treaty or an international agreement to which the Kingdom is party are inconsistent with the articles and provisions of this Law, the conditions of the treaty or international agreement shall prevail except for the provisions of Article (63) of this Law which are related to anti-tax avoidance procedures;” and since Article (25) of Convention Between the Government of The Kingdom of Saudi Arabia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Tax Evasion With Respect to Taxes on Income and on Capital, stipulates: “1. Where a resident of a Contracting State considers that the actions of one or both of those States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed;” and since Plaintiff, after filing its statement of claim, has pleaded to invoke the said Convention to justify seeking abolishment of Defendant’s decision regarding the amounts in question, while Defendant argued that Plaintiff did not present such a plea during the objection stage and adhered to the validity of its decision; accordingly, it has rejected Plaintiff’s objection in this regard; and since Plaintiff has failed to present such a plea initially during the objection stage; and since Article (25) of the said Convention enables Plaintiff to adhere to matters that it deems consistent with the said Convention as permissible and not as compulsory; Therefore, the Department satisfies to dismiss Plaintiff’s objection to the item in question.

3. Item (Payments of Escrow Fees to “..... Company”):



Plaintiff objects to Defendant's decision for subjecting the payments of escrow fees to "..... Company" to a withholding tax, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulation.

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that, since Article (7) of Convention Between the Government of the Kingdom of Saudi Arabia and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Tax Evasion With Respect to Taxes on Income, stipulates: "The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment;" and since the said Article has determined that the business profits of an enterprise of a Contracting State are subject to the withholding tax in that State only, unless the other Contracting State carries on business within the Kingdom through a permanent establishment; and since the dispute between parties hereto was over subjecting the payments of escrow fees to the withholding tax; and since Plaintiff has submitted documents establishing its non-subjection to the withholding tax, as it submitted a Tax Residency Certificate for "..... Company;" Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question.

4. Item (Payments Not Made by Plaintiff and Duplication in Addition of Amounts by Defendant):

Plaintiff objects to Defendant's decision for subjecting payments that have not been made by Plaintiff and duplication in adding amounts to a withholding tax, while Defendant argued that its decision came in compliance with the provisions of Income Tax Law and its Implementing Regulation.

The Department, having taken cognizance of subject of dispute and documents included in Case File, found that, since Article (68.8) of Implementing Regulation of Income Tax Law stipulates:

"The withholding tax as per rates stated in Paragraph (1) of this Article shall be levied on the total amount paid to the non-resident, regardless of expenses incurred to make such income, and notwithstanding full or partial allowance/ disallowance, as a deduction, of such payment; it shall also be even imposed on payments attributed to contracts concluded before the effective date of the Law;" and since Plaintiff has failed to submit the supporting documents proving the non-payment to suppliers; Therefore, the Department satisfies to dismiss Plaintiff's objection to the item in question.

5. Item (End of Service Gratuity):

The Department, having taken cognizance of subject of dispute, found that, since Article (70) of Law of Civil Procedure promulgated by Royal Decree No. (M/1) of 22/01/1435 AH, stipulates:

"Litigants may, at any stage of the Case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the Case record, and the court shall issue a deed to that effect;" and since Article (70.1) of Implementing Regulations of Law of Civil Procedures, issued by Minister of Justice's Decision No. (39933) of 19/05/1435 AH, stipulates: "If an agreement is reached prior to entering the Case, the text of the Case and the answer shall be entered prior to entering such agreement, provided that the original Case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the Case or portion thereof is agreed upon;" and since the dispute between parties hereto has been resolved with Defendant accepting Plaintiff's objection, in accordance with its Rejoinder, in which it stated: "Defendant clarifies that Plaintiff's objection will be accepted and the result of the year will be amended with the end-of-service gratuity provision for 2010, 2011, and 2013



in the amounts, respectively: (SAR 19,879) , (SAR 31,786), and (SAR -47,488);” Therefore, the Department satisfies to establish resolution of dispute on the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Establish resolution of dispute between Plaintiff (..... Electricity Company “CJSC”, TIN.) and Defendant (ZATCA) over item (End of Service Gratuity) with Defendant accepting Plaintiff’s requests in this regard.

Second: Establish resolution of dispute between Plaintiff (..... Electricity Company “CJSC”, TIN.) and Defendant (ZATCA) over item (Withholding Tax on Administrative “Banking” Charges Paid to “..... Bank”) with Defendant accepting Plaintiff’s requests in this regard.

Third: Dismiss Plaintiff’s (..... Electricity Company “CJSC”, TIN.) objection to Defendant’s decision regarding item (Payments Not Made by Plaintiff and Duplication in Addition of Amounts by Defendant).

Fourth: Dismiss Plaintiff’s (..... Electricity Company “CJSC”, TIN.) objection to Defendant’s decision regarding item (Withholding Tax on Amounts Paid to “..... Company, United Kingdom”).

Fifth: Abolish Defendant’s (ZATCA) decision against Plaintiff (..... Electricity Company “CJSC”, TIN.) regarding item (Payments of Escrow Fees to “..... Company).

This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of a copy of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the decision shall be final and enforceable.

May Allah’s Blessings and Peace be upon our Prophet Muhammad and his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Estimated Zakat

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-
1914)

Issued in Case No. (Z-
85688-2021)

Keywords:

Estimated Assessment and Disregard of Accounts – Date Factory – Submission of Declarations as Per Financial Statements – Audited Financial Statements by Certified Public Accountant – Estimated Charge for Failure to Submit Financial Statements – Documentary Dispute – Acceptance of Case in Form and Dismissal on Merits.

Abstract

Plaintiff (“Zakat Payer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding to Zakat Assessments of 2013 – 2016 AD, which included its objection, represented by the following:

1. Item (..... Exhibition of 2013 – 2016):

Plaintiff objected to Defendant’s decision for issuing an Estimated Assessment, stating that it keeps financial statements and submits its Zakat Declarations accordingly, while Defendant argued that it made an Estimated Assessment due to Plaintiff’s failure to submit the trial balance that it had requested.

2. Item (Date Factory of 2014 – 2016):

Plaintiff objected to Defendant’s decision for issuing an Estimated Assessment and disregarding its accounts, stating that the financial statements are audited by a certified public accountant, and submits its Zakat Declarations accordingly, while Defendant argued that it made an Estimated Assessment for Plaintiff’s failure to submit the trial balance that it had requested and that the financial statements of “..... Company” did not include the said commercial registration. Also, Plaintiff did not submit financial statements or any evidence of submitting Declarations for the years in question.

The Department Found That:

As for item (..... Exhibition of 2013 – 2016), Plaintiff has submitted a certificate of cancellation of “C.R. No.” dated 11/04/2018 AD, which determines that the commercial registration was active during the years in question; and since Plaintiff has also submitted the financial statements of 2013 for “C.R. No.;” however, has failed to submit its trial balance, and the financial statements of 2014 –2016 for “C.R. No. and its trial balance. Also, the dispute between parties hereto is a documentary dispute and that Note No. (1) to the financial statements of “..... Company” has shown that “C.R. No.” was not among the records included in its financial statements.

As for item (Date Factory of 2014 – 2016), Defendant has charged Plaintiff on an estimated basis for failure to submit the financial statements or any evidence of submitting Declaration, and has failed also failed 4to submit the said financial statements nor did it provide or any evidence of submitting Declaration within the statutory deadlines.

The Department Decided To:

Accept Plaintiff’s Case in form and dismiss the same on merits. – The Decision is deemed final and enforceable.



Documents:

- Article (13.5) of [Implementing Regulations for the Collection of Zakat issued by Minister of Finance Decision No. \(2082\) of 01/06/1438 AH.](#)

Facts

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 29/11/2022 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 09/12/2022 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (Mr., holder of National ID No.) in his capacity as the Owner of (..... Factory for Packaged Dates, C.R. No.); has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding Zakat Assessments of 2013 – 2016 AD, which included the following:

1. Item (..... Exhibition of 2013 – 2016):

Plaintiff objects to Defendant’s decision for issuing an Estimated Assessment, stating that it keeps financial statements and submits its Zakat Declarations accordingly.

2. Item (Date Factory of 2014 – 2016):

Plaintiff objects to Defendant’s decision for issuing an Estimated Assessment and disregarding its accounts, stating that the financial statements are audited by a certified public accountant, and submits its Zakat Declarations accordingly.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (..... Exhibition of 2013 – 2016):

Defendant clarifies that it made an Estimated Assessment on “..... Exhibition, C.R. No.” for Plaintiff’s failure to submit the trial balance that it had requested. Also, the financial statements of “..... Company” did not include the said commercial registration.

2. Item (Date Factory of 2014 – 2016):

Defendant clarifies that Plaintiff did not submit financial statements any evidence of submitting Declarations for the years in question.

On Tuesday, 29/11/2022 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Ms., holder of National ID No., appeared in her capacity as Plaintiff’s Attorney, under POA No.; and Mr., holder of National ID No., appeared in his capacity as Defendant’s “ZATCA” Representative, by virtue of Authorization No. dated .../.../..., issued by ZATCA’s Deputy Governor for Legal Affairs and Compliance. Having asked parties hereto whether they had further statements, they were satisfied with their earlier submissions. Therefore, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH, as amended, the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2216) of 07/07/1440 AH, Rules for Calculating Zakat on a Deemed Basis issued by Ministerial Decision No. (852) of 28/02/1441 AH, the



Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Zakat Assessments of 2013 – 2016 AD; 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 under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding Tax Assessment of 2010 – 2013 AD, which included the following:

1. Item (Exhibition of 2013 – 2016):

Plaintiff objected to Defendant's decision for issuing an Estimated Assessment, while Defendant argued that it made an Estimated Assessment due to Plaintiff's failure to submit the trial balance that it had requested.

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that, since Article (13.5) of Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, stipulates: "The Department may make an Assessment using the estimated method on Zakat Payers for the purpose of complying with statutory requirements in the following cases: (a) Failure to submit Zakat Declaration according to regular books and records on the statutory deadline; (b) Failure to keep accurate books and records within the Kingdom that reflect the true nature of Zakat Payer's business; (c) Keep books and records in a language other than Arabic in the event that Zakat Payer is notified in writing of their translation to Arabic within a period specified by the Department not exceeding three (3) months and failure to comply with the same; (d) Failure to comply with format, templates, and method required in books and records as prescribed by Law of Commercial Books; (e) Failure to verify information mentioned in Declaration under supporting documents; and (f) Conceal fundamental information in Declaration, such as concealing revenues, listing unreal expenses, or registering assets not owned by Zakat Payer;" and since the subject of dispute lies in Defendant's issuance of an Estimated Assessment on "..... Exhibition, C.R. No." for Plaintiff's failure to submit the trial balance and that the financial statements of "..... Company" did not include "C.R. No.;" and since Plaintiff has submitted a certificate of cancellation of "C.R. No." dated 11/04/2018 AD, which determines that the commercial registration was active during the years in question; and since Plaintiff has also submitted the financial statements of 2013 for "C.R. No.;" however, has failed to submit its trial balance, as well as the financial statements of 2014 – 2016 for "C.R. No. and its trial balance; and since the dispute between parties hereto is a documentary dispute; and since Note No. (1) to the financial statements of "..... Company" has shown that "C.R. No." was not among the records included in its financial statements; Therefore, the Department satisfies to dismiss Plaintiff's objection to the item in question.

2. Item (Factory Date of 2014 – 2016):

Plaintiff objected to Defendant's decision for issuing an Estimated Assessment and disregarding its accounts, while Defendant argued that Plaintiff did not submit financial statements or any evidence of submitting Declarations for the years in question.

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that, since Article (13.5) of Implementing Regulations for the



Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, stipulates: “The Department may make an Assessment using the estimated method on Zakat Payers for the purpose of complying with statutory requirements in the following cases: (a) Failure to submit Zakat Declaration according to regular books and records on the statutory deadline; (b) Failure to keep accurate books and records within the Kingdom that reflect the true nature of Zakat Payer’s business; (c) Keep books and records in a language other than Arabic in the event that Zakat Payer is notified in writing of their translation to Arabic within a period specified by the Department not exceeding three (3) months and failure to comply with the same; (d) Failure to comply with format, templates, and method required in books and records as prescribed by Law of Commercial Books; (e) Failure to verify information mentioned in Declaration under supporting documents; and (f) Conceal fundamental information in Declaration, such as concealing revenues, listing unreal expenses, or registering assets not owned by Zakat Payer;” and since Defendant has charged Plaintiff on an estimated basis for failure to submit the financial statements or any evidence of submitting Declaration; and since Plaintiff has failed to submit the said financial statements, nor did it provide any evidence of submitting Declaration within the statutory deadlines; Therefore, the Department satisfies to dismiss Plaintiff’s objection to the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Accept Plaintiff’s (Mr., holder of National ID No., the Owner of Factory for Packaged Dates, C.R. No.) Case filed against Defendant (ZATCA) in form and dismiss the same on merits.

This Decision was issued and read out in the presence of Both Parties. The Department has set Wednesday, 04/01/2023 AD, as the date of receipt of this Decision. The Department may extend this date in accordance with Article (40.1) of Tax Dispute and Violation Committee Procedures. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah’s Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1946)

Issued in Case No. (W-78410-2021)

Keywords:

Withholding Tax Difference of (10%) – Late Payment Fine on Tax Difference – Submission of Tax Returns within Prescribed Statutory Deadlines – Absence of Intentional Non-Payment of Tax on Statutory Deadline – Existence of a Beneficial Relationship – Resolution of Dispute.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding to Tax Assessment Assessments of 2017 – 2019 AD, which included its objection, represented by the following:

1. Item (Withholding Tax Difference of 10% for 2017 – 2019).

2. Item (Imposition of Late Payment Fine):

Plaintiff objected to Defendant’s decision for imposing a late payment fine on the contested items, stating that it had submitted Tax Returns within stipulated statutory deadlines and that the late payment fines arising from the tax difference were the result of errors and a difference in viewpoints, not the result of its deliberate failure of payment of the tax on the statutory deadline, while Defendant argued that it found that there is a beneficial relationship between the Director of Heritage and Arts at “..... Authority” and the said foreign companies. Also, it had imposed a late payment fine on unpaid tax differences within the statutory deadline.

The Department Found That:

As for item (Withholding Tax Difference of 10%), the dispute over the item in question has been resolved.

As for item (Imposition of Late Payment Fine), Plaintiff requested disregard of the item in question for the purpose of benefiting the “Exemption Initiative.”

The Department Decided To:

Establish resolution of dispute over item (Withholding Tax (Difference of 10%) and disregard item (Late Payment Fine). – The Decision is deemed final and enforceable.

Documents:

- Article (70) of Law of Civil Procedure promulgated by Royal Decree No. (M/1) of 22/01/1435 AH.
- Article (71.1) of Implementing Regulations of Law of Civil Procedure issued by the Minister of Justice’s Decision No. (39933) of 19/05/1435 AH.

Facts

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions. ◇



On Wednesday, 30/11/2022 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 20/10/2021 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (Mr., holder of National ID No.) by virtue of Authorization No. dated .../05/1442 AH, issued by Governor of “..... Authority” of “..... Region;” has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding Tax Assessment of 2017 – 2019 AD, which included the following:

1. Item (Withholding Tax (Difference of 10% for 2017 – 2019)).

2. Item (Late Payment Fine):

Plaintiff objects to Defendant’s decision for imposing a late payment fine on the contested items, stating that it had submitted Tax Returns within stipulated statutory deadlines and that the late payment fines arising from the tax difference were the result of errors and a difference in viewpoints, not the result of its deliberate failure of payment of the tax on the statutory deadline.

Having presented the statement of claim to Defendant, it submitted an answer summarized as follows:

1. Item (Withholding Tax Difference of 10% for 2017 – 2019):

Defendant clarifies that it had imposed a withholding tax of (15%) on the amounts paid to “..... Company” and “..... Company” on the grounds that they are related parties. Also, having examined Plaintiff’s objection, Defendant held a meeting with Plaintiff on Monday, 20/09/2021 AD, during which, it asked Plaintiff regarding the relationship between the Director of Heritage and Arts at “..... Authority” and (“..... Company” and “..... Company), as Plaintiff stated that the Director “Ms.” is a major shareholder of “..... Company,” who has unlimited influence on “..... Company.” Moreover, Defendant found that there is a beneficial relationship between the Director of Heritage and Arts at “..... Authority” and the said foreign companies.

2. Item (Late Payment Fine):

Defendant clarifies that it had imposed a late payment fine on unpaid tax differences within the statutory deadline.

On Wednesday, 30/11/2022 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff’s Representative, by virtue of Authorization attached to Case File; and Mr., holder of National ID No., appeared in his capacity as Defendant’s “ZATCA” Representative, by virtue of Authorization No. Having asked parties hereto whether they had further statements, Plaintiff’s Representative requested disregard of item (Late Payment Fine) for the purpose of benefiting the “Exemption Initiative.” Having asked Defendant’s Representative regarding his response, he replied: “Defendant maintained the statements contained in its supplementary memorandum deposited to the e-system, which included its acceptance of Plaintiff’s objection, by calculating the withholding tax at a rate of (5%) as per Plaintiff’s request, and requested the Department to establish a resolution of the dispute.” Having asked Plaintiff’s Representative regarding his response, he accepted the resolution of the dispute and requested the Department to establish the same. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:





Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH, as amended, the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and Article (Third) of Royal Order No. (26040) of 21/04/1441 AH regarding the Tax Dispute and Violation Committee Procedures.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of 2017 – 2019 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed by a person with capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Tax Assessment of 2017 – 2019 AD, which included the following:

1. Item (Withholding Tax (Difference of 10% for 2017 – 2019):

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that, since Article (70) of Law of Civil Procedure promulgated by Royal Decree No. (M/1) of 22/01/1435 AH, stipulates: "Litigants may, at any stage of the Case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the Case record, and the court shall issue a deed to that effect;" and since Article (70.1) of Implementing Regulations of Law of Civil Procedures, issued by Minister of Justice's Decision No. (39933) of 19/05/1435 AH, stipulates: "If an agreement is reached prior to entering the Case, the text of the Case and the answer shall be entered prior to entering such agreement, provided that the original Case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the Case or portion thereof is agreed upon;" and since Plaintiff, during the examination stage, has stated that: "Accordingly, "..... Authority" of "..... Region hereby accepts the processing by subjecting the amounts paid to "..... Company" to a withholding tax of (5%);" Therefore, the Department satisfies to establish a resolution of dispute on the item in question.

2. Item (Late Payment Fine):

Since Plaintiff has requested disregard of the item in question for the purpose of benefiting the "Exemption Initiative;" Therefore, the Department satisfies to disregard the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept Plaintiff's (Mr., holder of National ID No., by virtue of Authorization No. dated .../05/1442 AH, issued by Governor of "..... Authority" of "..... Region") Case in form.

Second: On Merits:

- 1- Establish resolution of dispute over item (Withholding Tax (Difference of 10%).
- 2- Disregard item (Late Payment Fine).

This Decision was issued and read out in the presence of Both Parties. The Department has set Wednesday, 11/01/2023 AD, as the date of receipt of this Decision. The Department may extend this date in accordance with Article (40.1) of Tax Dispute and Violation Committee Procedures.



May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-
91503)

Issued in Case No. (W-
91503-2022)

Keywords:

Additional Withholding Tax – Late Payment Fine – Related Parties – “Affiliate Should Follow Its Origin.”

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Additional Withholding Tax of 2015 AD, which included its objection, represented by items (Imposition of Withholding Tax of 15%) and (Fines), wherein Defendant responded as follows:

1. Item (Imposition of Withholding Tax of 15%):

Defendant imposed a withholding tax at a rate of (15%) on the paid amounts.

2. Item (Fines):

Defendant’s decision came in compliance with the provisions of Article (77/A) of Income Tax Law.

The Department Found That:

As for item (Imposition of Withholding Tax of 15%), Defendant has failed to provide evidence that the joint venture and Plaintiff were related parties.

As for item (Fines), it is established that “Affiliate Should Follow Its Origin.”

The Department Decided To:

Accept Plaintiff’s Case in form and dismiss the same on merits; and Abolish Defendant’s decision regarding item (Imposition of Withholding Tax of 15%) and the associated item (Fines). – The Decision is deemed final and enforceable under Article (42) of Tax Dispute and Violation Committee Procedures).

Instruments:

- [Article \(64/C\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- **Jurisprudence Rule:** “Affiliate Should Follow Its Origin.”

Facts:

All praise is to Allah, prayers and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 07/02/2023 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case.



Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 18/01/2022 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (..... Company, TIN.), has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Additional Withholding Tax of 2015 AD, which included the following:

1. Item (Imposition of Withholding Tax of 15%):

Plaintiff objects to Defendant’s decision for imposing an additional withholding tax of (15%) for the year in question, stating that “..... Company” (Plaintiff) owns (33.33%) of the voting rights in the joint venture; thus, the existence of an association under the Income Tax Law and its Implementing Regulations requires the existence of a higher ownership percentage than (50%) in joint ventures, which is not applied to Plaintiff. Also, there is no association between the companies and Plaintiff and the joint venture under the Law. As for the joint venture’s submitted arguments; the Transfer Pricing Bylaws do not apply to the Withholding Tax Assessment since they are related to a different matter, and even if they were applied to the withholding tax, the matter is not consistent with the joint venture, as the Effective Control Test has not been materialized over “Companies” in the joint venture, for several reasons, represented by the following:

- A) The equity share of Plaintiff is (33.33%); thus, it does not have management or control over the project;
- B) Defendant assumed the existence of a technical resources services agreement between the joint venture and Plaintiff, with which Defendant considered the existence of an effective control by Plaintiff, which is incorrect assumption since that agreement is related to engineering services and technical resources and not to administrative services; and
- C) The proportions and amounts on which Defendant relied in estimating the cost were higher than (50%), which is incorrect, as the correct proportion of the business provided by Plaintiff is less than (6%) of the overall business of the joint venture; hence, there is no effective control.

As for Defendant’s statement that it has compared the total amounts paid by the joint venture to the subcontractors with the total amounts paid to Plaintiff “..... Company,” Plaintiff clarifies that the project was not completed; therefore, the figures mentioned by Defendant are incorrect. In addition, Plaintiff was unable to determine the basis on which Defendant relied in its procedure. Also, Plaintiff submitted an analytical statement of the total amounts paid, showing that the proportion of work provided does not exceed (6%) and that the engineering services and technical resources provided by Plaintiff under the agreement are subject to the direction of the joint venture, and has no relation to administrative services whatsoever.

As for Defendant’s inference to the application of the Transfer Pricing Bylaws, they do not apply to Plaintiff due to their relevance to transactions between related parties in accordance with Articles (14.23) and (1.34) thereto, as they emphasize that the pricing of transactions is determined by transaction prices, not by the withholding tax.

2. Item (Fines):

Plaintiff objects to Defendant’s decision for imposing late payment fines on the above item. Plaintiff concluded by requesting abolishment of Defendant’s decision in question as well as fines resulting therefrom.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. (Imposition of Withholding Tax of 15%):

Defendant clarifies that it had imposed a withholding tax at a rate of (15%) on the amounts paid to “..... Company” and “..... Company,” considering the same as related



companies, in accordance with the provisions of Article (68) of Income Tax Law, Article (63) of its Implementing Regulations, and Articles (12/ A/1), (23), and (25) of the Transfer Pricing Bylaws issued by ZATCA's "Defendant" Board of Directors Decision No. (6-1-19) of 25/05/1440 AH, corresponding to 31/01/2019 AD. In addition, having examined Plaintiff's objection, Defendant held a meeting with Plaintiff on 18/11/2021 AD, and a second meeting on 08/12/2021 AD, during which, it requested Plaintiff's representatives to submit the contract concluded with "..... Company" and "..... Company." Then, having reviewed the joint venture, Defendant found that "..... Company" (Plaintiff) is a project member with a percentage of (33.33%) and also the project manager. Moreover, a technical and consultancy services agreement was signed with "..... Company" to carry out the work. Moreover, "..... Company" is considered a partner in "..... Company" through "..... Company." Furthermore, having reviewed the submitted agreement, Defendant found that the contract does not include the value of the work to be implemented, as well as the details and value of that work.

2. Item (Fines):

Defendant clarifies that its decision came in compliance with the provisions of Article (77/A) of Income Tax Law. Defendant concluded by requesting dismissal of Plaintiff's Case.

On Tuesday, 07/02/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Attorney of Plaintiff ("..... Company," under POA No., "..... Company," under POA No., and "..... Company," under POA No.); and Mr., holder of National ID No., appeared in his capacity as Defendant's "ZATCA" Representative, by virtue of Authorization No. Having asked Plaintiff's Attorney regarding the Case, he replied: "Plaintiff objects to the imposition of the additional withholding tax of 2015 and requests abolishment of Defendant's decision, as stated and explained in the statement of claim." Having asked Defendant's Representative regarding his response, he replied: "Defendant requests dismissal of Plaintiff's Case, as stated and detailed in the Rejoinder." Defendant also requests a continuance to submit some documents. Having asked Defendant's Representative regarding the nature of the documents to be submitted, he was unable to identify the same. Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Therefore, the Department decided to close pleadings for deliberation.

Reasons:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH, as amended, the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, the Rules for Calculating Zakat on a Deemed Basis issued by Ministerial Decision No. (852) of 28/02/1441 AH, the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Additional Withholding Tax of 2015 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in



Plaintiff's objection to Defendant's decision regarding issuance of the Additional Withholding Tax of 2015 AD, which included the following:

1. Imposition of Withholding Tax of 15%):

The Department, having taken cognizance of subject of dispute and documents included in Case File, found that, since Article (64/C) of Income Tax Law stipulates: "Companies and agencies shall be deemed under common control if the same person or related persons control 50% or more according to this Article as follows: 1. With respect to partnerships, control means the ownership of rights to its income or capital, either directly or indirectly, through a subsidiary company or companies of any type 2. With respect to capital companies, control means ownership of the voting rights therein or ownership of its value, either directly or indirectly, through a subsidiary company or companies of any type;" and since the dispute lies in Defendant's imposition of an additional withholding tax of (15%) on the assumption that Plaintiff is a related company to the joint venture, wherein Plaintiff objected to the subjection of the service to a rate of (15%) since it is not a related party and are not subject to control, and that all partners in the project own less than (50%) of the shares, with each partner owning (33%); and since the joint venture agreement has shown that Plaintiff is a partner with a share of (33%) only; and since the technical resources services agreement between "..... Company" and "..... Company" has shown that "..... Company" is a subcontractor and that the joint venture and Plaintiff are unrelated parties; and since Defendant has failed to provide evidence that the joint venture and Plaintiff were related parties; Therefore, the Department satisfies to accept Plaintiff objection and abolish Defendant's decision regarding the item in question.

2. Item (Fines):

Since the Department has decided to accept Plaintiff's objection to the above item (Imposition of Withholding Tax of 15%); and since it is established that "Affiliate Should Follow Its Origin;" Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Accept Plaintiff's (..... Company, TIN.) filed against Defendant (ZATCA) in form.

Second: On Merits:

Abolish Defendant's decision regarding item (Imposition of Withholding Tax of 15%) and the associated item (Fines) for the stated grounds herein.

This Decision was issued and read out in the presence of Both Parties. The Department has decided Wednesday, 15/03/2023 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-
95118)

Issued in Case No. (W-
95118-2022)

Keywords:

Withholding Tax – Capital Gains Tax – Fines – Exit of Some Partners – Death of a Partner – Effects of Transfer of Shares.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Withholding Tax of 2016 AD, which included its objection, represented by items (Capital Gains Tax) and (Fines), wherein Defendant responded as follows:

1. Item (Capital Gains Tax): It imposed a capital gains tax for the year in question due to the exist of some partners.

2. Item (Fines): Its decision came in compliance with the provisions of Income Tax Law.

The Department Found That:

As for item (Capital Gains Tax), a number of partners has transferred their shares to Partner “Ms.” on 17/02/2016 AD and that these shares have been transferred to Partner’s heirs, which determines that the transfer produced its effects as of 17/02/2016 AD.

As for item (Fines), the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions.

The Department Decided To:

Accept Plaintiff’s Case in form and dismiss the same on merits. – The Decision is deemed final and enforceable under Article (42) of Tax Dispute and Violation Committee Procedures).

Instruments:

- Articles (76/B) and (77/A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH](#),
- Articles (16/E), (67.3), (68.1), and (71.2) of [Implementing Regulations of Income Tax Law issued by Minister of Finance’s Decision No. \(1535\) of 11/06/1425 AH](#),

Facts:

All praise is to Allah, prayers and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 08/02/2023 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/02/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case.



Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 10/02/2022 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (..... Company, C.R. No.) has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Withholding Tax of 2016 AD, which included the following:

1. Item (Capital Gains Tax):

Plaintiff objects to Defendant’s decision for imposing a capital gains tax in the amount of (SAR 601,864) for the year in question, stating that a number of partners transferred their shares to Partner “Ms.” by virtue of the amended Investment License on 17/02/2016 AD. On 15/04/2016 AD, Partner “Ms.” passed away, and ownership of her shares was transferred to her heirs, who signed the amended Articles of Association of the Company “Plaintiff”, which is considered a full and final settlement from their part. As a result, Plaintiff was unable to amend its Articles of Association in the same year in which the Investment License was amended. In addition, when initiating the amendment procedures of the said Articles of Association, the General Investment Authority did not certify the same due to the lack of cooperation of a partner. Moreover, the amendment of the Investment License is not considered a final since the amendment procedures do not begin with the approval of all partners. Furthermore, such an amendment is not considered effective except with the approval of the Ministry of Justice.

2. Item (Fines):

Plaintiff objects to Defendant’s decision for imposing late payment fines on the contested items. Plaintiff concluded by requesting abolishment of Defendant’s decision in question as well as the fines resulting therefrom.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Capital Gains Tax):

Defendant clarified that it had imposed a capital gains tax for the year in question due to the exist of some partners, in accordance with the provisions of Articles (5) and (9) of Income Tax Law and Article (16) of its Implementing Regulations, as amended, according to the following: (a screenshot is attached herein). In addition, having examined Plaintiff’s objection, Defendant found that amendment of Plaintiff’s Articles of Association as a result of the transfer of ownership from one partner to another goes through several stages, and is effective from the moment of agreement between Transferor and Transferee, as these stages begin with that agreement between Transferor and Transferee and end with the notarization by the Notary Public, among which the notation of the Investment License and the amendment of the Commercial Registration, etc., which is evident by the following:

1. According to the amended Articles of Association on 19/11/2017 AD, the Partners from the Sixth to the Eleventh have transferred their entire shares amounted to (SAR 125,953), to the Twelfth Partner “Mr.” pursuant to an amended and approved Investment License on 08/05/1437 AH, corresponding to 17/02/2016 AD; therefore, such a transfer shall have effect from its, which is evident by the approved Investment License.
2. Due to the death of Transferee Partner before completing the remaining stages of the amendment procedures, which are notarization with the Notary Public, and also the delay in the ratification procedures with the same, the share of the deceased Partner, including the share that was transferred thereto, has been transferred to her heirs.
3. Due to the death of the Partner before completing the procedures for transferring ownership of the transferred shares, and since these shares were transferred to that Partner’s heirs, such a transfer produced its effects as of 17/02/2016 AD, and all



partners acknowledged the same in the amended Articles of Association on 19/11/2017 AD.

Accordingly, Plaintiff's request to calculate the capital gains tax for the year 2019 as the date of the notarization by the Notary Public of the amended Articles of Association is unreasonable, since the amended Articles of Association stated that the transfer of shares took place in 2016, and that the Transferee Partner died before completing the notarization procedures with the Notary Public, while the transfer of ownership of that Transferee Partner's shares to her heirs is considered a new event subsequent to the transfer of shares; therefore, in chronological and statutory order, the capital gains tax should be calculated for 2016 and not 2019. 2. Item (Fines): Defendant clarified that its decision came in compliance with the provisions of Article (77/A) of Income Tax Law. Defendant concluded by requesting dismissal of Plaintiff's Case.

On Wednesday, 08/02/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, under POA No.; and Mr., holder of National ID No., appeared in his capacity as Defendant's "ZATCA" Representative, by virtue of Authorization No. Having asked Plaintiff's Attorney regarding the Case, he replied: "Plaintiff objects to the imposition of the withholding tax of 2016 and requests abolishment of Defendant's decision, as stated and explained in the statement of claim." Having asked Defendant's Representative regarding his response, he replied: "Defendant requests dismissal of Plaintiff's Case, as stated and detailed in the Rejoinder." Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Therefore, the Department decided to close pleadings for consideration and deliberation.

Reasons:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH, as amended, the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH, the Rules for Calculating Zakat on a Deemed Basis issued by Ministerial Decision No. (852) of 28/02/1441 AH, the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Withholding Tax of 2016 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of the Additional Withholding Tax of 2015 AD, which included the following:

1. Item (Capital Gains Tax):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that, since Article (16/E) of Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) of 11/06/1425 AH, stipulates: "The disposing partner shall report the sale to the Department and pay the tax due on the pre-sale period and on resulting capital gains within sixty days from the date of sale. The company and the purchaser, together with the disposing partner, shall be deemed jointly



and severally liable to pay any amounts that become due to the Department as a result of this transaction;” and since the dispute between parties hereto lies in Plaintiff’s request to calculate the capital gains tax for 2019 instead of the year in question, on the grounds that the Articles of Association was notarized in 2019 by the Notary Public; and since the said the Articles of Association has shown that a number of partners has transferred their shares to Partner “Ms.” on 17/02/2016 AD by virtue of the approved Investment License; and since the ownership of these shares has been transferred to Partner’s heirs, which determines that the transfer produced its effects as of 17/02/2016 AD, and all partners acknowledged the same in the amended Articles of Association on 19/11/2017 AD; and since the said Article has asserted that Defendant must be informed within sixty (60) days from the date of transfer, without the necessity of completing the remaining stages of the transfer, which has been previously proven by the approved Investment License; Therefore, the Department satisfies to dismiss Plaintiff’s objection and uphold Defendant’s decision as to conclusion it had in this regard.

2. (Late Payment Fine):

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that, since Article (77/A) of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, stipulates: “In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, Taxpayer shall pay a delay fine of (1%) for every thirty (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;” and since Article (68.1) of the same Implementing Regulations stipulates: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty (30) days of delay shall be added in the following cases: (b) Delay in payment of due tax as per the Department’s Assessment;” and since Article (67.3) also of the same Implementing Regulations stipulates: “Unpaid tax shall mean the difference between the amount paid by Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment;” and since the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant; and since the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions; Therefore, the Department satisfies to dismiss Plaintiff’s objection and uphold Defendant’s decision as to conclusion it had in this regard.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision:

Accept Plaintiff’s (..... Company, C.R No.) Case filed against Defendant (ZATCA) in form and dismiss the same on merits.

This Decision was issued and read out in the presence of Both Parties. The Department has set Wednesday, 15/03/2023 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah’s Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.



(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-1819)

Issued in Case No. (W-58120-2022)

Keywords:

Withholding Tax – Late Payment Fine – Dismissal of Plaintiff's Objection.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Withholding Tax of December 2010, January 2016, February 2017, and May 2017, which included its objection, represented by items (Withholding Tax) and (Late Payment Fine),

The Department Found That:

The legal provisions stipulated: “A Taxpayer may object to an assessment or reassessment made by the Department within the statutory period of six ty days of receipt of the assessment or reassessment notice. The objection shall be in a reasoned memorandum submitted to the notifying department. If the end of the objection period falls within an official holiday, the objection shall be acceptable if filed during the first working day immediately after such a holiday;” and that Plaintiff’s objection is only considered regarding item (Withholding Tax), wherein Plaintiff has failed to submit the documents supporting its claim to verify the true nature of these services as contracts.

The Department Decided To:

Dismiss Plaintiff’s Case regarding item (Late Payment Fine) for failure to file its objection initially before Defendant within the prescribed statutory period, and also dismiss Plaintiff’s objection to item (Withholding Tax) and uphold Defendant’s decision as to conclusion it had in this regard.

Documents:

- Articles (60.1) and (63.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH.
- Article (2) of Tax Dispute and Violation Committee Procedures promulgated by Royal Decree No. (26040) of 21/04/1441 AH.

Facts

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 12/10/2022 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case.



Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 07/07/2021 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (..... Company, C.R. No.) has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Withholding Tax of December 2010, January 2016, February 2017, and May 2017, which included the following:

1. Item (Withholding Tax of December 2010, January 2016, February 2017, and May 2017):

Plaintiff objects to Defendant’s decision for imposing a withholding tax for the period in question.

2. Item (Late Payment Fine):

Plaintiff objects to Defendant’s decision for imposing a late payment fine on the contested item. Plaintiff concluded by requesting abolishment of Defendant’s decision for the stated grounds.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

First: The Case is inadmissible in form pursuant to Article (2) of Tax Dispute and Violation Committee Procedures.

Second: As for item (Late Payment Fine), Defendant argues that Plaintiff’s Case is inadmissible in form pursuant to Article (2) of Tax Dispute and Violation Committee Procedures.

As for item (Withholding Tax), Defendant clarifies that it had imposed the withholding tax on amounts paid by Plaintiff to non-resident parties in exchange for using intellectual property rights for computer software, stating that its decision came in compliance with the provisions of Article (68/A) of Income Tax Law. Defendant concluded by requesting dismissal of Plaintiff’s Case for the stated grounds.

On Wednesday, 12/10/2022 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff’s Attorney; and Mr., holder of National ID No., appeared in his capacity as Defendant’s “ZATCA” Representative, by virtue of Authorization No., issued by ZATCA’s Deputy Governor for Legal Affairs and Compliance. Having asked Plaintiff’s Attorney regarding the Case, he replied: “Plaintiff objects to the imposition of the withholding tax of December 2010, January 2016, February 2017, and May 2017, as well as the associated late payment fine. Plaintiff maintains pleas and requests contained in the statement of claim previously submitted to the General Secretariat of Tax Committees.” Having asked Defendant’s Representative regarding his response, he replied: “Defendant maintains pleas and requests contained in its Rejoinder previously submitted to the General Secretariat of Tax Committees and requests the department to dismiss the Case regarding item (Late Payment Fine) for Plaintiff’s failure to file its objection initially before Defendant within the prescribed statutory period.” Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Therefore, the Department decided to close pleadings for consideration and deliberation.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant’s decision regarding the Withholding Tax of December 2010, January 2016, February 2017, and May 2017; and



since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes promulgated by Royal Decree No. (26040) of 21/04/1441 AH; and since the consideration of such a Case is conditional upon filing an objection to the authority issuing the decision within sixty (60) days from the date of notice, as Article (60.1) of Implementing Regulations of Income Tax Law stipulates “A Taxpayer may object to an assessment or reassessment made by the Department within the statutory period of six ty days of receipt of the assessment or reassessment notice. The objection shall be in a reasoned memorandum submitted to the notifying department. If the end of the objection period falls within an official holiday, the objection shall be acceptable if filed during the first working day immediately after such a holiday;” and since Plaintiff did not initially file its objection to Defendant’s decision regarding item (Late Payment Fine) dated 04/14/2018 AD, but rather filed its Case directly on 07/07/2021 AD before the Committee for Determination of Income Tax Violations and Disputes; which indicates that Plaintiff has failed to comply with the procedures set forth in Article (60.1) of Implementing Regulations of Income Tax Law, and Article (2) of Tax Dispute and Violation Committee Procedures; Accordingly, with the lapse of the statutory period for filing the objection, Defendant’s decision regarding the late payment fine be deemed irrevocable and imperative; Therefore, the Department satisfies to dismiss Plaintiff’s Case regarding item (Late Payment Fine) for failure to file its objection initially before Defendant within the prescribed statutory period and accept the same in form regarding item (Withholding Tax).

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff’s objection to Defendant’s decision regarding issuance of Tax Assessment of 2017 – 2019 AD, which included the following:

1. Item (Withholding Tax):

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that, since Article (63.1) of Implementing Regulations of Income Tax Law stipulates: “A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds; payments for services to the head-office or an affiliated company by (15%);” and since Plaintiff has failed to submit the documents supporting its claim to verify the true nature of these services as contracts; Therefore, the Department satisfies to dismiss Plaintiff’s objection and uphold Defendant’s decision as to conclusion it had in this regard.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: In Form:

Dismiss Plaintiff’s (..... Company, C.R No.) Case filed against Defendant (ZATCA) regarding item (Late Payment Fine) for failure to file the objection initially before Defendant within the prescribed statutory period and accept the same regarding item (Withholding Tax).

Second: On Merits:

Dismiss Plaintiff’s objection and uphold Defendant’s decision as to conclusion it had in this regard.

This Decision was issued and read out in the presence of Both Parties. The Department has decided Monday, 26/12/2022 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day



following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-
1895)

Issued in Case No. (W-
66280-2022)

Keywords:

Withholding Tax – Imposition of Withholding tax of (15%) on Services Delivered by Related Parties – Double Taxation.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Withholding Tax of December 2016, which included its objection, represented by item (Imposition of Withholding Tax of 15% on Services Delivered by Related Parties).

The Department Found That:

First: With regard to Plaintiff’s request to impose a withholding tax of a rate of (15%) instead of (5%) on services delivered to “..... Company;” the dispute lies in Defendant’s imposing a withholding tax of a rate of (15%) on the ground that they represent amounts paid to related parties, and that Plaintiff has submitted its Articles of Association, which determines that Plaintiff does not have equity exceeding (50%) nor voting rights; hence, it is not considered a related party; Therefore, the Department satisfies to accept Plaintiff’s objection to the item in question.

Second: With regard to Plaintiff’s request to apply Articles (3) and (7) of the “Tax Agreement Between the Government of the Kingdom of Saudi Arabia and the Government of Malaysia For The Avoidance of Double Taxation,” these Articles are related to royalties and profits of a non-resident permanent establishment, and that the delivered services represent independent technical and consultancy services; Therefore, the said Articles do not apply to these services that are subject to a withholding tax of (5%).

The Department Decided To:

Amend Defendant’s decision by imposing a withholding tax of (5%) instead of (15%) on services delivered by related parties.

Documents:

- [Ministerial Decision No. \(1776\) of 18/05/1435 AH.](#)

Facts

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 08/11/2022 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case.



Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 22/08/2021 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (..... Company, C.R. No.) has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Withholding Tax of December 2016 AD, which included the following:

1. Item (Imposition of Withholding Tax of 15% on Services Delivered by Related Parties of 2016):

Plaintiff objects to Defendant’s decision for imposing a withholding tax of (15%) on services delivered to “..... Company” as services paid to a related company in the amount of (SAR 891,420) for the year in question, stating that “..... Company” owns (40%) of the capital of the United Fuel Company Limited “Plaintiff.” In addition, the nature of the transactions is technical and consultancy services; thus, “..... Company” is not a related party. Plaintiff concluded by requesting that the transactions be subject to a rate of (5%) instead of (15%).

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Imposition of Withholding Tax of 15% on Services Delivered by Related Parties of 2016):

Defendant clarifies that it had subjected the amounts paid to related parties to a withholding tax at a rate of (15%). Also, having examined Plaintiff’s objection and reviewed the item of payments to related parties in the financial statements and Note No. (7), Defendant found that they represent support services, as well as the statement submitted by the company requesting the application of the application of the Tax Agreement in force between the government of the Kingdom of Saudi Arabia and the government of Malaysia (noting that there is an error in the request to apply the said Tax Agreement, as the government of the United Kingdom was referred to in Arabic and the government of Malaysia in English). Moreover, Defendant found that there is an authentication from the embassy of the Kingdom of Saudi Arabia (Consular Department) in Kuala Lumpur with No. (...) dated .../09/1439 AH, as it shows that the type of income is (technical and consultancy services). Furthermore, having reviewed the said authentication, Defendant found that Plaintiff requests application of Article (12.2) of the “Tax Agreement Between the Government of the Kingdom of Saudi Arabia and the Government of Malaysia for The Avoidance of Double Taxation,” on the grounds that these amounts paid are in return for a royalty. Accordingly, Defendant affirms that the said Article does not apply to Plaintiff, as these amounts represent technical and consultancy services for a related party as per the above authentication approval. Therefore, Plaintiff’s objection was rejected. Plaintiff concluded by requesting dismissal of Plaintiff’s Case for the stated grounds.

On Tuesday, 08/11/2022 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Defendant’s “ZATCA” Representative, by virtue of Authorization No., issued by ZATCA’s Deputy Governor for Legal Affairs and Compliance. Neither Plaintiff nor its representative appeared at the session or presented an excuse for such an absence despite being legally served of the session date through the e-system of the General Secretariat of Tax Committees, indicating that Plaintiff has waived its right to attend the hearing and present its pleas. Having asked Defendant’s Representative regarding his response, he replied: “Defendant requests dismissal of Plaintiff’s Case as stated and detailed in its Rejoinder. Therefore, the Department decided to close pleadings for consideration and deliberation.



Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Withholding Tax of December 2016 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Tax Assessment of 2017 – 2019 AD, which included the following:

1. Item (Imposition of Withholding Tax of 15% on Services Delivered by Related Parties of 2016):

The Department, having taken cognizance of documents included in Case file, since the Ministerial Decision No. (1776) of 18/05/1435 AH, regarding the amendment of some Paragraphs of Articles of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, to stipulate the follows: "First: I. The second and third boxes of the following table included in Paragraph (1) of Article (63) of the Regulations shall be added to be as follows: A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: a. Any royalty or rent, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company by (15%); and b. Technical or consultancy services, international telecommunications services other than the amounts paid to the head office or an affiliated company, rent, airline tickets, air cargo or freight transport, profits distributed, loans returns or insurance or reinsurance premiums by (5%); II. This Decision shall be communicated to the concerned authorities, and to be applied as of its date, including the disputed cases that are not be assessed finally."

First: With regard to Plaintiff's request to impose a withholding tax of a rate of (15%) instead of (5%) on services delivered to "..... Company;" since the dispute lies in Defendant's imposing a withholding tax of a rate of (15%) on the ground that they represent amounts paid to related parties; and since Plaintiff has submitted its Articles of Association, which stated in Article (12) thereto regarding to the management of the Company that: "The management of the Company shall be assumed by a Board of Directors consisting of five (5) partners, two (2) members of which shall be appointed by the new partner," which determines that Plaintiff does not have equity exceeding (50%) nor voting rights; hence, it is not considered a related party; accordingly, Article (64.2/C) of Income Tax Law does not apply to the same; Therefore, the Department satisfies to accept Plaintiff's objection by amending Defendant's decision regarding the item in question by imposing a withholding tax of (5%) instead of (15%).

Second: With regard to Plaintiff's request to apply Articles (3) and (7) of the "Tax Agreement Between the Government of the Kingdom of Saudi Arabia and the Government of Malaysia For The Avoidance of Double Taxation," since these Articles are related to royalties and profits of a non-resident permanent establishment; and since the delivered services represent independent technical and consultancy services; Therefore,



the said Articles do not apply to these services that are subject to a withholding tax of (5%).

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

Accept Plaintiff's (..... Company, C.R. No.) Case in form and amend Defendant's decision by imposing a withholding tax of (5%) instead of (15%) on services delivered by related parties.

This Decision was issued and read out in the presence of Defendant and in absentia of Plaintiff. The Department has set Wednesday, 04/01/2023 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-
14167)

Issued in Case No. (W-
14167-2020)

Keywords:

Withholding Tax – Late Payment Fine – Dividends Paid to Non-Resident Partner – Dismissal of Case.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the imposition of a withholding tax on dividends paid to non-resident partner for January 2017 AD, which included its objection, represented by items (Withholding Tax on Dividends Paid to Non-Resident Partner) and (Late Payment Fine).

The Department Found That:

As for item (Withholding Tax on Dividends Paid to Non-Resident Partner), the dispute lies in Plaintiff’s request of non-imposition of a withholding tax on dividends paid to non-resident partner for 2017 in the amount of (SAR 15,101), on the grounds that the Sister Company had paid the withholding tax on Plaintiff’s behalf, and that Plaintiff attached copies of the wire transfer issued by “..... Company” (the Sister Company) indicating that payment of withholding tax to Defendant on Plaintiff’s behalf, in addition to the withholding tax forms related to the Sister Company; however, those amounts remitted through that Sister Company did not show whether they were related to the withholding tax due from Plaintiff to Defendant concerning dividends. Also, Plaintiff has failed to submit the bank account statement that shows payment of Plaintiff of the same amounts to that Sister Company regarding the payment of the withholding tax and also prove that the withholding tax is due from Plaintiff, not the Sister Company, and that the attached withholding tax forms were prepared manually and are not extracted from Defendant’s system.

As for item (Late Payment Fine), the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant, and that the dispute between Parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions.

The Department Decided To:

Accept Plaintiff’s Case in form and dismiss the same on merits

Instruments:

- Article (77/A, B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH.](#)
- Articles (57.3), (63.1), and (68.1) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH, and amended by Ministerial Decision No. \(1748/1\) of 20/02/1427 AH.](#)



Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 04/04/2023 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 21/04/2020 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (..... Company, C.R. No.) has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Withholding Tax of January 2017 AD, which included the following: **1.**

Item (Withholding Tax on Dividends Paid to Non-Resident Partner):

Plaintiff objects to Defendant’s decision for imposing a withholding tax on dividends paid to non-resident partner, stating that “..... Company” is a sister company that paid withholding tax on behalf of “..... Company” for lack of activation of Plaintiff’s local bank account. Consequently, “..... Company” paid withholding tax on the non-Saudi partner’s dividends pursuant to the Tax Return of December 2018 of “..... Company,” for cash dividends in the amount of (SAR 503,367) of 2017.

2. Item (Late Payment Fine):

Plaintiff objects to Defendant’s decision for imposing fines on the contested item. Plaintiff concluded by requesting abolishment of Defendant’s decision in question.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

Defendant argues that the Case is inadmissible in form in accordance with the provisions of Article (3.2) of Tax Dispute and Violation Committee Procedures.

On Tuesday, 04/04/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff’s Attorney, under POA No.; and Mr., holder of National ID No., appeared in his capacity as Defendant’s “ZATCA” Representative, by virtue of Authorization No. Having asked Plaintiff’s Attorney regarding the Case, he replied: “Plaintiff objects to the imposition of the withholding tax of January 2017 and requests abolishment of Defendant’s decision, as stated and explained in the statement of claim.” Having asked Defendant’s Representative regarding his response, he replied: “Defendant requests dismissal of Plaintiff’s Case, as stated and detailed in the Rejoinder.” Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Therefore, the Department decided to close pleadings for consideration and deliberation.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant’s decision regarding the Withholding Tax of January 2017 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and



Disputes; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the Withholding Tax January 2017 AD, which included the following:

1. Item (Withholding Tax on Dividends Paid to Non-Resident Partner):

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that, since Article (63.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, and amended by Ministerial Decision No. (1748/1) of 20/02/1427 AH, stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates:, dividends by (5%);" and since Article (57.3) of the same Implementing Regulations stipulates: "The burden of proof of correctness of information in Taxpayer's Return regarding its revenues, expenses and any other data, rests on the taxpayer. If Taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by Taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances, facts, and available information;" and since the dispute lies in Plaintiff's request of non-imposition of a withholding tax on dividends paid to non-resident partner for 2017 in the amount of (SAR 15,101), on the grounds that the Sister Company had paid the withholding tax on Plaintiff's behalf; and since Plaintiff has attached copies of the wire transfer issued by "..... Company" (the Sister Company) indicating that payment of withholding tax to Defendant on Plaintiff's behalf, in addition to the withholding tax forms related to the Sister Company; however, those amounts remitted through that Sister Company did not show whether they were related to the withholding tax due from Plaintiff to Defendant concerning dividends; and since Plaintiff has failed to submit the bank account statement that shows payment of Plaintiff of the same amounts to that Sister Company regarding the payment of the withholding tax and also prove that the withholding tax is due from Plaintiff, not the Sister Company; and since the attached withholding tax forms were prepared manually and are not extracted from Defendant's system; and since Plaintiff has failed to submit the documents supporting its argument that those amounts paid by the Sister Company represent withholding tax paid on Plaintiff's behalf; Therefore, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's decision as to conclusion it had in this regard.

2. Item (Late Payment Fine):

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that, since Article (77/A) of aforementioned Income Tax Law, stipulates: "In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every thirty (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;" and since Article (68.1) of the same Implementing Regulations 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: (b) Delay in payment of due tax as per the Department's Assessment;" and since Article (68/E) also of the same Implementing Regulations stipulates: "Delay in payment of tax required to be withheld within ten (10) 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;" and since the late payment fine



is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant; and since the dispute between parties hereto is a documentary dispute and did not arise from a significant difference in the interpretation of legal provisions; Therefore the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's decision as to conclusion it had in this regard.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Accept Plaintiff's (..... Company, C.R. No.) Case filed against Defendant (ZATCA) in form and dismiss the same on merits.

This Decision was issued and read out in the presence of Both Parties. The Department has decided Sunday, 30/04/2023 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-
91066)

Issued in Case No. (W-
91066-2020)

Keywords:

Withholding Tax – Capital Gains Tax – Calculation of Capital Gains Resulting from Exit of Foreign Partner – Amendment of Defendant’s Decision.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the imposition of a withholding tax on dividends paid to non-resident partner for August 2021 AD, which included its objection, represented in item (Capital Gains Tax of 2021).

The Department Found That:

As for item (Capital Gains Tax of 2021), the dispute lies in calculating the capital gains resulting from the exit of a foreign partner and the value corresponding to the contractual sale value, wherein parties hereto agreed to approve the contractual sale value in the amount of (SAR 89,582,989), while the difference lies in calculating the cost base, as Defendant limited the cost base to capital only in the amount of (SAR 2,000,000), while other equity elements should be taken into consideration, namely the share of the Exiting Partner from the statutory reserve in the amount of (SAR 1,000,000), as well as its share from the retained profits in the amount of (SAR 27,354,124); Therefore, the Department satisfies to accept Plaintiff’s objection and amend Defendant’s decision regarding the item in question.

The Department Decided To:

Accept Plaintiff’s Case in form Amend Defendant’s decision by calculating the capital gains tax to become (SAR 11,845,773).

Instruments:

- Articles (16.7/B) of [Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 13/03/2023 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (13957) of 26/03/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 13/01/2022 AD under the above number.



Facts of the Case are summarized as follows: Plaintiff (..... Company, C.R. No.) has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Withholding Tax of August 2021 AD, which included the following:

1.Item (Capital Gains Tax of 2021):

Plaintiff objects to Defendant’s decision for imposing a capital gains tax for the year in question in the amount of (SAR 17,516,597.80), stating that according to the provisions of Article (16.7/E) of the Implementing Regulations of Income Tax Law, the party responsible for the capital gains tax resulting from the sale process is the seller or the buyer, as it is a joint liability between those parties; thus, Plaintiff is not considered a related party pursuant to the said Article, nor is it subject to the same, as Plaintiff keeps regular accounting records and books, and it is not required to calculate capital gains on an estimated basis. In addition, a draft of the internal financial statements was submitted for non-completion of the fiscal year for 2021, as auditing remained in place until the end of the fiscal year. Moreover, the sale occurred on April 30, 2021; thus, a capital gains tax was calculated based on the draft financial statements. Also, a tax for exit of the two partners was calculated on an estimated basis. Accordingly, the correct calculation of the capital gain resulting from such an exit is as follows:

Item	Amount
Contractual Sale Value	(SAR 89,582,989).
To Be Deducted:	
Capital	(SAR 2,000,000).
Statutory Reserve	(SAR 1,000,000).
Retained Profits	(SAR 27,354,124).
Capital Gains Base until April 30, 2021	(SAR 59,228,865).
Capital Gains Tax of (20%)	(SAR 11,845,773).

Plaintiff concluded by requesting abolishment of Defendant’s decision for the stated grounds.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included its clarification that, upon making the Assessment, it calculated the capital gains tax based on the provisions of Article (16) of Implementing Regulations of Income Tax Law as follows:

Item	Amount
Contractual Sale Value (Maximum Value)	(SAR 89,582,989).
To Be Deducted: Cost Base (Capital)	(SAR 2,000,000).
Taxable Amount	(SAR 87,582,989).
Due Tax Amount	(SAR 17,516,597.80).

In addition, during the examination stage of Plaintiff’s objection, a hearing was held on November 17, 2021, in which Plaintiff explained its argument as stated in its objection statement. Moreover, the method of calculating capital gains for tax purposes is specified in Article (9/A) of Income Tax Law, while the cost base to be deducted from the sale price (received compensation) is defined in Paragraph (D) thereto, while the end of that Article stipulates: “For the purposes of this Article, an “asset” means cash, shares, stocks, securities, and other tangible and intangible assets.” Furthermore, Article (16.7) of Income Tax Law included provisions that are related to the method of calculating capital gains upon disposal of assets in the absence of Taxpayer’s “seller’s” legal accounts, as it stipulates: “(a) If the asset sold is a security such as shares or bonds that are not traded in the stock market, the sale value shall be determined on the basis of the contractual value or the market value, whichever is higher. The sale value is compared with the cost base to determine the capital gain; (b) If the asset sold is an interest in a capital company, the sale



value shall be determined on the basis of the contractual value, the market value or the book value of this interest in the company's books, whichever is higher. The sale value is compared with the cost base to determine the capital gain; (c) If the asset sold is an interest in a partnership, the sale value shall be determined either on the basis of the contractual value or the market value, whichever is higher. The sale value is compared with the cost base to determine the capital gain; and (d) In other cases, the sale value shall be either the contractual value or the market value, whichever is higher. The sale value is compared with the cost base to determine the capital gain, provided that the capital gains are not less than (15%) of the cost base."

In light of the foregoing, Defendant affirms that the Income Tax Law and its Implementing Regulations included explicit and clear provisions of the method of calculating capital gains and determining the cost base in a decisively. Accordingly, capital gains from an accounting perspective are determined by comparing the selling price with Plaintiff's "Seller" equity, which includes its share in capital, reserves, retained profits, and other equity items. However, capital gains from a tax perspective are calculated and determined in a different method other than the accounting perspective, which is why they are detailed in the Income Tax Law and its Implementing Regulations, as they result from comparing the selling price and the cost base, both of which are clearly and precisely defined by the Income Tax Law and its Implementing Regulations. Accordingly, Defendant considers that it had correctly applied the Law, whose will be directed towards accounting for taxpayers for capital gains according to that method. Also, if the will of the Law was directed to something else, it would leave the method of determining capital gains undefined, and then it would have applied the accounting method claimed by Plaintiff. Moreover, the entire Tax Return is considered from a tax perspective, not an accounting one, and there is a clear difference between the accounting net profit and the tax net profit. Accordingly, Plaintiff's objection was rejected. Defendant concluded by requesting dismissal of Plaintiff's Case for the stated grounds.

On Monday, 13/03/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, under POA No.; and Mr., holder of National ID No., appeared in his capacity as Defendant's "ZATCA" Representative, by virtue of Authorization No. Having asked Plaintiff's Attorney regarding the Case, he replied: "Plaintiff objects to the imposition of the withholding tax of August 2021 and requests abolishment of Defendant's decision, as stated and explained in the statement of claim." Having asked Defendant's Representative regarding his response, he replied: "Defendant requests dismissal of Plaintiff's Case, as stated and detailed in the Rejoinder." Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Therefore, the Department decided to close pleadings for consideration and deliberation.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Withholding Tax of August 2021 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.



On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the Withholding Tax of August 2021 AD, which included the following:

1. Item (Capital Gains Tax of 2021):

The Department, having taken cognizance of the subject of dispute and documents and method of calculation included in Case File, found that, since Article (16.7/B) of Implementing Regulations of Income Tax Law stipulates: "If the asset sold is an interest in a capital company, the sale value shall be determined on the basis of the contractual value, the market value or the book value of this interest in the company's books, whichever is higher. The sale value is compared with the cost base to determine the capital gain;" and since the dispute lies in calculating the capital gains resulting from the exit of a foreign partner and the value corresponding to the contractual sale value, wherein parties hereto agreed to approve the contractual sale value in the amount of (SAR 89,582,989), while the difference lies in calculating the cost base, as Defendant limited the cost base to capital only in the amount of (SAR 2,000,000), while other equity elements should be taken into consideration, namely the share of the Exiting Partner from the statutory reserve in the amount of (SAR 1,000,000), as well as its share from the retained profits in the amount of (SAR 27,354,124); Therefore, the Department satisfies to accept Plaintiff's objection and amend Defendant's decision regarding the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept Plaintiff's (..... Company, C.R. No.) Case filed against Defendant (ZATCA) in form.

Second: On Merits:

Amend Defendant's decision by calculating the capital gains tax to become (SAR 11,845,773).

This Decision was issued and read out in the presence of Both Parties. The Department has decided Sunday, 30/04/2023 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-
96660)

Issued in Case No. (W-
96660-2022)

Keywords:

Withholding Tax – Withholding Tax on Dividends – Defendant’s Failure to Provide Proof of Payment or Settlement – Late Payment Fine – Acceptance of Case.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Withholding Tax of December 2018 AD, which included its objection, represented in items (Withholding Tax on Dividends) and (Error in Imposition of Late Payment Fine):

The Department Found That:

As for item (Withholding Tax on Dividends), the dispute lies in Defendant’s imposition of a withholding tax on dividends declared by the resident investee “..... Holding Company” by Plaintiff on the assumption that Plaintiff had received the dividends and delivered the same to the Bahraini companies it owns, without providing any proof of payment whatsoever, and that the imposition of withholding tax on amounts paid to non-resident parties is based on the occurrence of the actual payment or the like, such as settlements, offsetting, or any other means. Also, Defendant has failed to provide proof of payment or the occurrence of settlement or the like; Therefore, the Department satisfies to accept Plaintiff’s objection and abolish Defendant’s decision regarding the item in question.

As for item (Error in Imposition of Late Payment Fine), since the Department has decided to accept Plaintiff’s objection to the above item (Withholding Tax on Dividends) and it is established that “Affiliate Should Follow Its Origin.”

The Department Decided To:

Accept Plaintiff’s Case in form and abolish Defendant’s decision regarding items (Withholding Tax on Dividends) and (Error in Imposition of Late Payment Fine).

Instruments:

- Article (63.1) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 20/02/2023 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/02/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case.



Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 24/02/2022 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff. C.R. No.) has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Withholding Tax of December 2018 AD, which included the following:

1. Item (Withholding Tax on Dividends):

Plaintiff objects to Defendant’s decision for imposing a withholding tax for the year in question, stating that the approved financial statements issued on 31/12/2014 AD have established that Plaintiff did not distribute any profits throughout the year in question and that the amounts remitted by Plaintiff to partners represent a loan. In addition, the rejection notice in which Defendant claimed the existence of dividends to unit owners of “..... Fund” and “..... Fund” established by “..... Retail Company” is incorrect due to the following: 1. Lack of dividends; and 2. Lack of relationship with “..... Company,” and that “.....” is not a fund but rather a company owned by other companies. Moreover, Defendant's decision is in violation of the provisions of Article (68) of Income Tax Law.

2. Item (Error in Imposition of Late Payment Fine):

Plaintiff objects to Defendant’s decision for imposing late payment fines on the contested Item. Plaintiff concluded by requesting abolishment of Defendant’s decision in question as well as the fines resulting therefrom.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Withholding (Tax on Dividends):

Defendant clarifies that the “..... Company, TIN.” and its clients invest in several companies, including the company “..... Holding Company,” and that Plaintiff “..... Company” is a resident company and has investments in “..... Holding Company.” Also, “..... Company” and its clients have established “Special Purpose Bahraini Companies” that were used in the legal structure to establish funds in Bahrain. In addition, the prospectuses and assurances of the financial advisor of subscriptions of the investee companies show the existence of an investment fund that benefits from investing in Company “Plaintiff” without determining the unitholders. Moreover, having reviewed the ownership structure of the investee companies by “..... Company” to verify whether they are subject to income tax, Defendant held a meeting with representatives of “..... Saudi Financial Consulting Company, TIN.” to verify the ownership structure of these companies, as well as the Funds benefiting from the investment in Company “Plaintiff,” wherein Defendant requested “..... Company” to determine the identities of the holders of the Bahraini Fund Units; however, “..... Company” did not provide any information regarding those unitholders. Defendant also requested “..... Company” to provide the investment contracts of the investee companies, wherein Defendant found that they were signed by a “Special Purpose Company” in Bahrain.

Also, the beneficiaries of such an investment are the Special Purpose Bahraini Companies. In addition, the investment amount has been remitted from the Bahraini Company to the Investee Saudi Companies, indicating that the financial statements of the companies investing within the Kingdom of Saudi Arabia appear as a “Special Purpose Company” and were established only for use by these companies. Below is a list of Investee Saudi Companies:

Company	TIN:
“..... Company”	...



“..... Company”	...
“..... Company”	...

Neither Zakat Declarations nor Financial Statements are submitted by Saudi companies after selling their shares in the investee companies. In addition, “..... Group” and its clients are establishing Bahraini companies (shown as per the structure attached herein) with a special purpose that are used in the legal structure of funds established in Bahrain, as these funds establish companies in Bahrain for the purpose of establishing companies in Saudi Arabia to invest in Saudi companies and then exit the same after increase of their value, either by offering for sale or by selling their shares, which results in the following:

1. These companies established in the Kingdom are subject to Zakat, as well as their shares, as they are companies owned by Gulf citizens;
2. The disposal of these companies in the Kingdom of their shares in the investee companies is not subject to capital gains tax, as they are subject to Zakat; and
3. The dividends of the investee companies are not subject to withholding tax, as they represent amounts paid to a resident party (the investing company in the Kingdom).

Moreover, Defendant found that Plaintiff has concealed and failed to determine the identities of the unitholders of the Bahraini fund, since this is the criterion for Plaintiff's subjection to Tax or Zakat. Accordingly. Such act by Plaintiff is considered a violation of Articles (91/A) and (77/B/1) of Income Tax Law, concerning the submission of false books, records, accounts, or documents that do not reflect the true status of Plaintiff; thus, the owners of “..... Company” benefiting from the investment are the unitholders in the funds due to Plaintiff's lack of cooperation by submitting a statement of their names and nationalities. Therefore, Defendant adheres to the validity and soundness of its procedure in rejecting Plaintiff's objection for failure to submit the required documents. Consequently, Defendant subjected dividends of the companies owing “..... Saudi Holding Company” to withholding tax under the following evidence (Articles of Association of the investing companies, Bank Statements, Financial Statements, and Tax Returns), wherein it calculated Plaintiff's share at (77.5%) of the declared dividends and deducted (5%) from the same for 2014 – 2018, which determines that the item represents dividends from a resident company within the Kingdom “..... Saudi Holding Company” to non-resident shareholders (the owner of the funds owned by Plaintiff “..... Saudi Company” indirectly), in addition to the fact that dividends were from a resident company to a non-resident shareholder indirectly. Furthermore, having reviewed Plaintiff's financial statements, Defendant found that Plaintiff does not practice any activity in the Kingdom, nor did it register any expenses or revenues other than its share of the net profits of the investee company “..... Holding Company” through its investment in “..... Saudi Company” as shown in the ownership structure. Consequently, Defendant exercised its statutory right by rectifying Tax Return and subjecting Plaintiff to withholding tax.

2. Item (Error in Imposition of Late Payment Fine):

Defendant clarified that its decision came in compliance with the provisions of Article (77/A) of Income Tax Law. Defendant concluded by requesting dismissal of Plaintiff's Case.

On Monday, 20/02/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, by virtue of Foreign Power of Attorney; and Mr., holder of National ID No., appeared in his capacity as Defendant's “ZATCA” Representative, by virtue of Authorization No. Having asked Plaintiff's Attorney regarding the Case, he replied: “Plaintiff objects to the imposition of the withholding tax of December 2018 and requests abolishment of Defendant's decision, as stated and explained in the statement of claim.” Having asked Defendant's Representative regarding his response, he replied: “Defendant requests dismissal of



Plaintiff's Case, as stated and detailed in the Rejoinder." Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Therefore, the Department decided to close pleadings for consideration and deliberation.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Withholding Tax of December 2018 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the Withholding Tax January 2017 AD, which included the following:

1. Item (Withholding Tax on Dividends):

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since Article (63.1) of Implementing Regulations of Income Tax Law stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates:, dividends by (5%);" and since the dispute lies in Defendant's imposition of a withholding tax on dividends declared by the resident investee "..... Holding Company" by Plaintiff on the assumption that Plaintiff had received the dividends and delivered the same to the Bahraini companies it owns, without providing any proof of payment whatsoever; and since the imposition of withholding tax on amounts paid to non-resident parties is based on the occurrence of the actual payment or the like, such as settlements, offsetting, or any other means; and since Defendant has failed to provide proof of payment or the occurrence of settlement or the like; Therefore, the Department satisfies to accept Plaintiff's objection and abolish Defendant's decision regarding the item in question.

2. Item (Error in Imposition of Late Payment Fine):

Since the Department has decided to accept Plaintiff's objection to the above item (Withholding Tax on Dividends); since it is established that "Affiliate Should Follow Its Origin;" Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First:

Accept Plaintiff's (..... Saudi Company, C.R. No.) Case filed against Defendant (ZATCA) in form.

Second: On Merits:

- 1- Abolish Defendant's decision regarding item (Withholding Tax on Dividends) for the grounds stated herein.
- 2- Abolish Defendant's decision regarding item (Error in Imposition of Late Payment Fine) for the grounds stated herein.



This Decision was issued and read out in the presence of Both Parties. The Department has decided Wednesday, 29/03/2023 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-
97634)

Issued in Case No. (W-
97634-2022)

Keywords:

Withholding Tax – Defendant’s Non-Compliance with Examination and Assessment Requirements – Withholding Tax Amendments – Notice of Partial Acceptance of Objection – Late Payment Fines – Acceptance of Case.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Withholding Tax of June 2016 to January 2020 AD, which included its objection, represented in items (Defendant’s Non-Compliance with Examination and Assessment Requirements); (Withholding Tax Amendments for June 2016); (Withholding Tax Amendments for January 2020); (Defendant’s Lack of Response on Other Items of Objection); (Uncompleted Notice of Partial Acceptance of Objection to Withholding Tax for January 2020); and (Late Payment Fine).

The Department Found That:

First: As for item (Defendant’s Non-Compliance with Examination and Assessment Requirements), the dispute lies in Plaintiff’s objection to Defendant’s decision for its non-compliance with statutory requirements on the grounds that Assessment Notice lacked of any reasons for making amendments, while Defendant argued that its decision came in compliance with the provisions of the Law. Defendant has failed to clarify the details of amendments in its Assessments, but rather has merely mentioned the subjection of the amounts of transactions carried out for related parties to withholding tax at a rate of (15%) without clarifying the basis for making these amendments, and that the Assessment Draft was also devoid of any reasons that Defendant arrived at in its Assessments. Also, having perused the provisions of the Law, regulations, guidelines, Instructions, and having considered the facts of the item in question, the Department found that it is clear without a doubt that Defendant has failed to comply with the provisions of the said Article. In addition, the withholding tax rate is determined by the type of service delivered, and the identity of the non-resident service provider, and that the documents and statements presented by Plaintiff regarding the transactions provided to the same from abroad have shown that it is impossible to consider all of these companies as “related parties,” as the laws have set a specific limit for considering any party as a related party up to the second-tier of the statutory structure; thus, Defendant should have taken into consideration these standards. Moreover, Plaintiff has submitted an email between the same and Defendant, which shows that Defendant, during the objection stage, has requested Plaintiff to submit statements, under which Plaintiff submitted those statements, which indicated that not all transactions are subject to a rate of (15%) (related parties). Plaintiff has also submitted copies of Withholding Tax Returns and details of the declared transactions, as well as invoices and an analytical



statement that Defendant had requested; Therefore, the Department satisfies to accept Plaintiff's objection and abolish Defendant's decision regarding the item in question.

Second: As for items (Withholding Tax Amendments for June 2016); (Withholding Tax Amendments for January 2020); (Defendant's Lack of Response on Other Items of Objection); (Uncompleted Notice of Partial Acceptance of Objection to Withholding Tax for January 2020); and (Late Payment Fine); since the Department has decided to accept Plaintiff's objection to the above item (Defendant's Non-Compliance with Examination and Assessment Requirements); and since it is established that "Affiliate Should Follow Its Origin;" Therefore, the Department satisfies to abolish Defendant's decision regarding the items in question.

The Department Decided To:

Accept Plaintiff's Case in form and abolish Defendant's decision regarding the Assessments in question, as well as the contested items resulting therefrom.

Instruments:

- Article (59.7) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 01/05/2023 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/02/1425 AH, as amended, and Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 10/03/2022 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (..... Company, C.R. No.) has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding the Withholding Tax of June 2016 to January 2020 AD, which included the following:

1. Item (Defendant's Non-Compliance with Examination and Assessment Requirements):

Plaintiff objects to Defendant's non-compliance with the provisions of Article (59) of Income Tax Law, stating that Defendant's decision is inconsistent with the provisions of Paragraph (7) thereto, as the Assessments in question did not meet the statutory requirements. In addition, the Assessments lacked of any reasons for amendment. Therefore, Plaintiff requests abolishment of Defendant's decision in question.

2. Item (Withholding Tax Amendments for June 2016); **3. Item** (Withholding Tax Amendments for January 2020); **4. Item** (Defendant's Lack of Response on Other Items of Objection); **5. Item** (Uncompleted Notice of Partial Acceptance of Objection to Withholding Tax for January 2020); and **6. Item** (Late Payment Fine). Plaintiff concluded by requesting abolishment of Defendant's decision for the stated grounds.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Defendant's Non-Compliance with Examination and Assessment Requirements):

Defendant clarifies Plaintiff submitted its objection regarding the reasons for the amendment, stating that its decision is governed by the rules and procedures issued in this regard. In addition, the Assessments in question were issued correctly and in accordance



with the provisions of Article (62) of Income Tax Law, which stipulates: “A. The Department may correct and adjust the tax shown on the declaration to make it conform to the provisions of this Law, and it may perform tax assessment if the taxpayer does not file its declaration,” and Paragraph (C) thereof, which stipulates: “Subject to Article (65) of this Law, if it becomes clear to the Department that the tax it had previously accepted is incorrect, the Department may make an additional assessment on the taxpayer. The Department shall notify the taxpayer of the additional assessment and the reasons therefor. The taxpayer may object to the assessment as stipulated in the rules for objection,” as well as Article (59.7) of Implementing Regulation of Income Tax Law. Moreover, Plaintiff was notified with the reasons for the amendment and that the amounts paid for transactions with related parties had been subject to a withholding tax at rate of (15%).

2. Item (Withholding Tax Amendments for June 2016); **3. Item** (Withholding Tax Amendments for January 2020); **4. Item** (Defendant’s Lack of Response on Other Items of Objection); **5. Item** (Uncompleted Notice of Partial Acceptance of Objection to Withholding Tax for January 2020); and **6. Item** (Late Payment Fine). Defendant concluded by requesting dismissal of Plaintiff’s Case for the stated grounds.

On Monday, 01/05/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff’s Legal Representative; and Mr., holder of National ID No., appeared in his capacity as Defendant’s “ZATCA” Representative, by virtue of Authorization No. Having asked Plaintiff’s Attorney regarding the Case, he replied: “Plaintiff objects to the imposition of the Withholding Tax of June 2016 to January 2020 and requests abolishment of Defendant’s decision, as stated and explained in the statement of claim.” Having asked Defendant’s Representative regarding his response, he replied: “Defendant requests dismissal of Plaintiff’s Case, as stated and detailed in the Rejoinder, and requests a continuance to submit a supplementary memorandum.” Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Therefore, the Department decided to close pleadings for consideration and deliberation.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant’s decision regarding the Withholding Tax of June 2016 to January 2020 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff’s objection to Defendant’s decision regarding the Withholding Tax of June 2016 to January 2020 AD, which included the following:

First: Item (Defendant’s Non-Compliance with Examination and Assessment Requirements):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that, since Article (59.7) of Implementing Regulation of Income Tax Law stipulates: “If the Department does not agree with the Taxpayer’s Return, it shall notify Taxpayer of its modifications on Return, the reasons thereof, the amount of tax and subsequent penalties, and of the Taxpayer’s right to object and the statutory period



specified for objection. The notice to Taxpayer shall be sent by registered mail or by any other means that proves the taxpayer's receipt of such notice;" and since the dispute lies in Plaintiff's objection to Defendant's decision for its non-compliance with statutory requirements on the grounds that Assessment Notice lacked of any reasons for making amendments, while Defendant argued that its decision came in compliance with the provisions of the Law; and since Defendant has failed to clarify the details of amendments in its Assessments, but rather has merely mentioned the subjection of the amounts of transactions carried out for related parties to withholding tax at a rate of (15%) without clarifying the basis for making these amendments; and since the Assessment Draft was also devoid of any reasons that Defendant arrived at in its Assessments; and since the Department, having perused the provisions of the Law, regulations, guidelines, instructions, and having considered the facts of the item in question, found that it is clear without a doubt that Defendant has failed to comply with the provisions of the said Article; and since the withholding tax rate is determined by the type of service delivered, and the identity of the non-resident service provider; and since the documents and statements presented by Plaintiff regarding the transactions provided to the same from abroad have shown that it is impossible to consider all of these companies as "related parties," as the laws have set a specific limit for considering any party as a related party up to the second-tier of the statutory structure; thus, Defendant should have taken into consideration these standards; and since Plaintiff has submitted an email between the same and Defendant, which shows that Defendant, during the objection stage, has requested Plaintiff to submit statements, under which Plaintiff submitted those statements, which indicated that not all transactions are subject to a rate of (15%) (related parties); and since Plaintiff has also submitted copies of Withholding Tax Returns and details of the declared transactions, as well as invoices and an analytical statement that Defendant had requested; Therefore, the Department satisfies to accept Plaintiff's objection and abolish Defendant's decision regarding the item in question.

Second: with regard to items (Withholding Tax Amendments for June 2016); (Withholding Tax Amendments for January 2020); (Defendant's Lack of Response on Other Items of Objection); (Uncompleted Notice of Partial Acceptance of Objection to Withholding Tax for January 2020); and (Late Payment Fine); since the Department has decided to accept Plaintiff's objection to the above item (Defendant's Non-Compliance with Examination and Assessment Requirements); and since it is established that "Affiliate Should Follow Its Origin;" Therefore, the Department satisfies to abolish Defendant's decision regarding the items in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First:

Accept Plaintiff's (..... Company, C.R. No.) Case filed against Defendant (ZATCA) in form.

Second: On Merits:

Abolish Defendant's decision regarding the Assessments in question, as well as the contested items resulting therefrom for the grounds stated herein.

This Decision was issued and read out in the presence of Both Parties. The Department has decided Wednesday, 10/05/2023 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.



May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Second Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2023-
98184)

Issued in Case No. (W-
98184-2022)

Keywords:

Withholding Tax – Withholding Tax Differences – Late Payment Fines – Acceptance of Case.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding the Withholding Tax of December for 2016, 2017, 2019, and 2020 AD, which included its objection, represented in items (Withholding Tax Differences of 2016, 2017, 2019 and 2020) and (Late Payment Fine).

The Department Found That:

As for item (Withholding Tax Differences of 2016, 2017, 2019 and 2020), the dispute lies in the differences in the withholding tax of December for 2016, 2017, 2019, and 2020; and since the imposition of a withholding tax on is based on the existence of an actual payment or the like, such as settlement between accounts or offsetting, and that Defendant has subjected the amounts in question to a withholding tax as of the date of the accounting entry on the grounds that they represent services delivered by the Head Office and the related parties and that the accounting entry is considered a settlement between accounts. Also, Defendant has failed to provide proof of payment or settlement between accounts; and since the date of the accounting entry alone is not sufficient evidence of the existence of a settlement between the debit and credit accounts of the Head Office or the related companies, which renders invalidity of Defendant’s decision to subject those services to the withholding tax; Therefore, the Department satisfies to accept Plaintiff’s objection and abolish Defendant’s decision regarding the item in question.

As for item (Late Payment Fine), since the Department has decided to accept Plaintiff’s objection to the above item (Withholding Tax Differences of 2016, 2017, 2019 and 2020), and since it is established that “Affiliate Should Follow Its Origin,” Therefore, the Department satisfies to abolish Defendant’s decision regarding the item in question.

The Department Decided To:

Accept Plaintiff’s Case in form and abolish Defendant’s decision regarding items (Withholding Tax Differences of 2016, 2017, 2019 and 2020) and (Late Payment Fine).

Instruments:

- Article (63.1) of [Implementing Regulations of Income Tax Law issued by Ministerial Decision No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.



On Tuesday, 28/03/2023 AD, the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/03/1425 AH, as amended, and Royal Order No. (13957) of 26/03/1444 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 15/03/2022 AD under the above number.

Facts of the Case are summarized as follows: Plaintiff (Branch of Company, C.R. No.) has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority (“ZATCA”) regarding the Withholding Tax of December for 2016, 2017, 2019, and 2020 AD, which included the following:

1. Item (Withholding Tax Differences of 2016, 2017, 2019 and 2020):

Plaintiff objects to Defendant’s decision regarding the withholding tax differences for the month of December for the years in question, stating that Defendant added services from related parties in the Head Office for the month of December for the years in question, using the estimated method by adding the debit side of the Head Office account from the trial balance for years 2016, 2017 and 2020, despite providing Defendant with a detailed statement of the services obtained by Plaintiff from non-resident parties. In addition, Plaintiff does not register accounts for suppliers in its records, as the transactions are conducted with the Head Office. Also, Plaintiff has paid for services delivered to its projects within the Kingdom, which is confirmed by the trial balance for those years with the absence of supplier accounts, indicating that upon receipt of services from unrelated parties, Plaintiff records an accounting entry debiting the costs and expenses and crediting the same in the Head Office account. Then, upon payment to that supplier, Plaintiff records a debit accounting entry in the Head Office account and a credit in the bank account or a credit in the Head Office account if the payment is made by the Head Office on Plaintiff’s behalf. Accordingly, if Defendant takes into account the statements of services delivered by unrelated, abroad parties, they will be subject to the withholding tax twice in (1) each item separately benefiting under services delivered by related or un related parties at a rate of (5%) or (15%); and (2) related parties “Head Office” item from its debit side in the trial balance at a rate of (15%).

Moreover, there are also amounts that are not subject to withholding tax by nature since they are paid on behalf of or for services that are not subject to withholding tax; hence, they are recorded in the Head Office account; however, the amount may not be added in total from the debit side in the trial balance. Also, a detailed settlement was prepared for clarification through the submitted detailed analytical statements and a sample of beneficiaries’ invoices. Furthermore, that the amounts subject to withholding tax were duplicated in the Assessment and are supported by a sample of documents that clarify the beneficiaries and the amounts paid to them through the Head Office that appeared on the debit side of the trial balance for the years in question.

Finally, Plaintiff does not object to the necessity of imposing withholding tax on services paid to non-resident parties, but rather objects to imposing withholding tax on the difference in the amount after preparing the settlement, as the amount is in the maturity stage but remains unpaid, and that Defendant added services from unrelated parties in exchange for technical and consultancy services at a rate of (15%) for non-residents, while these services are subject to a rate of (5%) as specified in Article (63) of Implementing Regulations of Income Tax Law.

2. Item (Late Payment Fine):

Plaintiff objects to Defendant’s decision for imposing late payment fines on the contested item. Plaintiff concluded by requesting abolishment of Defendant’s decision for the stated grounds.



Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Withholding Tax Differences of 2016, 2017, 2019 and 2020):

Defendant clarifies that, with regard to the subjection of services delivered by unrelated parties to rates of (5%) and (15%); and the subjection of services delivered by related parties to a rate of (15%), it had imposed a withholding tax on the amounts paid to non-resident related parties “Head Office” at a rate of (15%) of the amount paid as per the trial balance. With regard to 2016; it had imposed a withholding tax on the amounts paid to non-resident related parties “Head Office” at a rate of (15%) of the amount paid for Plaintiff’s failure to specify the true nature of the service. Also, based on the trial balance in the amount of (€ 4,225,457 euros × 4.16 = SAR 17,577,899.08), while Plaintiff submitted a detailed statement of the activity of the item as well as samples based on the statement during the examination stage, whereby Defendant found that there were currency differences, shipping expenses, and materials expenses with a total value of (SAR 4,751,560), as the tax is withheld from the remaining amount as follows: (SAR 17,577,899 – SAR 4,751,560 = SAR 12,826,339).

Moreover, as for Plaintiff’s argument of existence of a duplication in imposing the withholding tax, Defendant clarifies that Plaintiff did not provide documents supporting the validity of its argument, as it held a meeting with Plaintiff’s representatives, during which they stated that there was a duplication in imposing the withholding tax, while Defendant clarified that it imposed the withholding tax on the amounts remitted to the Head Office “Related Parties” pursuant to the trial balance. Also, Defendant had previously requested Plaintiff to provide supporting documents and samples, under which the amount of the related parties has been reduced from (SAR 17,577,899) to (SAR 12,826,339).

As for Plaintiff’s statement that it had submitted those documents, Defendant clarifies the documents submitted were insufficient. Accordingly, Plaintiff’s arguments cannot constitute a valid case; therefore, the objection was rejected. With regard to 2017 and 2020; Defendant clarifies that it had imposed a withholding tax on the amounts paid to non-resident related parties “Head Office” at a rate of (15%) of the amount paid for under the trial balance for 2017 = (SAR 320,113 × 15% = SAR 48,017). For 2020 = (SAR 7,981,623 × 15% = SAR 1,197,243).

In addition, Plaintiff did not provide documents supporting the validity of its argument. Moreover, during the meeting held with Plaintiff’s representatives, they stated that there was a duplication in imposing the withholding tax, while Defendant clarified that it imposed the withholding tax on the amounts remitted to the Head Office “Related Parties” pursuant to the trial balance. Also, Defendant had previously requested Plaintiff to provide supporting documents and samples; however, Plaintiff failed to do so. Accordingly, Plaintiff’s objection was rejected. With regard to the subjection of services delivered by unrelated parties at a rate of (15%) instead of (5%); Defendant clarifies that it had imposed a withholding tax of (15%) for technical and consultancy services to related parties in the name of “Mr.” an employee of the parent company for the period of December 2016, 2017, 2019 and 2020, in the amounts of (SAR 456,836), (SAR 476,896), (SAR 330,957), and (SAR 144,598) respectively for the technical and consulting services delivered as per the statement submitted by Plaintiff. Accordingly, and in accordance with the statement submitted in which Plaintiff acknowledged that these amounts were remitted in the name of “Mr.” who is an employee of the parent company as a related party in exchange for technical and consulting services, a rate of (15%) was applied instead of (5%), and by extension, the objection was rejected pursuant to the provisions of Article (68/A) of Income Tax Law.

2. Item (Late Payment Fine):



Defendant clarified that its decision came in compliance with the provisions of Article (77/A) of Income Tax Law. Defendant concluded by requesting dismissal of Plaintiff's Case.

On Tuesday, 14/03/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Defendant's "ZATCA" Representative, by virtue of Authorization No. Neither Plaintiff nor its representative appeared at the session or presented an excuse for such an absence despite being legally served of the session date through the e-system of the General Secretariat of Tax Committees, indicating that Plaintiff has waived its right to attend the hearing and present its pleas. Having perused Article (20.2) of Tax Dispute and Violation Committee Procedures, and after deliberation, the Department has unanimously decided to drop Plaintiff's Case.

On 15/03/2023 AD, Plaintiff requested to set the Case to motion.

On Wednesday, 22/03/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, by virtue of Foreign Power of Attorney; and Mr., holder of National ID No., appeared in his capacity as Plaintiff's Legal Representative, by virtue of Authorization No. During the hearing, the Department has requested to review the Power of Attorney and the updated Commercial Registration that proves the capacity of the Company's "Plaintiff" Director appeared at the hearing. Neither Legal Representative nor Plaintiff's Attorney were able to send proof of their capacity through the Department's email. After discussion, the department decided to postpone the consideration of the Case to Tuesday, 28/03/2023 AD, at 9:00 PM, and stressed to Plaintiff's Attorney that this is the final deadline to submit proof of their capacity and attach the same to the e-system of the General Secretariat of Tax Committees.

On Tuesday, 28/03/2023 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., whose presence had previously been registered; and Mr., holder of National ID No., appeared in his capacity as Defendant's Representative, by virtue of Authorization No. Having asked Plaintiff's Attorney regarding the Case, he replied: "Plaintiff objects to the imposition of the Withholding Tax of December for 2016, 2017, 2019, and 2020, and requests abolishment of Defendant's decision, as stated and explained in the statement of claim." Having asked Defendant's Representative regarding his response, he replied: "Defendant requests dismissal of Plaintiff's Case, as stated and detailed in the Rejoinder." he also submitted a follow-up memorandum that included further clarification of arguments mentioned in the first Rejoinder." Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Therefore, the Department decided to close pleadings for consideration and deliberation.

Grounds:

Having perused the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding the Withholding Tax of December for 2016, 2017, 2019, and 2020 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed with a party having capacity and within the prescribed statutory period, it is then accepted in form.



On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the Withholding Tax of December for 2016, 2017, 2019, and 2020 AD, which included the following:

1. Item (Withholding Tax Differences of 2016, 2017, 2019 and 2020):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that, since Article (63.1) of Implementing Regulations of Income Tax law issued by Ministerial Decision (1535) of 11/06/1425 AH stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates:; dividends by (5%);" and since the dispute lies in the differences in the withholding tax of December for 2016, 2017, 2019, and 2020; and since the imposition of a withholding tax on amounts paid to non-resident parties is based on the existence of an actual payment or the like, such as settlement between accounts, offsetting, or any other means; and since Defendant has subjected the disputed amounts in question to a withholding tax as of the date of the accounting entry on the grounds that they represent services delivered by the Head Office and the related parties and that the accounting entry is considered a settlement between accounts; and since Defendant has failed to provide proof of payment or settlement between accounts; and since the date of the accounting entry alone is not sufficient evidence of the existence of a settlement between the debit and credit accounts of the Head Office or the related companies, which renders invalidity of Defendant's decision to subject those services to the withholding tax; Therefore, the Department satisfies to accept Plaintiff's objection and abolish Defendant's decision regarding the item in question.

2. Item (Late Payment Fine):

Since the Department has decided to accept Plaintiff's objection to the above item (Withholding Tax Differences of 2016, 2017, 2019 and 2020); and since it is established that "Affiliate Should Follow Its Origin;" Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept Plaintiff's (Branch of Company, C.R. No.) Case filed against Defendant (ZATCA) in form.

Second: On Merits:

1. Abolish Defendant's decision regarding item (Withholding Tax Differences of 2016, 2017, 2019 and 2020) for the grounds stated herein.
2. Abolish Defendant's decision regarding item (Late Payment Fine) for the grounds stated herein.

This Decision was issued and read out in the presence of Both Parties. The Department has decided Sunday, 30/04/2023 AD, as the date of receipt of this Decision. Parties hereto may appeal against this Decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the Decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Third Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
5892)

Issued in Case No. (W-
57579-2021)

Keywords:

Withholding Tax on Dividends – Considering Taxpayer a Tax Evader – Taxpayer’s Failure to Pay the Tax Due for Years Subject to Assessment is Tax Evasion – Considering Taxpayer Subject to Income Tax as for Being a Resident Company – Late Payment Fine – Difference in Application of Approved Rates.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding to Tax Assessment Assessments of 2015 – 2018 AD, which included its objection, represented by the following:

1. Item (Considering Taxpayer a Tax Evader):

Plaintiff objects to the Assessment’s Amendment Notice, which stated that Taxpayer’s “Plaintiff” failure to pay the tax due for years subject to Assessment is a tax evasion, which is a theoretical objection, not a substantive one, stating that Defendant did not take in consideration Plaintiff’s ignorance of Income Tax Law in force within the Kingdom, despite the fact that Plaintiff showed good faith by registering in VAT in 2018 to meet the tax requirements in the Kingdom.

2. Item (Considering Taxpayer Subject to Income Tax as for Being a Resident Company or Permanent Establishment).

3. Item (Withholding Tax on Dividends):

Plaintiff objected to Defendant’s decision for subjecting the estimated profit for years 2015 – 2018 to withholding tax as dividends.

4. Item (Late Payment Fine):

The dispute lies in imposing late payment fines on the tax differences.

The Department Found That:

As for item (Considering Taxpayer a Tax Evader), the Assessment’s Amendment Notice has shown that Plaintiff was not treated as a tax evader, nor was it subject to a tax evasion fine as claimed, and that Plaintiff has failed to submit the financial statements to the Case File, despite their substantial impact on its classification as a permanent establishment

As for item (Considering Taxpayer Subject to Income Tax as for Being a Resident Company or Permanent Establishment), Defendant has applied a rate of (40%), which is inconsistent with the rates approved in the Implementing Regulations of Income Tax Law.

As for item (Withholding Tax on Dividends), Plaintiff has failed to submit the statement of the Head Office account to verify the true nature of debit and credit activities during the years in question, which renders validity of such closing



As for item (**Late Payment Fine**), the dispute between parties hereto is over the difference in the application of the approved rates and did not arise from a significant difference in the interpretation of legal provisions.

The Department Decided To:

Dismiss Plaintiff's objection to item (Considering Taxpayer a Tax Evader) and amend Defendant's decision regarding other items in question. – The Decision is deemed final and enforceable.

Instruments:

- Articles (2) and (63.1/B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH.](#)
- Articles (16.4) and (57.3) of [Implementing Regulations of Income Tax Law issued by Minister of Finance's Decision No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 23/10/2022 AD, the Third Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (22800) of 25/04/1442 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 04/07/2021 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of National ID No., in his capacity as Plaintiffs (..... Company, UAE C.R. No.) Attorney, under POA No.; has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding the Tax Assessment of 2015 – 2018 AD, which included the following:

1. Item (Considering Taxpayer a Tax Evader):

Plaintiff objects to the Assessment's Amendment Notice, which stated that Taxpayer's "Plaintiff" failure to pay the tax due for years subject to Assessment is a tax evasion, which is a theoretical objection, not a substantive one, stating that Defendant did not take in consideration Plaintiff's ignorance of Income Tax Law in force within the Kingdom, despite the fact that Plaintiff showed good faith by registering in VAT in 2018 to meet the tax requirements in the Kingdom. In addition, Defendant overlooked the fact that the vast majority of Taxpayers are ignorant of Income Tax Law in force within the Kingdom, despite their actual presence therein, so what about those who are not a resident company or a permanent establishment? Although such action from Defendant is not justified, it is a fact that should not be overlooked. However, it resulted in the imposition of tax amounts that Taxpayer "Plaintiff," given the size of the establishment, may not be able to meet the tax liabilities in any way, nor will it be able to do so, as Defendant has imposed a high rate in calculating the estimated revenues, which implicitly indicates that Defendant considered Plaintiff to be a tax evader compared to similar cases.

2. Item (Considering Taxpayer Subject to Income Tax as for Being a Resident Company or Permanent Establishment):

Plaintiff objects to the aforementioned Tax Assessments, due to Defendant's perspective that Plaintiff is a resident company or a permanent establishment within the Kingdom, in accordance with the provisions of Articles (3/B) and (4/B) of Income Tax Law hereunder, by imposing an estimated tax of (40%) of total sales as estimated net profit, which is a high



rate compared to that set forth in Article (16.4) of Implementing Regulations of Income Tax Law, which stipulated: “Estimated net profit rate shall be determined based on available facts, evidence, and indicators relevant to Taxpayer’s activity, its nature and circumstances. In all cases, it shall not be less than the following rates of Taxpayer’s revenues:” **(The table of rates is attached herein)**. Accordingly, having referred to the said categories, in the event that Plaintiff is a resident company or a permanent establishment, which was not proved by Defendant through a legal provision in its Assessment, it will fall into Category No. (9) for which the estimated profit percentage has been set at (15%). However, it seems that Defendant has adopted a rate of (40%) for its consideration that Plaintiff is evading taxes, which is undoubtedly a false assumption that lacks any valid grounds. Nevertheless, the fact is that the Defendant is fully aware that there is a large segment of Taxpayers who are ignorant of Income Tax Law in force within the Kingdom, and not to evade the tax as mentioned above if Plaintiff is actually required to submit Income Tax Returns for the years subject to Assessment.

3. Item (Withholding Tax on Dividends):

Plaintiff objects to Defendant’s decision for subjecting the estimated profit for years 2015 – 2018 to withholding tax as dividends. According to this processing, Plaintiff would like to point out that there is no statutory provision such this processing by Defendant. In addition, Defendant’s decision lacks of any statutory provision on which Defendant bases its decision, by subjecting the estimated profit to withholding tax as dividends. Accordingly, Defendant is not entitled to make such a procedure even if Plaintiff does not keep accounting books.

4. Item (Late Payment Fine):

Plaintiff objects to Defendant’s decision for making the above Tax Assessments for the years in question and imposing late payment fines on the tax differences, stating that there is a difference in viewpoints between Plaintiff and Defendant on the imposition of income tax under the above statutory provisions.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Considering Taxpayer a Tax Evader):

Defendant clarifies that no evasion fine has been imposed on Plaintiff and that the Assessment Notice sent to Plaintiff was verified, as it did not contain Plaintiff evading or considering the same as such. Accordingly, Plaintiff’s objection is groundless of any fact or law due to the absence of an actual action taken by Defendant against Plaintiff.

2. Item (Considering Taxpayer Subject to Income Tax as for Being a Resident Company or Permanent Establishment):

Defendant clarifies that it had considered Plaintiff a permanent establishment based on Note No. (1) to the financial statements and activities listed under its name in the financial statements as “a foreign company operating within the Kingdom as a permanent establishment;” thus, Plaintiff is listed among parties subjecting to tax for carrying out activity within the Kingdom as a permanent establishment, in accordance with Article (1.1) of Implementing Regulations of Income Tax Law. In addition, having examined Plaintiff’s financial statements, Defendant found that the phrase “a foreign company operating within the Kingdom as a permanent establishment” was listed under Plaintiff’s name, which is a legal classification made by Plaintiff, and also was confirmed in Note No. (1) to the said financial statements.

With regard to Plaintiff’s denial of the status of a permanent establishment and the citation of the provisions of Income Tax Law as inconsistent with its status, Defendant clarifies that Plaintiff did not address in its objection the denial of the legal status stated in the financial statements of the status of a permanent establishment; thus, Plaintiff’s objection as well as its citation of the provisions of Income Tax Law are insufficient to refute



Defendant grounds that it arrived when making the Assessment by considering Plaintiff a permanent establishment.

3. Item (Withholding Tax on Dividends):

Defendant clarifies that it had imposed a withholding tax on estimated profits after excluding the income tax calculated as dividends in accordance with Article (16.3), Paragraph (3) of Implementing Regulations of Income Tax Law, due to the lack of accounting records and books for the years under examination. Having examined Plaintiff's objection, Defendant found that Plaintiff did not keep accounting books or records, as per the statement of the certified public accountant as well as its report to the financial statements, in which its rejection to express an opinion was included, due to its inability to examine and verify the accuracy of the accounts. Moreover, the submitted financial statements approved by Plaintiff's Management have shown that the year's income is closed annually in the current account of the Head Office, which determines that the income of the permanent establishment is closed on a regular basis in the books in the accounts of the Head Office. Accordingly, it is considered a payment method or the like, indicating the necessity of subjecting estimated profits to withholding tax after deducting the corresponding income tax. Furthermore, Defendant's decision is endorsed by the Appeal Committee's Decision No. (1586) of 1437 AH in Appeal No. (1490/D) of 1434 AH, which ruled to dismiss Taxpayer's appeal regarding the non-calculation of a withholding tax on dividends.

4. Item (Late Payment Fine):

Defendant clarifies that its decision in imposing these fines on the differences in the tax due came in compliance with Article (77/A) of Income Tax Law, which stipulates: "In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every thirty (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;"

On Sunday, 23/10/2022 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant, wherein Mr., holder of National ID No., appeared in his capacity as Plaintiff's Attorney, by virtue of Foreign Power of Attorney attached to Case File. Having reviewed the same, the Department found that it did not meet the statutory requirement. Mr., holder of National ID No., appeared in his capacity as Defendant's "ZATCA" Representative, by virtue of Authorization No. dated .../.../1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. At the beginning of the hearing, the Department informed parties hereto that it will consider the following Cases: (I-2021-57543), (W-2021-57571), (W-2021-57547), (I-2021-57560), (I-2021-57551), (W-2021-57553), (I-2021-57576), and (W-2021-57579), and record the same in a single transcript, a copy of which will be deposited for each Case. Having asked Defendant's Representative regarding his response, he maintained the statements contained in the Reply Previously submitted to General Secretariat of Tax Committees. Having asked Defendant's Representative whether he had further statements, he responded with denial. Therefore, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as



amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of 2015 – 2018 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed by a party having capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the issuance of Tax Assessment of 2015 – 2018 AD, which included the following:

1. Item (Considering Taxpayer a Tax Evader):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that the dispute lies in Defendant's consideration of Plaintiff's failure to pay the tax due for the years subject to Assessment as a tax evasion as stated in the Assessment's Amendment Notice; and since Article (2) of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, concerning "Persons Subject to Taxation," stipulates: "A nonresident who conducts business in the Kingdom through a permanent establishment;" and since Article (63/B) of the same Law concerning "Anti-Tax Avoidance Procedures," stipulates: "The Department may 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;" and since Article (57.3) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, stipulates: "The burden of proof of correctness of information in Taxpayer's Return regarding its revenues, expenses and any other data, rests on the taxpayer. If Taxpayer fails to prove the correctness of information in its Returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by Taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances, facts, and available information;" which determines that the dispute is over the validity of Defendant application of tax avoidance procedures on Plaintiff; and since Defendant has applied the said Article (2) of Income Tax Law and based its action on the assumption that Plaintiff is a non-resident permanent establishment according to Note No. (1) to the financial statements; and since the Assessment's Amendment Notice has shown that Plaintiff was not treated as a tax evader, nor was it subject to a tax evasion fine as claimed; and since Plaintiff has failed to submit the financial statements to the Case File, despite their substantial impact on its classification as a permanent establishment; Therefore, the Department satisfies to dismiss Plaintiff's objection to the item in question.

2. Item (Considering Taxpayer Subject to Income Tax as for Being a Resident Company or Permanent Establishment):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that the dispute lies in Defendant's consideration of Plaintiff as resident company or permanent establishment operating within the Kingdom; and since Article (16.4) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, stipulates: "Estimated net profit rate shall be determined based on available facts, evidence and indicators relevant to Taxpayer's activity, its nature and circumstances. In all cases, it shall not be less than the following rates of Taxpayer's revenues: 9. Other Activities by (15%);" and since Article (2) of Income Tax



Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, concerning “Persons Subject to Taxation,” stipulates: “A nonresident who conducts business in the Kingdom through a permanent establishment;” and since Article (57.3) of the said Implementing Regulations stipulates: “The burden of proof of correctness of information in Taxpayer’s Return regarding its revenues, expenses and any other data, rests on the taxpayer. If Taxpayer fails to prove the correctness of information in its Returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by Taxpayer or make an estimated assessment according to the Departments opinion based on relevant circumstances, facts, and available information;” and since the dispute is over the application of an estimated net profit rate different from the rates mentioned in the said Article (16.4) of Implementing Regulations of Income Tax Law; and since the “Trade License” issued by Ajman Free Zone has shown that Plaintiff’s activity is represented in general trade, import and export, and classified under Category No. (9) “Other Activities” mentioned in Article (16.4) of Implementing Regulations of Income Tax Law; and since Defendant has applied a rate of (40%), which is inconsistent with the rates approved in the Implementing Regulations of Income Tax Law; Therefore, the Department satisfies to amend Defendant’s decision by applying the net profit of (15%) as specified by the Implementing Regulations of Income Tax Law.

3. Item (Withholding Tax on Dividends):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that the dispute lies in subjecting the estimated profit of 2015 – 2018 to a withholding tax as dividends; and since Article (63.1) of Implementing Regulations of Income Tax Law stipulates: “A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates:; dividends by (5%);” and since Article (57.3) of the same Implementing Regulations stipulates: “The burden of proof of correctness of information in Taxpayer’s Return regarding its revenues, expenses and any other data, rests on the taxpayer. If Taxpayer fails to prove the correctness of information in its Returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by Taxpayer or make an estimated assessment according to the Departments opinion based on relevant circumstances, facts, and available information;” and since the imposition of a withholding tax is based on the existence of an actual payment or the like, such as settlements between accounts or offsetting; and since Defendant’s imposition of withholding tax on dividends results from closing the branch’s profits in the Head Office account; and since Plaintiff has failed to submit the statement of the Head Office account to verify the true nature of debit and credit activities during the years in question, which renders validity of such closing; Therefore, the Department satisfies to uphold Defendant’s decision imposing withholding tax on estimated profits; and since the Department has amended Defendant’s decision regarding item (Considering Taxpayer Subject to Income Tax as for Being a Resident Company or Permanent Establishment) by applying the net profit of (15%) as specified by the Implementing Regulations of Income Tax Law; Therefore, the Department satisfies to amend Defendant’s Decision by applying the same rate.

4. Item (Late Payment Fine): 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 imposing late payment fines on the tax differences; and since Article (77/A) of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, stipulates: “In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every thirty (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and



advance payments. It shall be calculated from the tax due date until the date of payment;” and since Article (68.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, stipulates: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty (30) days of delay shall be added in the following cases: (b) Delay in payment of due tax as per the Department’s Assessment;” and since Article (67.3) of the same of Implementing Regulations stipulates: “Unpaid tax shall mean the difference between the amount paid by the Taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment;” and since the late payment fine is calculated from the final date of the deadline specified for submitting Tax Returns to the date of payment of the tax due arising under the application of the provisions of the Law and the amendments made by Defendant; and since the dispute between parties hereto is over the difference in the application of the approved rates and did not arise from a significant difference in the interpretation of legal provisions; Therefore, the Department satisfies to amend Defendant’s decision by calculating the late payment fine as of the date of Estimated Assessment, which is the date that Plaintiff became aware of the tax due.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept Plaintiff’s (..... Company, C.R No. objection to Defendant’s (ZATCA) decision in form.

Second: On merits:

- 1- **Dismiss Plaintiff’s objection to item (Considering Taxpayer a Tax Evader).**
- 2- Amend Defendant’s decision regarding other items in question.

This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of a copy of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the decision shall be final and enforceable.

May Allah’s Blessings and Peace be upon our Prophet Muhammad and his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Third Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
5888)

Issued in Case No. (W-
55109-2021)

Keywords:

Tax Assessment – Imposition of Withholding Tax on Amounts for Technical and Consultancy Services Delivered by Third Parties – Late Payment Fine – Tax Returns – Statutory Period – Activity of Payables – Activity of Transactions – Acceptance of Plaintiff's Objection in Form and Dismissal on Merits.

Abstract

Plaintiff ("Taxpayer") filed this Case moving to abolish Defendant's ("ZATCA") decision regarding to Tax Assessment of July 2015, August 2016, July 2017 and July 2018 AD, which included its objection, represented by the following:

1. Item (Imposition of Withholding Tax on Amounts for Technical and Consultancy Services Delivered by Third Parties):

Plaintiff objected to Defendant's argument regarding the item in question, stating that it firmly believes that Defendant's processing and imposition of lump sum withholding tax is groundless of any fact or law and contradicts the statutory provisions, and that it had submitted the supporting documents, while Defendant argued that Plaintiff did not to submit the activity of transactions with the related parties, as well as to the activity of payables for the purpose of verifying the settlement, except a file showing the amounts of transactions with the related parties, and that it had subjected amounts of technical and consultancy services delivered by related third parties and were not deducted to a withholding tax, as well as the amounts paid abroad for training.

2. Item (Late Payment Fine):

Plaintiff objected to Defendant's decision for imposing a late payment fine on the contested items, stating that it had submitted Tax Returns within prescribed statutory deadlines and that the late payment fines arising from the tax difference were the result of errors and a difference in viewpoints, not the result of its deliberate failure of payment of the tax within the statutory deadline, while Defendant argued that it imposed a late payment fine on the tax differences that were not paid within the statutory deadline.

The Department Found That:

As for item (Imposition of Withholding Tax on Amounts for Technical and Consultancy Services Delivered by Third Parties), Defendant's imposition of withholding tax on the entire accrued amounts is invalid procedure.

As for item (Late Payment Fine), since the Department has decided invalidity of Defendant's decision regarding item (Imposition of Withholding Tax on Amounts for Technical and Consultancy Services Delivered by Third Parties); Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question due to absence of grounds on which the tax is imposed.

The Department Decided To:



Accept Plaintiff's objection in form and dismiss the same on merits. – The Decision is deemed final and enforceable under Article (42) of Tax Dispute and Violation Committee Procedures).

Instruments:

- Articles (68/A, B/3, C, F), (76), (77/A, B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) of 15/01/1425 AH.](#)
- Article (68.1) of [Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. \(1535\) of 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 11/10/2022 AD, the Third Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (22800) of 25/04/1442 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 17/06/2021 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of Iqama ID No., in his capacity as Plaintiff's (..... Company, C.R. No.) Legal Representative; has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding the Tax Assessment of July 2015, August 2016, July 2017 and July 2018 AD, which included the following:

1. Item (Imposition of Withholding Tax on Amounts for Technical and Consultancy Services Delivered by Third Parties for July 2015, August 2016, and July 2017):

Plaintiff objects to Defendant's argument regarding the item in question, stating that its objection is represented in the following:

Plaintiff would like to draw attention of the Esteemed Department that Defendant has requested to review the activity statements of receivables and payables of the related parties. Accordingly, Plaintiff hereby submits the activity statements of receivables and payables of the related parties (Exhibit No. 3) concerning years 2015, 2016, 2017, and 2018 for perusal.

In view of the above analytical data, Plaintiff firmly believes that Defendant's processing and imposition of lump sum withholding tax is groundless of any fact or law and contradicts the statutory provisions. The Department, having perused the above analytical statements, found that Plaintiff paid the withholding tax as and when it becomes due on its transactions with non-resident parties. In addition, the provisions of the Income Tax Law concerning the withholding tax apply when a Saudi resident pays non-residents who generate income from a source located within the Kingdom, noting that Defendant's imposition of withholding tax when there are no amounts paid to related companies for technical, consultancy, and other services is incorrect, nor is it endorsed by the Income Tax Law, its Implementing Regulations, or other Circulars and Clarifications issued by Defendant. Moreover, Plaintiff had already submitted the activity and other supporting documents pursuant to the above clarifications and documents.

Furthermore, Plaintiff strongly affirms that Defendant's imposition of the withholding tax is unjustified. In light of the foregoing, Plaintiff kindly requests the Esteemed Department to instruct Defendant to drop the additional withholding tax liability and to make an



Amended Assessment for the months of July 2015, August 2016, July 2017 and July 2018 accordingly.

2. Item (Late Payment Fine):

Plaintiff objects to Defendant's decision for imposing a late payment fine on the contested items, stating that it had submitted Tax Returns within prescribed statutory deadlines and that the late payment fines arising from the tax difference were the result of errors and a difference in viewpoints, not the result of its deliberate failure of payment of the tax within the statutory deadline. Accordingly, Plaintiff requests the Department to drop any additional tax liability resulting therefrom that is not subject to a late payment fine.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Withholding Tax):

Defendant clarifies that it had subjected amounts of technical and consultancy services delivered by related third parties that appeared in the notes to financial statements as "Royalties or Technical Support Services" and were not deducted to a withholding tax, as well as the amounts paid abroad for training as shown in the table (attached in Defendant's response).

With regard to August 2016, Defendant clarifies that they were amounts represented in technical and consultancy services delivered by related third parties that appeared in Plaintiff's Tax Return as requested by Defendant to provide the activity of transactions with the related parties, as well as to the activity of payables for the purpose of verifying the settlement. Moreover, due to Plaintiff's failure to submit the required documents except a file showing the amounts of transactions with the related parties, and since the burden of proof lies solely on Plaintiff, Defendant adheres to the validity and soundness of its procedure.

2. Item (Late Payment Fine):

Defendant clarifies that it imposed a late payment fine on the tax differences that were not paid within the statutory deadline. Accordingly, Defendant adheres to the validity and soundness of its procedure.

On Tuesday, 11/10/2022 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant. Having called parties to the Case; Mr., British National, holder of Passport No., and Iqama ID No., appeared in his capacity as Plaintiff's Legal Representative, by virtue of its Articles of Association attached to Case File; and Mr., holder of National ID No., appeared in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs. Having asked parties hereto whether they had further statements, they responded with denial. Therefore, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of July 2015, August 2016, July 2017 and July 2018 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441



AH; and since the Case was filed by a person with capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the issuance of Tax Assessment of July 2015, August 2016, July 2017 and July 2018 AD, which included the following:

1. Item (Imposition of Withholding Tax on Amounts for Technical and Consultancy Services Delivered by Third Parties):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that the dispute lies in Defendant's imposition of a withholding tax on amounts for technical and consultancy services delivered by related third parties; and since Article (68) of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, stipulates: "A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates:.....; C. 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; and 3. If he fails to report withholding statements to the Department as stipulated under subparagraph (3) of paragraph (b) of this Article; and F. If the amount referred to in this Article is paid to a nonresident who conducts business in the Kingdom through a permanent establishment, and the amount paid is directly connected with the business of the establishment, such amount shall be calculated in determining the tax base of the nonresident;" and since the imposition of a withholding tax on is based on the existence of an actual payment or the like, such as settlement between accounts or offsetting; and since Plaintiff has submitted an analytical statement of the accrued amounts to related non-resident parties, and also an analytical statement of transactions with related parties, showing the accrued amounts to related non-resident parties and those actually paid, which indicates that the amounts in question represent technical and consultancy services for related companies; however, these transactions are accrued and unpaid transactions; and since Plaintiff has reduced the accrued amount upon payment and tax withholding (payment receipts 2, 4 is attached herein); since Plaintiff has withheld the tax upon payment; and since Defendant has failed to verify the actual payment due to the documentary dispute, which renders invalidity of Defendant's imposition of withholding tax on the entire accrued amounts; Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question.

2. Item (Late Payment Fine):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that the dispute lies in Defendant's imposition of a late payment fine on the above contested item; and since Article (77/A) of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, stipulates: "In addition to the fines stipulated in Article (76) of this Law and in Paragraph (B) of this Article, a Taxpayer shall pay a delay fine of (1%) for every thirty (30) days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment;" and since Article (68.1) of Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, stipulates: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty (30) days of delay shall be added in the following cases: (b) Delay in payment of due tax as per the Department's Assessment;" and since the late payment fine is imposed on Taxpayer "Plaintiff" as a result its delay in



paying the tax due; and since the Department has decided invalidity of Defendant's decision regarding item (Imposition of Withholding Tax on Amounts for Technical and Consultancy Services Delivered by Third Parties); Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question due to absence of grounds on which the tax is imposed.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Accept Plaintiff's (..... Company Ltd., C.R No.) objection to Defendant's (ZATCA) decision in form and dismiss the same on merits.

This Decision was issued in the presence of Both Parties. Date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of a copy of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Third Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
6621)

Issued in Case No. (W-
48376-2021)

Keywords:

Tax Assessment – Income Tax – Withholding Tax – Foreign Remittances – Customs Duties – Supply of Steel Structures – Installation of Steel Panels.

Abstract

Plaintiff (“Taxpayer”) filed this Case moving to abolish Defendant’s (“ZATCA”) decision regarding to Tax Assessment of December for 2010, 2011, and 2016 AD, which included its objection, represented by the following:

1. Item (Withholding Tax Assessment of December for 2010 and 2011):

Plaintiff objected to Defendant’s decision for imposing a withholding tax on external payments of 2010 and 2011, stating that the amounts paid to “..... Company” in Kuwait were for the supply of steel structures by virtue of the employment contract and should not be subject to a withholding tax since the design of these steel structures was prepared by the buyer in contract with “..... Architectural Consultancy Office.” Also, there were no external payments subject to a withholding tax. In addition, Plaintiff tried to obtain a statement from Customs to prove that customs duties had been paid for the import of steel; however, it was unable to do so due to the passage of time and the lapse of the statutory period for keeping the documents. Moreover, in response to Defendant’s Rejoinder, Plaintiff states that “..... Company” is only responsible for supplying the steel structures and was not assigned to carry out any design or installation work, and that all amounts paid to the same represent only the value of the materials. Furthermore, Plaintiff submitted a letter from “..... Company” confirming that no support services under the supply contract have been provided. Plaintiff also submitted the contract of steel panel installation for “..... Institution,” as well as the contracts related to the project from the design contract “.....Office.” Accordingly, Plaintiff requests cancellation of the entire amount of the Withholding Tax Assessment for the period in question as well as any fines resulting therefrom.

Defendant argued that it had imposed a withholding tax at a rate of (5%) of December 2010 and 2011 on amounts for technical and consultancy services and subcontractor services, which were paid to foreign parties (foreign remittances), in accordance with the provisions of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH and its Implementing Regulations, stating that according to the meeting held with Plaintiff, in which it stated that a contract was signed with “.....Office” to prepare designs for steel structures and their accessories, and another a contract was signed with “..... Company” in Kuwait to supply these structures, and that it was unable to obtain customs declarations for the two years in question, claiming that the customs duties were paid for the import of these structures, whereby Defendant, having examined Plaintiff’s objection, found that the contract guarantees the delivery of the structures to Al Khobar



in the Kingdom, and the price includes shipping, roof covers, fixing screws and installation. Moreover, “..... Company” has obtained part of the contract revenue from work within the Kingdom. Accordingly, Defendant adheres to the validity and soundness of its procedure.

2. Item (Withholding Tax Assessment of December for 2016):

Plaintiff stated that it had to pay the due tax again due to inability to prove previous payments. Accordingly, Plaintiff requests cancellation of any resulting fines.

Defendant argued that it had imposed a withholding tax at a rate of (5%) of December 2010 and 2011 on amounts for technical and consultancy services and subcontractor services, which were paid to foreign parties (foreign remittances), in accordance with the provisions of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH and its Implementing Regulations, stating that according to the meeting held with Plaintiff, in which it stated that it was a branch of “..... Holding Company, TIN.,” and that the Holding Company had paid the withholding tax and its fines for the period in question, whereby Defendant, having examined Plaintiff’s objection and documents submitted, found that Plaintiff had paid for the years 2013, 2014, and 2015, with the exception of the year 2016. Accordingly, and due to Plaintiff’s failure to provide evidence of payment of the 2016 tax, and based on Article (75) of Implementing Regulations of Income Tax Law, Defendant adheres to the validity and soundness of its procedure.

The Department Found That:

As for item (Withholding Tax Assessment of December for 2010 and 2011), Plaintiff is not subject to withholding tax as the supply contract from the Kuwaiti Company only supplies materials without those contracts including any supporting or accompanying services for such supply and that Plaintiff has submitted a letter from the Kuwaiti Company proving that it only supplies materials and has also submitted contracts indicating that the party that installs the steel panels is “..... Institution.

As for item (Withholding Tax Assessment of December for 2016), Plaintiff stated in its letter dated 22/04/2021 AD that it had paid the withholding tax again for the said period due to inability to prove previous payments; yet it failed to provide any documents proving its payment of the withholding tax in the amount of (SAR 18,500). Also, having referred to Plaintiff’s letter to Defendant dated 31/12/2020 AD, which included a payment invoice in the amount of (SAR 17,150), claiming that such an invoice is for the withholding tax of December 2016 AD, the Department found that the amount paid is different from the amount of tax due of (SAR 18,500), which was confirmed by Plaintiff in its letter dated 22/04/2021 AD, wherein it stated that it was unable to prove payment on an earlier date and that it had paid the tax again; and since Plaintiff is requesting cancellation of the fines due for paying the original tax during exemption period; yet has failed to provide evidence for the same.

The Department Decided To:

Abolish Defendant’s decision regarding item (Withholding Tax Assessment of December for 2010 and 2011), and dismiss Plaintiff’s objection to item (Withholding Tax Assessment of December for 2016).

Instruments:

- Articles (5.7) and (63.1) of [Implementing Regulations of Income Tax Law issued by Minister of Finance’s Decision No. \(1535\) of 11/06/1425 AH.](#)
- [Ministerial Decision No. \(1776\) of 18/05/1435 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.



On Wednesday, 28/09/2022 AD, the Third Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (22800) of 25/04/1442 AH, held its session via video conference in accordance with the procedures for remote video litigation to consider the Case filed by Plaintiff (..... Company) against Zakat, Tax, and Customs Authority (“ZATCA”). Since the Case met the prescribed statutory requirements, it was filed with General Secretariat of Tax Committees on 22/04/2021 AD under the above number.

Facts of the Case are summarized as follows: Mr., holder of National ID No., in his as capacity as Plaintiff's (..... Real Estate Investment Company, C.R. No.) Attorney, under POA No.; has filed a statement of claim objecting to ZATCA's decision regarding the Tax Assessment of December for 2010, 2011, and 2016 AD, which included the following:

1. Item (Withholding Tax Assessment of December for 2010 and 2011):

Plaintiff objects to Defendant's decision for imposing a withholding tax on external payments of 2010 and 2011, stating that the amounts paid to “..... Company” in Kuwait were for the supply of steel structures by virtue of the employment contract and should not be subject to a withholding tax since the design of these steel structures was prepared by the buyer in contract with “..... Architectural Consultancy Office.” Also, there were no external payments subject to a withholding tax. In addition, Plaintiff tried to obtain a statement from Customs to prove that customs duties had been paid for the import of steel; however, it was unable to do so due to the passage of time and the lapse of the statutory period for keeping the documents. Moreover, in response to Defendant's Rejoinder, Plaintiff states that “..... Company” is only responsible for supplying the steel structures and was not assigned to carry out any design or installation work, and that all amounts paid to the same represent only the value of the materials. Furthermore, Plaintiff submitted a letter from “..... Company” confirming that no support services under the supply contract have been provided. Plaintiff also submitted the contract of steel panel installation for “..... Institution,” as well as the contracts related to the project from the design contract “.....Office.” Accordingly, Plaintiff requests cancellation of the entire amount of the Withholding Tax Assessment for the period in question as well as any fines resulting therefrom.

2. Item (Withholding Tax Assessment of December for 2016):

Plaintiff clarifies that it had to pay the due tax again due to inability to prove previous payments. Accordingly, Plaintiff requests cancellation of any resulting fines.

Having presented the statement of claim to Defendant, it submitted a Rejoinder that included the following:

1. Item (Withholding Tax Assessment of December for 2010 and 2011):

Defendant clarifies that it had imposed a withholding tax at a rate of (5%) of December 2010 and 2011 on amounts for technical and consultancy services and subcontractor services, which were paid to foreign parties (foreign remittances), in accordance with the provisions of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH and its Implementing Regulations, stating that according to the meeting held with Plaintiff, in which it stated that a contract was signed with “.....Office” to prepare designs for steel structures and their accessories, and another a contract was signed with “..... Company” in Kuwait to supply these structures, and that it was unable to obtain customs declarations for the two years in question, claiming that the customs duties were paid for the import of these structures, whereby Defendant, having examined Plaintiff's objection, found that the contract guarantees the delivery of the structures to Al Khobar in the Kingdom, and the price includes shipping, roof covers, fixing screws and installation. Moreover, “..... Company” has obtained part of the contract revenue from work



within the Kingdom. Accordingly, Defendant adheres to the validity and soundness of its procedure.

2. Item (Withholding Tax Assessment of December for 2016):

Defendant clarifies that it had imposed a withholding tax at a rate of (5%) of December 2010 and 2011 on amounts for technical and consultancy services and subcontractor services, which were paid to foreign parties (foreign remittances), in accordance with the provisions of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH and its Implementing Regulations, stating that according to the meeting held with Plaintiff, in which it stated that it was a branch of “..... Holding Company, TIN.,” and that the Holding Company had paid the withholding tax and its fines for the period in question, whereby Defendant, having examined Plaintiff’s objection and documents submitted, found that Plaintiff had paid for the years 2013, 2014, and 2015, with the exception of the year 2016. Accordingly, and due to Plaintiff’s failure to provide evidence of payment of the 2016 tax, and based on Article (75) of Implementing Regulations of Income Tax Law, Defendant adheres to the validity and soundness of its procedure.

On Wednesday, 28/09/2022 AD, the Department held its session remotely to consider the Case filed by Plaintiff against Defendant. Having called parties to the Case; Mr., holder of National ID No., appeared in his capacity as Plaintiff’s Attorney, under POA No.; and Mr., holder of National ID No., appeared in his capacity as Defendant’s (ZATCA) Representative, by virtue of Authorization No. dated .../.../..., issued by ZATCA’s Deputy Governor for Legal Affairs. Having asked Plaintiff’s Attorney regarding the Case, he maintained his statements contained in the statement of claim previously submitted to General Secretariat of Tax Committees. Having asked Defendant’s Representative regarding his response, he maintained the statements contained in the Reply previously submitted to General Secretariat of Tax Committees. Having asked Parties hereto whether they had further statements, they responded with denial. Accordingly, the Department decided to close pleadings for deliberation.

Reasons:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance’s Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance’s Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant’s decision regarding the Tax Assessment of December for 2010, 2011, and 2016 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case was filed by a person with capacity and within the prescribed statutory period, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff’s objection to Defendant’s decision regarding the issuance of Tax Assessment of December for 2010, 2011, and 2016 AD, which included the following:

1. Item (Withholding Tax Assessment of December for 2010 and 2011):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that the dispute lies in Defendant’s imposition of a



withholding tax at a rate of (5%) of December 2010 and 2011 on amounts for technical and consultancy services and subcontractor services, which were paid to foreign parties; and since Article (5.7) of Implementing Regulations of Income Tax Law issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, 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;" and since Plaintiff's documents have shown that it is not subject to withholding tax as the supply contract from the Kuwaiti Company only supplies materials without those contracts including any supporting or accompanying services for such supply; and since Plaintiff has submitted a letter from the Kuwaiti Company proving that it only supplies materials and has also submitted contracts indicating that the party that installs the steel panels is "..... Institution;" Therefore, the Department satisfies to abolish Defendant's decision regarding the item in question.

2. Item (Withholding Tax Assessment of December for 2016):

The Department, having taken cognizance of the subject of dispute and documents included in Case File, found that the dispute lies in Defendant's imposition of a withholding tax at a rate of (5%) of December 2010 and 2011 on amounts for technical and consultancy services and subcontractor services, which were paid to foreign parties; and since Ministerial Resolution No. (1776) of 18/05/1435 AH concerning the amendment of certain paragraphs of Articles of the Implementing Regulations of Income Tax Law issued by the Ministerial Resolution No. (1535) of 11/06/1425 AH, to be as follows: "First: I: The second and (third boxes of the following table included in Paragraph (1) of Article (63) of the Regulations shall be added to be as follows: 1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds; payments for services to the head-office or an affiliated company by 15%; and Rent; technical or consulting services; air tickets, air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums by (5%);" and since Plaintiff stated in its letter dated 22/04/2021 AD that it had paid the withholding tax again for the said period due to inability to prove previous payments; yet it failed to provide any documents proving its payment of the withholding tax in the amount of (SAR 18,500); and since the Department, having referred to Plaintiff's letter to Defendant dated 31/12/2020 AD, which included a payment invoice in the amount of (SAR 17,150), claiming that such an invoice is for the withholding tax of December 2016 AD, found that the amount paid is different from the amount of tax due of (SAR 18,500), which was confirmed by Plaintiff in its letter dated 22/04/2021 AD, wherein it stated that it was unable to prove payment on an earlier date and that it had paid the tax again; and since Plaintiff is requesting cancellation of the fines due for paying the original tax during exemption period, yet has failed to provide evidence for the same; Therefore, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's decision regarding the item in question.

In light of the above grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Accept Plaintiff's (..... Real Estate Investment Company, C.R. No.) objection to Defendant's (ZATCA) decision in form.

Second: On merits:

1. Abolish Defendant's decision regarding item (Withholding Tax Assessment of December for 2010 and 2011).



2. Dismiss Plaintiff's objection to item (Withholding Tax Assessment of December for 2016).

This Decision was issued in the presence of Both Parties, and the date of depositing the Decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the Decision. Parties hereto may appeal against the decision under Law within thirty (30) days from the day following the date specified for its receipt, whereafter the decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his Family and Companions.

(The Decision is deemed final and imperative by the lapse of the objection period under Article (33.2) of Zakat, Tax, and Customs Committee Procedures).



Withholding Tax

Determination Committee

Third Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
6641)

Issued in Case No. (IW-
56821-2021)

Keywords:

Tax Assessment - Estimated Profit Rate - Calculating Net Profit Rate - Withholding Tax - Fines - Bank Account.

Abstract

Plaintiff instituted this case moving to cancel ZATCA's decision on tax assessment and withholding tax of 2016 to 2019. Plaintiff based its objection on three items: Item First: Estimated profit rate (40%) for the years 2016 to 2019: Plaintiff stated that the estimated net profit rate of (40%) was an arbitrary rate and that ZATCA provided no reasons for calculating a different net profit rate. Plaintiff stated that ZATCA applied a net profit rate of (25%) for 2010 to 2015, and applied a profit of (40%) for 2016 to 2019. In addition, Plaintiff states that 40% profit rate does not reflect actual net profits, because IT consulting sector achieves a very low net profit of less than (15%). In its objection, Plaintiff included a table of revenues, expenses and net profit for the years 2010 to 2020. Item Second: Withholding tax for December 2016 to 2019: Plaintiff stated that no withholding tax should be applied to profits of its permanent establishment in KSA, because these profits were not transferred, and if they were transferred, they would have been transferred to the same legal entity, and that definition of dividends does not include profits transferred to the head office or headquarters. Furthermore, Plaintiff indicated that, assuming that the withholding tax applies to profits of the permanent establishment, withholding tax should be assessed on the basis of actual post-tax profits of the Company rather than the Company's estimated profits. Assuming that this is applied, it should be assessed at a net profit rate of (20%). Item (3): Fines for 2016-2019: Plaintiff indicated that ZATCA increased the net profit rate. Since the Company does not have a bank account in the Kingdom, changing the significant profit ratio considered to be impossible for the Company to pay by December 31, 2020, Plaintiff argued that it benefits from the exemption initiative, because the plan was extended to June 30, 2021 and all additional taxes were paid before March 31, and all conditions were met. Therefore, all penalties should be exempted in all circumstances - ZATCA responded with regard to the estimated profit (40%) item from 2016 to 2019: that it informed Taxpayer via email on 30/12/2020 AD that the estimated profit rate it would calculate is 40% for all years, and that ZATCA presented an offer to Taxpayer to be held accountable for an estimated profit of 25% from 2010 to 2015, and 40% from 2016 to 2019, and Taxpayer accepted this treatment according to the email. ZATCA attached a copy of the email in its reply, and also attached its method of calculating the tax, resulting estimated profits and income tax due. With regard to the withholding tax item for the month of December 2016 to 2019, ZATCA stated that it calculated the withholding tax at 5% on the remaining net profits after deducting the income tax due on the grounds that the Company is non-resident and received these



profits. In its reply, ZATCA attached a table showing the amounts paid from dividends to a non-resident company at 5% tax rate and due tax. Regarding fines item for the years 2016-2019: ZATCA stated that it informed Taxpayer that it had adjusted the estimated profit rate for the years 2016 to 2019 to 40% and that Taxpayer agreed to this procedure, but it did not pay during the exemption period, and therefore those fines are considered due as Taxpayer did not pay amounts due during the initiative period. Therefore, the objection was dismissed. The Department, with regard to the estimated profit rate (40%) item for the years 2016 to 2019, established: that ZATCA conducted estimated assessment to Plaintiff with a profit rate of 40% of his total revenues for the years 2016 to 2019, based on Plaintiff's approval of that rate, and also based on its procedure. It was found that ZATCA calculated a profit percentage of 25% from the total revenues from 2010 to 2015, and at the same time calculated a profit percentage of 40% from the total revenues from 2016 to 2019, which are the years subject of dispute. Since Plaintiff did not object to ZATCA's action with regard to years from 2010 to 2015, and this case concerns only years from 2016 to 2019. It turned out that Plaintiff's claim is specific to treating years from 2016 to 2019 in the same way as years from 2010 to 2015, by making the total revenue profit 25%. Having perused ZATCA's reply and correspondence between parties to the dispute, it is evident that ZATCA did not explain the reason for its procedure regarding revenues profit of 40% for the years 2016 to 2019 by a 20% profit for revenues of technical and consulting services' activities. Any increase in profiting revenues by a percentage higher than percentages specified in the text of the aforementioned paragraph would require an explanation by ZATCA for this increase. With regard to the withholding tax for the month of December 2016 to 2019: It was found that imposing withholding tax on amounts paid to non-resident entities is based on the actual payment or the like, such as settlements, settlement or any other means. Since the dispute lies in ZATCA's procedure of imposing withholding tax on net profit after deducting income tax for disputed years, as this is not considered a payment or settlement in accounts between headquarters and the branch. In the absence of evidence from ZATCA of payment or settlement process or the like, and since it stated in its reply through the table that the nature of payment is (dividends - hypothetical). Regarding fines item for the years 2016-2019: Withholding tax was found to be imposed on transferred profits as income generated within the Kingdom. Therefore, the Department ruled to Amend of the Defendant's decision regarding estimated profit percentage item and cancel the Defendant's decision regarding the withholding tax and fines item.

Instruments:

- **Articles (77.A and B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)**
- Articles (16.4) and (68.1) of [the Implementing Regulations of Income Tax Law, issued by Minister of Finance Decision No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 11/10/2022, Third Department for the Determination of Income Tax Violations and Disputes in Riyadh pursuant to Article 67 of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended and constituted by Royal Order No. (22800) of 25/04/1442 AH, held its session remotely via audio and video conferencing to consider the case mentioned above. Since the Case met the prescribed legal requirements. Therefore, the Case was lodged with the General Secretariat of Zakat, Tax and Customs Committees on 28/ 06/ 2021.



The facts of this case are summarized in the fact that, National ID No. ..., in his capacity as the legal representative of the Plaintiff/Company, CR. No. (...), under its articles of association, filed an objection to tax assessment and withholding tax for years from 2016 to 2019 issued by ZATCA. The Plaintiff's objection is limited to three items: Item First: Estimated profit rate (40%) for the years 2016 to 2019: Plaintiff stated that the estimated net profit rate of (40%) was an arbitrary rate and that ZATCA provided no reasons for calculating a different net profit rate. Plaintiff indicated that ZATCA applied a net profit rate of (25%) for 2010 to 2015, and applied a profit of (40%) for 2016 to 2019. In addition, Plaintiff states that 40% profit rate does not reflect actual net profits, because IT consulting sector achieves a very low net profit of less than (15%). In its objection, Plaintiff included a table of revenues, expenses and net profit for the years 2010 to 2020. Item Second: Withholding tax for December 2016 to 2019: Plaintiff stated that no withholding tax should be applied to profits of its permanent establishment in KSA, because these profits were not transferred, and if they were transferred, they would have been transferred to the same legal entity. According to Article 63 of the Income Tax Law, definition of dividends does not include profits transferred to the head office or headquarters. Furthermore, Plaintiff indicated that, assuming that the withholding tax applies to profits of the permanent establishment, withholding tax should be assessed on the basis of actual post-tax profits of the Company rather than the Company's estimated profits. Assuming that this is applied, it should be assessed at a net profit rate of (20%). Third item: Fines for the years 2016 to 2019. Plaintiff stated that ZATCA increased the net profit rate, and since the Company does not have a bank account in the Kingdom, changing the significant profit ratio would make it impossible for the Company to pay by December 31, 2020. Plaintiff argued that it benefits from the exemption initiative, because the plan was extended to June 30, 2021 and all additional taxes were paid before March 31, and all conditions were met. Therefore, all penalties should be exempted in all circumstances.

Having presented statement of claim to the Defendant, it responded with a reply that, with regard to the estimated profit rate of (40%) item for years from 2016 to 2019, it stated that it informed Taxpayer via email on 30/12/2020 AD that the estimated profit rate that ZATCA would calculate is 40% for all years, and that ZATCA presented an offer to Taxpayer to be held accountable for an estimated profit of 25% from 2010 to 2015, and 40% from 2016 to 2019, and Taxpayer accepted this treatment according to the email. ZATCA attached a copy of the email in its reply, and also attached its method of calculating the tax, resulting estimated profits and income tax due. With regard to the withholding tax item for the month of December 2016 to 2019: ZATCA stated that it calculated the withholding tax at 5% on the remaining net profits after deducting the income tax due on the grounds that the Company is non-resident and received these profits. In its reply, ZATCA attached a table showing the amounts paid from dividends to a non-resident company at 5% tax rate and due tax. With regard to fines item for the years 2016 to 2019, ZATCA stated that it informed Taxpayer that it had adjusted the estimated profit rate for the years 2016 to 2019 to 40% and that Taxpayer agreed to this procedure, but it did not pay during the exemption period, and therefore those fines are considered due as Taxpayer did not pay amounts due during the initiative period. Therefore, the objection was dismissed.

On Tuesday, 11/10/2022 AD, the Department held its session remotely to consider the case. Having called parties to the Case; Mr., holder of National ID No., appeared in his capacity as the attorney of Plaintiff, by virtue of the foreign power of attorney attached to the Case file; and Mr., holder of National ID No., appeared in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No., issued by Deputy Governor for Legal Affairs, dated. /10/1443 AH. Having asked



Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim previously submitted to General Secretariat of Tax Committees. Having asked Defendant Representative regarding its reply, it replied that it maintained Defendant statements presented earlier to General Secretariat of Zakat, Tax and Customs Committees. Having asked parties hereto whether they had further statements, they responded with denial. Therefore, the Department decided to close pleadings and deliberation.

Reasons:

Having perused Zakat Law promulgated by Royal Order No. (17/28/577) of 14/03/1376 AH, as amended, and Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and 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,

In form, since the Plaintiff instituted this case moving to cancel ZATCA's decision regarding tax assessment and withholding tax for years from 2016 to 2019; and since this dispute is considered one of the tax 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 given that the Case was filed with valid grounds, by an eligible party, and within the legally prescribed period, the Department shall therefore accept the case in form.

On Merits, having taken cognizance of documents included in Case file, requests, defenses and pleas raised by Party thereto, the Department found that the dispute lies in the following:

First: With regard to the estimated profit rate of (40%) item for years 2016 to 2019, the dispute lies in Defendant's action of rejecting the statute of limitations for 2015, based on Article 16.4 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, concerning the expenses that may be deducted to determine the taxable income as: The estimated net profit is determined according to available evidence, facts or indicators relevant to the activity, nature and circumstances of Taxpayer, and in any event not less than rates derived from the Taxpayer's income, including: 3. Technical and consulting services with a profit percentage of 20%.

Based on the foregoing, and having perused pleas of parties to the dispute, it was found that ZATCA conducted an estimated assessment on the Plaintiff with a profit percentage of (40%) of his total revenues for the years 2016 to 2019 based on the Plaintiff's approval of that percentage. In addition, ZATCA based its procedure on Article 16.4 of the Implementing Regulations of the Income Tax Law. Having perused the Case file and ZATCA's reply, it was found that ZATCA calculated a profit rate of (25%) from the total revenue for the years from 2010 to 2015, and at the same time calculated a profit rate of (40%) from the total revenue for the years 2016 to 2019, which is the years subject of dispute, as the plaintiff did not object to ZATCA's action with regard to years from 2010 to 2015, and that this Case concerns only years from 2016 to 2019. It turned out that Plaintiff's claim is specific to treating years from 2016 to 2019 in the same way as years from 2010 to 2015, by making the total revenue profit 25%. Having perused ZATCA's reply and correspondence between parties to the dispute, it is evident that ZATCA did not explain the reason for its procedure regarding revenues profit of 40% for the years 2016 to 2019, in the light of Article 16.4 regarding profiting revenues of technical and consulting services' activities by 20%. Any increase in profiting revenues by a percentage higher than percentages specified in the text of the aforementioned paragraph would require an



explanation by ZATCA for this increase. Therefore, the Department concluded to amend Defendant's procedure regarding profiting revenues by (25%) similar to years prior to years in dispute.

Second: With regard to the withholding tax item for the month of December 2016 to 2019: The dispute lies in Defendant's procedure of calculating withholding tax at 5% on the remaining net profits after deducting the income tax due on the ground that the Company is non-resident and has received such profits, based on Article 63.1 of the Implementing Regulations of the Income Tax Law: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: ... Dividends 5%".

Based on the foregoing, since it is clear from the above legal texts that imposing withholding tax on amounts paid to non-resident entities is based on the actual payment or the like, such as settlements, settlement or any other means. Since the dispute lies in ZATCA's procedure of imposing withholding tax on net profit after deducting income tax for disputed years, as this is not considered a payment or settlement in accounts between headquarters and the branch. In the absence of evidence from ZATCA of payment or settlement process or the like, and since it stated in its reply through the table that the nature of payment is (dividends - hypothetical). Therefore, the Department concluded to cancel Defendant's procedure and accept Plaintiff's objection.

Third: With regard to fines item for the years 2016 to 2019: The dispute lies in Defendant's action of imposing a late payment fine for the years 2016 to 2019, based on Article 77.A of the Income Tax Law issued by Royal Decree No. (M/1) of 15/01/1425 AH, which stipulates: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment" and in accordance with Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: Delay in payment of due tax as per the Department's assessment".

Accordingly, with regard to the above item, the Plaintiff claims that no fines shall be imposed on due amounts. Plaintiff stated that, based on ZATCA's initiative of exemption from fines that was extended by ZATCA until March 31, 2021, no fines should be imposed, as the Plaintiff stated that it paid the full amount of tax due within the framework of initiative. Having perused ZATCA's reply, it was found that it had stated that the Plaintiff had not paid during the initiative, but since the plaintiff submitted documents supporting payment of obligations during fines exemption period. Therefore, the Department concluded to accept the Plaintiff's objection and cancel the Defendant's action.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Accept Plaintiff's/..... Company, (C.R No.) objection to Defendant's (ZATCA) decision in form.

Second: On merits:

- 1- Amend Defendant's decision regarding the item (Estimated Profit Rate).
- 2- Cancel Defendant's decision regarding the item (Withholding Tax).
- 3- Cancel Defendant's decision regarding the item (Fines).

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is



considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

Third Department for Determination of
Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-
6759)

Issued in Case No. (W-
42028-2021)

Keywords:

Withholding Tax - Seconded Workers - Workers' Salaries - Workers' Insurance - dividends - Late Fines - Income Tax.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax for December 2018 - Plaintiff based its objection on the fact that with regard to the first item: Withholding Tax on Services Provided by the Head Office for Seconded Labor: Plaintiff objects to Defendant's action of imposing a 15% withholding tax on workers' salaries, estimated at SAR (2,477,943), on the grounds that they are services provided by the head office of Company branch and that the head office is the party that pays their salaries through amounts transferred thereto from branch of Company. The aforementioned is incorrect and contrary to the reality, as workers are directly linked and under agreements and contracts with Company, and not as ZATCA claims that the head office is the one that contracted therewith. Accordingly, ZATCA's action of imposing a 15% withholding tax on salaries as services between related parties and not (5%) as technical services is deemed to be contrary to provision of Article 68 of the Tax Law. Item Second: Withholding tax on dividends, as the Plaintiff objects to Defendant's action of calculating a withholding tax of SAR 271,828 on profits amounting to SAR 5,436,552 as dividends to the head office without providing proof. There are no dividends of the Company for the period ending on 31/03/2019. If ZATCA had examined the financial statements, it would have found that the retained earnings for the period ending on 31/03/2019 were SAR 5,436,552, the same amount that ZATCA claims was distributed as profits. Item (3): Late fines, since the Plaintiff objects to Defendant's action of imposing late fines and requests their cancellation. ZATCA replied that, with respect to the item of Withholding Tax on Services Provided by the Head Office for Seconded Labor: It stated that it had subjected payments to employees of the head office who come to work inside the Kingdom to provide consulting and technical services and to whom the principle of residence applies, to a 15% withholding tax. Having studied the Company's objection, it stated that it had contracted with a group of employees directly, and had agreed therewith on salary and transfer of their salaries to their own accounts. To complete the study, a remote hearing was held with the Company's representatives, and their objection to this item was discussed. It was found that contracts between the head office and employees, and bank transfers to employees were made by the head office. Having reviewed the financial statements, ZATCA found that the head office receives revenues on behalf of the branch and that expenses paid to the branch are settled. Advance payments received on behalf of the branch amounted to SAR 29,028,050. With regard to the withholding tax on dividends, ZATCA stated that it had subjected the dividends item amounting to SAR



552,436.5 to a withholding tax of 5% based on Note No. 8 in the financial statements, as it was found that the head office receives revenue on behalf of the branch and expenses paid to the branch are settled. Seeking to complete discussion and study, a remote hearing was held with the Company's representatives and they were asked to provide a copy of the general ledger and documents supporting the validity of their objection. Having studied the external audit report regarding financial statements, it turned out that in his opinion, Note No. 8 of financial statements should be excluded, which states that on 31/03/2019, the Company's branch has an amount of SAR 29,028,050 as a balance due to the head office. Regarding item (Late payment fines): The Defendant did not respond in its reply. The Department found that first: With regard to the item of withholding tax on services provided by the head office for seconded labor: having perused the Case file, it becomes clear that the head office collects revenues on behalf of the branch, and expenses paid are settled. Since the Plaintiff did not submit employment contracts to verify that controls stated in the above circular applied to its situation, and the Plaintiff did not provide documents supporting its point of view that those amounts represented salaries and wages. Second: Regarding the withholding tax item on dividends and having taken cognizance of ZATCA's point of view, it is clear that it subjected disputed amounts to withholding tax because the head office collected revenues on behalf of the branch, that there is a balance due to the difference, and that the Plaintiff has not submitted documents proving otherwise. Third: Regarding Late Payment Fine item: Late payment fine is calculated from the end of deadline for submitting the declaration to the date of paying due tax arising under the application of the provisions of the law and amendments made by the Defendant, and that the difference between parties is documentary and did not arise from a significant difference in the interpretation of legal texts. Therefore, the Department ruled to: Dismiss Plaintiff's objection to the items of withholding tax on services provided by the head office for seconded labor, withholding tax on dividends and late payment fine.

Instruments:

- Articles (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (75.3), (63.1) and (68.1) of [the Implementing Regulations of Income Tax Law, issued by Minister of Finance Decision No. \(1535\) dated 11/06/1425 AH.](#)
- Circular No. (8922/9/1438/2) dated 03/01/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 27/09/2022, Third Department for the Determination of Income Tax Violations and Disputes in Riyadh pursuant to Article 67 of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, held its session remotely via audio and video conferencing to consider the case mentioned above. Since the Case met the prescribed legal requirements. Therefore, the Case was lodged with the General Secretariat of Zakat, Tax and Customs Committees on 17/ 03/ 2021.

The facts of this case are summed up in that Mr....., Passport No. (...), in his capacity as manager of the Plaintiff Company/ ... C.R. No. (...), under memorandum of association, filed its objection to withholding tax assessment for December 2018, which was issued by ZATCA. The Plaintiff's objection is limited to three items, the first item: Withholding Tax on Services Provided by the Head Office for Seconded Labor: Plaintiff objects to Defendant's action of imposing a 15% withholding tax on workers' salaries, estimated at SAR (2,477,943), on the grounds that they are services provided by the head office of ... Company branch and that the head office is the party that pays their salaries through



amounts transferred thereto from branch of Company. The aforementioned is incorrect and contrary to the reality, as workers are directly linked and under agreements and contracts with Company, and not as ZATCA claims that the head office is the one that contracted therewith. There is no contractual relationship between them and the head office, and there is no direct agreement between Taxpayer and the head office on providing labor so that we can say that there are services represented in providing labor provided by the head office to Taxpayer. Furthermore, salaries of the Company's workers are deposited directly by the Company in their personal accounts, not as ZATCA claims that they are transferred to the head office, which in turn pays expenses on behalf of the branch (workers payroll deposits into workers' account directly are attached). Accordingly, since Company is the one that contracted with its workers, and since workers' salaries are deposited directly by Taxpayer in their own bank accounts and not by the head office, ZATCA's imposition of a 15% withholding tax on salaries as services between related parties and not (5%) as technical services are deemed to be contrary to Article 68 of the Tax Law. Item Second: Withholding Tax on Dividends: Plaintiff objects to Defendant's action of calculating a withholding tax of SAR 271,828 on profits amounting to SAR 5,436,552 as dividends to the head office without providing proof. In fact, there are no dividends of the Company for the period ending on 31/03/2019. If ZATCA had examined the financial statements, it would have found that the retained earnings for the period ending on 31/03/2019 were SAR 5,436,552, the same amount that ZATCA claims was distributed as profits. Item (3): Late Payment Fines: Plaintiff objects to Defendant's action of imposing late payment fines and seeks their cancellation.

Having presented the statement of claim to the Defendant, it responded with a reply, stating that regarding the withholding tax on services provided by the head office for seconded labor, it stated that it had subjected payments to employees of the head office who come to work inside the Kingdom to provide consulting and technical services and to whom the principle of residency applies, to a 15% withholding tax. In addition, having studied the Company's objection, it was found that it had contracted with a group of employees directly and agreed with them on salary and transferred their salaries to their own accounts. To complete the study, a remote hearing was held with the Company's representatives and they were discussed regarding their objection to this item. They reported that employees were hired based on their experience and the Company's need to provide consultancy and technical services to the Company. Their salaries are transferred to their own bank accounts, and they are not granted residency because they come on a three-month visit system and are renewed. They were asked to provide a translated sample of contracts concluded therewith, which turned out to be an offer to the employee from the Company based abroad (... Company)- Contracts concluded between the head office and employees, and bank transfers to the employees were made by the head office. Having reviewed the financial statements, ZATCA found that the head office receives revenues on behalf of the branch and that expenses paid to the branch are settled. Advance payments received on behalf of the branch amounted to SAR 29,028,050. With regard to the withholding tax on dividends, ZATCA stated that it had subjected the dividends item amounting to SAR 552,436.5 to a withholding tax of 5% based on Note No. 8 in the financial statements, as it was found that the head office receives revenue on behalf of the branch and expenses paid to the branch are settled. Seeking to complete discussion and study, a remote hearing was held with the Company's representatives, and having asked them about their objection to this item, they reported that the Company did not have dividends for this year subject of dispute. In addition, there was no decision issued by the head office to distribute profits, and they were asked to provide a copy of the general ledger and documents supporting the validity of their objection. Having studied the external audit report regarding financial statements, it turned out that in his opinion, Note



No. 8 of financial statements should be excluded, which states that on 31/03/2019, the Company's branch has an amount of SAR 29,028,050 as a balance due to the head office. With regard to late payment fine item, Defendant did not respond thereto in its reply.

On Tuesday, 27/09/2022 AD, the Department held its session remotely to consider the case. Having called parties to the Case, no one representing the Plaintiff appeared, despite being legally notified. Mr., holder of National ID No. (...), appeared in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No., issued by Deputy Governor for Legal Affairs, dated .../ .../ Having asked Defendant's representative about his answer to the claim, he replied that he insists on the answer lodged with the General Secretariat of Tax Dispute and Violation Committees. Having asked Defendant's representative if he would like to add any statements, he replied "no". Therefore, the Department decided to close pleadings and deliberation.

Reasons:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax assessment for December 20189; and since this dispute is considered one of zakat disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH and given that the Case was filed with valid grounds, by an eligible party, and within the legally prescribed period, the Department shall therefore accept the case in form.

On Merits: The Department, having taken cognizance of documents included in Case File, requests, defenses, and pleas raised by parties thereto, found that the dispute lies in Plaintiff's objection to Defendant's decision regarding the issuance of Tax Assessment of December for 2010, 2011, and 2016 AD, which included the following: With regard to the item of withholding tax on services provided by the head office for seconded labor: The dispute lies in Defendant's procedure of imposing a withholding tax of 15% on workers' salaries, estimated at SAR (2,477,943). Since Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended by Ministerial Decision No. (1/1748) dated 20/02/1427 AH provides that: "(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... (15%)". In addition, Article 57.3 thereof states: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on Circular No. (8922/9/1438) dated 03/01/1438 AH, paragraph (2) thereof stipulates that salaries and wages are not subject to withholding tax if controls governing the contract of employment are fulfilled, the paragraph states: "2. Or in return for a work wage resulting from an employment relationship for specific employment



contracts (whether the contract is for one year or less). This income is not subject to tax in the Kingdom as salaries and wages. The contract is classified as an employment contract if it meets the following controls: - Stating Employer's powers to monitor the method and performance of work. - Determining the working hours and monitoring their times and schedules by Employer. - Determine the place where the service is performed by the employer. - Identify work tools and other relevant facilities. - Receive work-related instructions from the employer. - Disburse their fees and wages on fixed dates". Based on the foregoing, and in accordance with facts of the Case and documents contained in the Case file, the dispute lies in subjecting salaries and wages to employees seconded from the head office, as it claims that those amounts represent salaries and wages of employees at the branch and not services provided by the head office to the branch. Having perused the Case file, it becomes clear that the head office collects revenues on behalf of the branch, and expenses paid are settled. Since the Plaintiff did not submit employment contracts to verify that controls stated in the above circular applied to its situation. Accordingly, due to failure of the Plaintiff to provide documents supporting its point of view that those amounts represented salaries and wages, the Department concluded to dismiss Plaintiff's objection.

Second: With regard to the item (Withholding Tax on Dividends), the dispute lies in Defendant's procedure of calculating a withholding tax of SAR 271,828 on profits amounting to SAR 5,436,552 based on Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH, which provides as follows: "1. A non-resident is subject to tax that any amount realized from a source within the Kingdom and the tax is withheld from the total amount at the following rates: - Payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... At %15". Additionally, Article (57.3) of the Implementing Regulations of Income Tax Law states that: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". On the basis of the foregoing, and since it is clear from the above legal texts that imposition of withholding tax is linked to existence of actual payment and its equivalent, such as settlement between accounts and set-off. Having taken cognizance of ZATCA's point of view, it is clear that it subjected disputed amounts to withholding tax because the head office collected revenues on behalf of the branch, that there is a balance due to the difference, and that the Plaintiff has not submitted documents proving otherwise. Therefore, the Department concluded to dismiss the Plaintiff's objection.

Third: Regarding Late Payment Fine item: The dispute lies in Defendant's action of imposing a late payment fines, and based on Article 77.A of the Income Tax Law issued by Royal Decree No. (M/1) of 15/01/1425 AH, which stipulates: "In addition to the fines stipulated in Article 76) of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on Article 68.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which provides that: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: Delay in payment of due tax as per the Department's assessment". Based on the above, and having perused case file and defenses and documents contained therein,



since the late payment fine is calculated as of end of the deadline for submitting the declaration to the date of payment of due tax, in accordance with application of Law provisions and adjustments made by the Defendant. Since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of legal texts. Therefore, the Department concluded to dismiss Plaintiff's objection.

For those grounds and after deliberation, the Department unanimously decided to:

Decision:

- Accept objection in form filed by Plaintiff/ branch of ... Company, C.R. No. (...), to Defendant (ZATCA) decision in form and dismiss the objection on merits.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Income Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-2360)

Issued in Case No. (W-60523-2021)

Keywords:

Tax Assessment - Letter of Amendment Does not Conform to Legal Procedure for Issuing Assessment - Amounts Paid for Technical and Consulting Services to Related Third Parties - Late Payment Fine - Documentary Dispute that Did not Arise from Significant Difference in Interpretation of Legal Texts.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on tax assessment of 2018. Plaintiff's objection is represented in three items. First: Letter of amendment does not conform to legal procedure for issuing assessment: Since assessment does not comply with the requirements of the Implementing Regulations of the Income Tax Law. However, Defendant stated in the amendment letter issued that assessment of technical and consulting services provided by related parties during the year was not deducted in the amount of SAR 97,130,922. Item Second: Payments paid for technical and consulting services to related third parties for September 2018: The Plaintiff objects to Defendant's procedure of subjecting amounts due for technical services to the relevant non-resident entities, while the Defendant argued that it subjected an amount totaling SAR 97,130,922 to tax, in exchange for technical and consulting services during 2018 for which no withholding tax was not paid. Item (3): Late Payment Fine: The Defendant argued that it imposed a late payment fine on unpaid tax differences on the legal date. The Department established that, with regard to the first item, and since the Plaintiff is required to state reasons for amendment, and since the Defendant stated the reason for amendment in the amendment letter. Item Second: It was found that Plaintiff submitted documents proving that there was an error in submitting the tax return. Item (3): It turned out that the dispute between the parties was a documentary dispute, and did not arise from significant difference in the interpretation of legal texts. Therefore, the Department ruled to Dismiss the Plaintiff's objection with respect to the item (Amendment Letter Does not Comply with Legal Procedures for Issuing the Assessment). Cancel Defendant's decision regarding all other items - the decision is final and enforceable.

Instruments:

- [Articles \(77/A\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- [Articles \(59.7\) and \(63.1\) of the Implementing Regulations of Income Tax Law, promulgated by Ministerial Decision No. \(1535\) dated 11/06/1442 AH.](#)

Facts:





Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 30/10/2022 AD, First Department for the Determination of Income Tax Violations and Disputes in Dammam, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Decree No. (13957) dated 26/02/1444 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 15/07/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), ID No. (...), in his capacity as Attorney of Plaintiff/ Limited, C.R. No. (...), submitted its objection to tax assessment of 2018, issued by ZATCA. The objection is focused on three items: Item First: Letter of amendment does not conform to legal procedure for issuing assessment: Plaintiff objects to Defendant's action of rejecting the Plaintiff's objection, stating that the assessment does not comply with requirements of Article 59.7 of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. 1535 dated 11/06/1425 AH. ZATCA did not notify the Company of reasons for amendments contained in the assessment, nor did it clarify the legal reasons for subjecting services fees due to Company to tax - Indian nationality, in the amount of SAR 40,859,700 and the amount due to Company - Indian nationality, in the amount of SAR 56,271,222. Item Second: Payments paid for technical and consulting services to related third parties for September 2018: Plaintiff objects to Defendant's action of subjecting the amounts due for technical services to the relevant non-resident entities to tax, stating that the Defendant violated provisions of Article 68 of the Tax Law, and that the technical support services were provided by Company UAE, as they were disclosed in the tax return in the name of ... Company as a result of an unintended error. The Company disclosed these facts to ZATCA while responding to a letter requesting additional information by email on June 10, 2021, in which it explained that services were provided by ... Company and ask for its correction. At the request of ZATCA's Inspection Team under the teleconference held on June 10, 2021, the Company submitted the following data: a) Confirmation letter from ... - UAE, dated April 25, 2021, i.e., at a date later than the date of issuing withholding tax assessment subject to this grievance. According to the aforementioned confirmation letter, service bills totaling SAR 97,130,922 have not been settled and are still payable by the Company. Therefore, the amount is still due to date. Therefore, it should not be subject to withholding tax. Item (3): Late Payment Fine: The Plaintiff objects to Defendant's procedure of imposing a late payment fine on the contested items.

Having presented the statement of claim to Defendant, it responded with a memorandum that included, with regard to the item of amounts paid for technical and consulting services to related third parties: It stated that it had subjected a total of SAR 97,130,922 to tax and paid to each of: Company An associated company with an amount of SAR 40,859,700, and Company (India), an associated company with an amount of SAR 56,271,222. In exchange for technical and consulting services during 2018, for which the withholding tax was not paid. Having met with Plaintiff's representatives on 10/06/2021, having asked them about reasons for objection, they stated that the (Plaintiff) Company did not object to ZATCA's action of subjecting the above amount to a 15% tax. However, the Company's claim is limited to the fact that these amounts were not paid to related third parties but are still due. Subsequently, ZATCA requested the Company to provide the following data: A certificate from the two related parties to whom these amounts are due that the amounts are still due on the Company. Submit documents and invoices in a sequential manner according to their due date for each party separately. An analytical



statement of the year-end balances of the related parties subject of dispute, explaining the amounts that were not paid on time and amounts that were paid. The Plaintiff requested to be given sufficient time, and ZATCA responded thereto. It was agreed that the required documents would be submitted on 14/06/2021. The Company did not commit to submitting any of the required documents, and therefore the objection was dismissed. Regarding item (Late payment fines): It stated that it imposed the fine for failing to pay tax differences on the legal deadline.

On Sunday, 10/02/2022, the Department held its session remotely to consider the Case. ..., holder of National ID No. (...), appeared in her capacity as the Plaintiff's attorney under POA attached to the Case file, and (...), holder of National ID No. (...), appeared in his capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, On .../10/1443 AH. Having asked the Plaintiff's attorney about her client's case, she stated that it objected to ZATCA's decision regarding imposing the withholding tax for September 2018 and referred to what was attached to the Case file. In addition, it added that it submitted an appended memorandum and a set of documents that were attached to the Case file. Having presented the same to Defendant's representative, it stated that it requested an extension to submit a response to what had been submitted. The Department responded to his request, and therefore decided to open the electronic pleadings for 21 days. Accordingly, hearing of this case was postponed to Sunday 30/10/2022 AD.

On Sunday, 30/10/2022, the Department held its session remotely to consider the Case. ..., holder of National ID No. (...), appeared in her capacity as the Plaintiff's attorney under POA attached to the Case file, and (...), holder of National ID No. (...), appeared in his capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, dated .../10/1443 AH. Having asked the Plaintiff's attorney about her claim, she replied that her claims are the same as stated in the statement of claims previously filed with the General Secretariat of the Tax Committees. Having presented the same to Defendant's representative, he stated that he was requesting an extension to submit a reply to the Plaintiff's appended memorandum in the Case file on that day. Having perused the reply, the Department found that the reply has no reason to open exchange of notes between parties. Therefore, the Department decided not to respond to the request of Defendant's representative. Having asked both parties if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff aims with its case to annul decision of ZATCA regarding the tax assessment of 2018, and given that this dispute falls within the category of tax disputes, it lies within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH. Furthermore, the case was filed by an authorized party and within the legally prescribed period, which necessitates acceptance of the case in form by the Department.



On merits, having perused documents and papers contained in the Case file, as well as requests, pleas and defenses presented by the parties, the Department found that the dispute centers on Defendant's issuance of tax assessment of 2018, specifically concerning the objection related to three items:

Item First: Letter of amendment does not conform to legal procedure for issuing assessment:

Plaintiff objects to Defendant's action of rejecting the Plaintiff's objection, stating that the assessment does not comply with requirements of Article 59.7 of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. 1535 dated 11/06/1425 AH. However, Defendant stated in the amendment letter that the assessment of technical and consulting services provided by the relevant parties during the year was not deducted in the amount of SAR 97,130,922. Article 59.7 of the Implementing Regulations of Income Tax Law provides that: "If the Authority does not approve the Taxpayer's return, it shall notify him of amendments it makes to its tax return, grounds for amendment, amount of tax and resulting fines, its right to object, and the prescribed legal period for objection. The notification shall be by registered mail or by any other means evidencing receipt thereof". Based on the foregoing, the Plaintiff requests that reasons for the amendment be stated, and since the Defendant stated reason for amendment in the amendment letter, the Department concluded to dismiss the Plaintiff's objection.

Item Second: Payments paid for technical and consulting services to related third parties for September 2018:

The Plaintiff objects to Defendant's procedure of subjecting amounts due for technical services to the relevant non-resident entities to tax, while the Defendant argued that it subjected an amount totaling SAR 97,130,922 to tax, paid to each of: Company An associated company with an amount of SAR 40,859,700, and Company (India), an associated company with an amount of SAR 56,271,222. In exchange for technical and advisory services during 2018 for which no withholding tax has been paid. Since Article 63.1 of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. 1535 of 11/06/1425 AH stipulates that: "1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: - Payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company... at a rate of 15%". Based on the foregoing, objection is limited to imposition of a withholding tax on amounts for related parties at a rate of 15% and presence of a material error that has not been remedied. The withholding tax due was in the amount of SAR 97,130,922, and is still not paid by the Company. Therefore, the amount is still due to date, so it should not be subject to withholding tax. Since the Plaintiff submitted documents proving that there was an error in submitting the tax return, the Department therefore concluded to cancel Defendant's decision.

Item (3): Late Payment Fine:

Plaintiff objects to Defendant's procedure of imposing late payment fine, while the Defendant argued that it imposed late payment fine on unpaid tax differences on the legal date. Article 77.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425AH 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". Based on the foregoing, since the delay fine is calculated from the deadline for submitting the return to the date of paying tax due arising under the application of provisions of Law, and since the dispute between the parties is a documentary dispute and did not arise from a significant difference in the interpretation of legal texts. Therefore,



the Department concluded to amend the Defendant's decision, by canceling the delay fine for items regarding which Defendant's decision was cancelled.
For these grounds and after deliberation, the Department unanimously decided as follows:

Decision

- 1- Dismiss the Plaintiff's objection with respect to the item (Amendment Letter Does Not Comply with Legal Procedures for Issuing the Assessment).
- 2- Cancel the Defendant's decision regarding the item (Amounts Paid for Technical and Consulting Services to Related Third Parties for September 2018).
- 3- Cancel the Defendant's decision regarding late payment fine.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(The Decision is deemed final and imperative by expiration of objection period under Article (42) of Tax Dispute and Violation Committee Procedures).



Income Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-2450)

Issued in Case No. (W-23024-2021)

Keywords:

Withholding Tax on Capital Increase - Late Payment Fine - Filing Tax Returns on Legal Dates - Difference of Viewpoints - Non-Payment of Tax on Legal Date - Retained Earnings (Bonus Shares) - Audited Financial Statements - Transfer of Retained Earnings and Reserves to Capital - Capitalization of Profits is not Considered as Set-Off Between Accounts - Reclassification of an Accounting Account.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on tax assessment of April 2018. Plaintiff's objection is represented in the following items: Item First: Withholding Tax on Capital Increase: The Plaintiff objects to Defendant's procedure of imposing a withholding tax on foreign partner's share in capital increase, as there are no cash flows that can be deducted in part from non-resident investors because they have not been paid. Item Second: Late Payment Fine: The Plaintiff objects to imposition of a late payment fine on the contested item, stating that it filed tax returns within the prescribed legal times, and that late payment fine arising from tax difference are the result of errors and differences of views, and not the result of a deliberate non-payment of the tax within the legal times - the Defendant argued that it had imposed a withholding tax on capital increase made through retained earnings (bonus shares), as shown in the audited financial statements in (Statement of Changes in Equity) of 2018. - The Department has established that, with regard to the first item, and since bonus shares do not represent a cash distribution, neither de facto nor de jure, but rather an increase in capital through transferring balances of retained earnings and reserve to capital, making them non-taxable. In addition, capitalization of profits is not account-setoff, and does not entail cash flow outside KSA, and the tax appeal court extrapolated on capitalization of retained earnings, therefore, it is not considered a distribution of profits, as the process is an accounting account reclassification within the Company's equity. Reclassification does not entail any dividends to shareholders, and the term (bonus shares) does not apply thereto, since value of shares before the grant is equal to their value thereafter, so there is no actual profit distribution. Since late payment fine is a consequential fine in respect of the first item of this Decision, the Department decided to cancel defendant's decision, and the resulting occurrence shall take the same effect, the Department ruled to: Cancel Defendant's decision regarding both items subject of the case - the decision is final and enforceable.

Instruments:

- **Articles (5.A.6), (68.A) and (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)**



- **Articles (2), (3.7) and (63.1&6) of the Implementing Regulations of Income Tax Law, promulgated Decision No. (1535) of 1425 AH.**

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 13/11/2022 AD, First Department for the Determination of Income Tax Violations and Disputes in Dammam, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Decree No. (13957) dated 26/02/1444 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 20/08/2020 AD.

The facts of this Case are summed up as follows: Mr. (...), holder of National ID No. (...), in his capacity as Attorney of Plaintiff/ C.R. No. (...), submitted its objection to tax assessment of April 2018, issued by ZATCA. The objection is focused on the following items: Item First: Withholding Tax on Capital Increase: The Plaintiff objects to Defendant's action of imposing a withholding tax on foreign partner's share in capital increase. Plaintiff stated that when the capital was increased by means of retained earnings and general reserve, there were no cash flows that could be deducted partly from non-resident investors because they were not paid, and that they are not subject to withholding tax according to law. Since Tax Law clearly stated that withholding tax is only imposed on amount paid to non-resident, and it believes that what is meant is dividends, as what is subject to the withholding tax are the distributions that have been paid and transferred, which does not apply to the case under objection. Item Second: Late Payment Fine: The Plaintiff objects to Defendant action of imposing a late payment fine on the item under objection, stating that it submitted tax returns on the prescribed legal dates, and that late fines arising from tax difference are the result of errors and differences of opinion, not the result of intentional non-payment of tax on the legal date.

Having presented statement of appeal to Defendant, it submitted a memorandum that included, with regard to the item of Amendment of Withholding Tax Return for April 2018 (on shares granted to non-resident shareholders): It stated that it imposed a withholding tax on capital increase made through remaining profits (bonus shares) as shown in the audited financial statements in (Statement of Changes in Equity) of 2018. In addition, Defendant that after inquiring from the Securities Depository Center about percentage of foreigners on due date of bonus shares, which took place in April 2018, foreigners' share of (4.92%) was taken by increase in capital and a withholding tax was imposed as follows:

Grant Distribution Date	Increase Capital from Retained Earnings	Percentage of Foreigners	Share of Foreigners	Withholding Tax of 5%
April 23, 2018	450,000,000	4.92%	22,140,000	1,107,000

Furthermore, Defendant stated that, with reference to claim made by the Plaintiff in its statement of claim and its claim that share of non-Saudis who are not founders (purchased through the capital market) in capital increase through capitalization of retained profits and reserves should not be subject to withholding tax, on the grounds that it was not subject to such tax. Therefore, ZATCA responds as follows: By reviewing provisions of



the Income Tax Law and the Implementing Regulations: First, Article 1 of the Income Tax Law provides that “The following terms shall have the meanings assigned thereto, unless the context requires otherwise. Taxpayer: Any person subject to tax in accordance with this Law. Activity: Any form of commercial activity, or any vocational, professional, or any other similar activity for profit. This includes the use of movable and immovable property. Article 2 of the Law also provides that: Persons Subject to Taxation: A resident capital company with respect to shares owned directly or indirectly by non-Saudis, as well as shares owned directly or indirectly by persons working in production of oil and hydrocarbons”. Article 5 of the Law further states that: “Source of Income A. Income shall be considered accrued in the Kingdom in any of the following cases: 1. If it is derived from an activity which occurs in the Kingdom. 6. Dividends or management or directors’ fees paid by a resident company. As well as article 6 on the tax base, which stated: “The tax base of a capital company shall be calculated independently of tax base of its shareholders, partners or subsidiaries, irrespective of whether the company’s accounts are consolidated with those of another person for purposes of accounting”. Article 8 also provides: “Taxable Income: 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”.

According to Article 68, which states: “A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: ...”. Having referred to and perused the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. 1535 of 1425 AH, Article 1 stipulates that: Provisions of Income Tax Law apply to resident capital companies on shares owned directly or indirectly by non-Saudis, and on shares owned directly or indirectly by persons engaged in production of oil and hydrocarbons, whether natural or legal, resident or non-resident. Shares held by non-Saudis in listed resident capital companies do not include shares held by non-Saudis for Mudaraba purposes through trading in Saudi Exchange. Indirect ownership means ownership up to the second level. Tax base of the resident capital company shall be calculated independently of tax base of its shareholders, partners or subsidiaries, even if it is consolidated for accounting purposes ... The provisions of the Law also apply to non-residents, whether natural or corporate, Saudi or non-Saudi, who conduct business in the Kingdom through a permanent establishment in it or who gain income derived from sources within the Kingdom”. Article 2 of the Regulation also stipulates that “Taxable activity shall mean all activities of any type, such as commercial, industrial, agricultural, service, banking, and insurance activities; investments of all forms or fields; transportation operations; leasing of movable and immovable properties, whether tangible or intangible. It shall also include professional and trade activity or any other similar activity intended for profit, such as agencies and brokerage and the like. Taxable activity shall not include opening bank accounts of any type (current, time or saving) alone, or trading in shares of companies listed in the Kingdom’s Stock Market by a natural resident person”. based on Article 63 of the Regulation, which provides that “1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: 6. “Dividends” means: Any distribution by a resident company to a non-resident shareholder, and any profits transferred by a permanent establishment to related parties. The following shall be taken into consideration”. Based on the above legal grounds, and provisions of Income Tax Law and Implementing Regulations, ZATCA clarifies the following: 1. There is no provision exempting this item from being subject to withholding tax or consistent with Taxpayer’s claim. 2. There are



clear and explicit provisions subjecting the item to tax, such as Article (5.A.6) of the Income Tax Law and Article (63.1&6) of the Implementing Regulations of the Law. 3. According to Article 7.3 of the Implementing Regulations of Income Tax Law, which states that “bonus shares” are in-kind distributions to the partner, any profit capitalization is therefore a distribution of profits intended in Article 63 of the Implementing Regulations of Income Tax Law. 4. Taxpayer points out that the established rule of withholding tax is to be borne by non-resident beneficiary by deducting it from the source and delivering it to ZATCA. We emphasize that Taxpayer is the person responsible for deducting the tax from non-resident in accordance with Article 68.C the Income Tax Law. If it is not deducted and paid to ZATCA, Taxpayer will be obligated to pay it together with resulting fines. tax is originally charged to the beneficiary personally if Taxpayer deducts it upon payment, clearing or in any way similar to payment, as confirmed by Appeal Committee Decision No. 1547 of 1437 AH. Regarding item (Late payment fines): It stated that it imposed a late fine on the unpaid tax differences on the regular date based on Article 77.A of the Income Tax Law.

On Sunday, 13/11/2022 AD, the Department held its session remotely to consider the Case. Mr., holder of National ID No. (...), appeared as a legal representative under legal entity’s pleading certificate, and Mr. ... holder of National ID No. (...), appeared in his capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, dated .../10/1443 AH. Having asked the Plaintiff’s attorney about her claim, she replied that her claims are the same as stated in the statement of claims previously filed with the General Secretariat of the Tax Committees. Having asked the Defendant’s representative about his reply to the Plaintiff’s claims, he replied that he maintains the statements contained in the reply submitted to the General Secretariat requesting that no further documents be accepted from the Plaintiff that hadn’t been submitted during the objection and examination stages. Having asked both parties if they had further statements, they replied by reiterating their earlier submissions presented to the Department. Therefore, the Department decided to close the pleadings and deliberation.

Grounds:

Having perused Zakat Law promulgated by Royal Order No. (17/28/577) of 14/03/1376 AH, as amended, and Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and 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.

In form, since the Plaintiff aims with its case to annul decision of ZATCA regarding the tax assessment of April 2018, and given that this dispute falls within the category of tax disputes, it lies within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH. Furthermore, the case was filed in compliance with its legal requirements, which necessitates acceptance of the case in form by the Department.

On merits, having examined the case papers and documents included in the case file, and requests, defenses and pleas made by the parties, the Department found that the dispute centers on Defendant’s issuance of tax assessment of April 2018. That objection was related to the following items:

Item First: Withholding Tax on Capital Increase:

The Plaintiff objects to defendant’s action of imposing a withholding tax on the foreign partner’s share in capital increase, while the Defendant argued that it imposed a



withholding tax on capital increase made through retained earnings (bonus shares) as shown in the audited financial statements in (statement of changes in equity) of 2018. Since Article 68.A of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, stipulates that: “Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates:”. Article 63.1 of the Implementing Regulations of the Income Tax Law provides: “A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: ... Dividends of 5%”. Based on the foregoing, since bonus shares do not represent a cash distribution, neither de facto nor de jure, but rather an increase in capital through transferring balances of retained earnings and reserve to capital, making them non-taxable. In addition, capitalization of profits is not account-setoff, and does not entail cash flow outside KSA, and the tax appeal court extrapolated on capitalization of retained earnings, therefore, it is not considered a distribution of profits, as the process is an accounting account reclassification within the Company’s equity. Reclassification does not entail any dividends to shareholders, and the term (bonus shares) does not apply thereto, since value of shares before the grant is equal to their value thereafter, so there is no actual profit distribution. Therefore, the Department concluded to cancel Defendant’s decision.

Item Second: Late Payment Fine:

The Plaintiff objects to Defendant’s action of imposing a late fine on the item under objection. However, Defendant argued that it imposed a late fine on the unpaid tax differences on the legal date, and that the late payment fine is a consequential fine relating to the first item of this decision, since the Department decided to overturn Defendant’s decision, and the resulting occurrence shall take the same effect, the Department concludes to overturn Defendant’s decision.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Cancel the Defendant's decision regarding the two items subject of the Case.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

Appeal Committee:

Appeal Committee has decided to uphold the Department’s decision.



Income Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-2576)

Issued in Case No. (W-42647-2021)

Keywords:

Withholding Tax on Salaries - Withholding Tax on Loan Interest - Withholding Tax on Insurance - Withholding Tax on Travel Tickets - Withholding Tax on Communications - Withholding Tax on Marketing Services - Withholding Tax on Technical, Consulting and Administrative Services - Withholding Tax on Other Matters - Documentary Dispute not Arising from Significant Difference in Interpretation of Legal Texts - Taxpayer Bears the Burden of Proving Validity of its Return.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on tax assessment of 2015. Plaintiff's objection is represented in nine items: Items One, Two, Three, Four, Five, Six, Seven, and Eight: Withholding Tax on Salaries, Withholding Tax on Loan Interest, Withholding Tax on Insurance, Withholding Tax on Travel Tickets, Withholding Tax on Communications, Withholding Tax on Marketing Services, Withholding Tax on Technical, Consulting and Administrative Services, and Withholding Tax on Other Matters: Apply a 15% withholding tax on these items, while the Defendant argued that its procedure was based on observations of the General Auditing Bureau. As for the ninth item: Late Payment Fines: The Plaintiff objects to imposition of a late fine for tax differences due, while the Defendant has argued that it maintains validity and soundness of its procedure. With regard to the first item, the Department found that the Plaintiff had submitted a summary of withholding tax schedule together with bank payment corresponding to the total withholding tax due with calculated fines, which indicated that there were salaries in the amount of SAR 50,653.61 on which withholding tax was calculated and which corresponded to the Plaintiff's statement. Regarding the Second Item: The Plaintiff provided evidence that it paid the withholding tax in the amount of SAR 16,554.79. Item (3): Since the dispute between both parties is documentary in nature, and having examined the case file, documents and pleas submitted, the Department found that the Plaintiff did not submit documents supporting its objection. Item (4): It turned out that Plaintiff did not provide contracts for those purchased services, and argues that they are not subject to withholding tax and a sufficient sample of invoices from purchase of such goods from abroad was submitted, and that submitted documents are not sufficient to cancel the withholding tax due on SAR 285,609. Item (5): It turned out that Plaintiff attached a summary of withholding tax schedule together with a statement of payment of withholding tax from ... Bank, but at a rate of (5%). In addition, Plaintiff submitted a statement of amounts paid in (Excel) format with a total amount of SAR 357,194, and the Plaintiff did not provide any documents related thereto, as it was satisfied with submitting an Excel file. Item (6): The Department established that the Plaintiff did not submit documents supporting its objection. Item (7): Plaintiff provided a statement of amounts paid in Excel



format with a total amount of SAR 980,030, did not provide any documents indicating that dealings were with local suppliers, and was satisfied with submitting the Excel file only. Item (8): The Department established that the Plaintiff did not submit documents supporting its objection. Item (9): Since the dispute between both parties is a documentary dispute, and did not arise from a significant difference in interpretation of legal texts, the Department established the validity of Defendant's action in imposing late payment fine from the due date on items where the Plaintiff's objection was dismissed, and the late payment fine was cancelled regarding items in which the Defendant's decision was overturned, as the basis for imposing the tax is no longer exist. The Department ruled to: Dismiss Plaintiff's objection with regard to withholding tax on insurance, withholding tax on marketing services, and amend Defendant's decision in all other items - the decision is final and enforceable.

Instruments:

- Articles (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (5), (57.3), (63.1), (68.1.B) and (71.2) [of the Implementing Regulations of Income Tax Law, promulgated by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 11/12/2022 AD, First Department for the Determination of Income Tax Violations and Disputes in Dammam, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (13957) dated 26/02/1444 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 21/03/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), holder of National ID No. (...), in his capacity as Attorney of Plaintiff/ C.R No. (...), submitted its objection to the tax assessment of 2015, issued by ZATCA. The objection is focused on nine items: Item First: Withholding Tax on Salaries: Plaintiff objects to Defendant's procedure of imposing a withholding tax of SAR 514,793 to employees' salaries SAR (3,431,953) at rate of 15%, stating that there is a payment of SAR 50,654 paid to employees in Canada that has been deducted, and that the remaining portion is for employees recruited from outside the Kingdom who have a full-time employment relationship through a residence or business visit visa, which the Defendant did not consider. Item Second: Withholding Tax on Loan Interest: Plaintiff objects to Defendant's procedure of imposing a withholding tax of 5% in the amount of SAR 18,036 on loan interest amounting to SAR 360,720, stating that it paid the tax on loan interest amounting to SAR 331,096 and not SAR 360,720, due to the existence of bank charges in the amount of SAR 29,624 that are not subject to withholding tax. Item (3): Withholding Tax on Insurance: Plaintiff objects to Defendant's action of levying a 15% withholding in the amount of SAR 35,932 on insurance amounting to SAR 239,456, stating that payments have been made to companies based in KSA (...), therefore the withholding tax cannot be applied. Item (4): Withholding Tax on Travel Tickets: Plaintiff objects to Defendant's action of imposing a 5% withholding tax in the amount of SAR 36,288 on tickets amounting to SAR 725,760, stating that it paid on the amounts paid for travel tickets in the amount of SAR 440,151, and that the remaining amount of SAR 725,760, which is SAR 285,609, was paid either to purchase services not covered by the



tax or to purchase goods from outside the Kingdom. Item (5): Withholding Tax on Communications: Plaintiff objects to Defendant's action of imposing a 15% withholding tax in the amount of SAR 53,579 on communications SAR (357,194), stating that it paid the withholding tax in the amount of SAR 14,295, that the remaining amount was paid in the amount of SAR 342,899 to local suppliers, and that the withholding tax cannot be applied to these amounts. In addition, it objects to the applicable rate (15%) instead of (5%) because they are amounts paid to service providers working under communications. Item (6): Withholding Tax on Marketing Services: Plaintiff objects to Defendant's action of levying a 15% withholding in the amount of SAR 185,718, stating that these amounts are paid to suppliers residing in the Kingdom and withholding tax cannot be applied thereto. Item (7): Withholding Tax on Technical, Consulting and Administrative Services: Plaintiff objects to Defendant's action of levying a 15% withholding tax in the amount of SAR 148,005 on technical and consulting services of SAR 980,030, stating that it paid the withholding tax of SAR 35,318, and the remaining amount of SAR 944,712 was paid to local suppliers, and that the withholding tax could not be applied to those amounts. Item (8): Withholding Tax on Other Matters: Plaintiff objects to Defendant's action of levying a 15% withholding in the amount of SAR 12,558 on other matters in the amount of SAR 83,722, stating that these amounts are paid to suppliers residing in the Kingdom and withholding tax cannot be applied thereto. Item (9): Late Payment Fines: Plaintiff objects to Defendant's action of imposing a late payment fine on outstanding tax differences, stating that they arose from different views and did not result from a deliberate non-payment of dues. Plaintiff also requests that late fine not be calculated until the due tax is final.

Having presented the statement of claim to Defendant, it responded with a memorandum that included, with regard to the item of withholding tax on salaries: It stated that transactions with related parties were subject to a withholding tax of 15% based on observations of the General Auditing Bureau, that a meeting was held with the Plaintiff to discuss its point of view, and it was asked to provide an analytical statement of the item to ascertain nature of the expense, and that it became clear to Defendant through an analytical statement of the total value of transactions of related parties that there were expenses subject to withholding tax that were not subjected thereto. Moreover, it is evident that the same expense was subjected twice to tax, once by subjecting the examiner to total value of transactions with related parties, and once through the Plaintiff. Therefore, Defendant counted all expenses subject to withholding tax and subjected them to withholding tax after excluding what the Plaintiff added to the base and subjected it to withholding tax during the year. With regard to the following items: Items of Withholding Tax on Loan Interest, Withholding Tax on Insurance, Withholding Tax on Travel Tickets, Withholding Tax on Communications, Withholding Tax on Marketing Services, Withholding Tax on Technical, Consulting and Administrative Services, and Withholding Tax on Other Matters: Defendant merely refused without giving a substantive response in respect of these items. Regarding item (Late payment fines): It stated that it imposed a late fine on the unpaid tax differences on the legal date based on Article 77.A of the Income Tax Law, and Article 68.1.B of the Implementing Regulations of Income Tax Law.

On Sunday, 13/11/2022 AD, the Department held its session remotely to consider the Case., holder of National ID No. (...), appeared in her capacity as attorney by POA No. (...), and holder of National ID No. (...), appeared in his capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, On .../10/1443 AH. Having asked Plaintiff's attorney about her case, it stated that the Plaintiff objects to tax assessment issued by Defendant related to the withholding tax of 2015, referred in the details of the case to what was attached to its file. Having perused the Case file, the Department found that the



Defendant did not submit a substantive response to the Plaintiff's case. Therefore, the Department gave ZATCA's representative a grace period to review the Plaintiff's submission, submit substantive response and attach it to the Case file no later than Sunday 27/11/2022. Furthermore, the Department gave Plaintiff's attorney a grace period to review what ZATCA submitted, submit the response and attach it to the Case file no later than Wednesday 07/12/2022 AD. Accordingly, the Department decided to postpone the hearing of the case to Sunday 11/12/2022.

On Sunday, 11/12/2022 AD, the Department held its session remotely to consider the Case. Mr., holding National ID No. (...), appeared in his capacity as Attorney by Power of Attorney No. (.....), and (.....), holder of National ID No. (...), appeared in his capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, dated .../12/1442 AH. Having asked the Plaintiff's attorney about its Case, it stated that the Plaintiff objects to the tax assessment issued by Defendant related to withholding tax of 2015 AD, and referred in the details of the lawsuit to what was attached to its file, and added that it requests a grace period to submit an additional memorandum since the Plaintiff Company did not review what ZATCA submitted, since ZATCA did not attach its memorandum to the Case file. The Department did not respond to his request since ZATCA attached its reply dated 28/11/2022 AD, and the Plaintiff had sufficient time to review the same and submit a response thereto. Having confronted Defendant's representative with the aforementioned, he replied that he adheres to response previously submitted to the General Secretariat of Tax Committees. Having asked both parties if they had further statements, they replied by reiterating their earlier submissions presented to the Department. Therefore, the Department decided to close the pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff aims through her case to annul the decision of ZATCA regarding 2015 tax assessment, and given that this dispute falls under the category of tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it must be accepted in form.

On merits, having perused documents and papers contained in the Case file, as well as requests, pleas and defenses presented by the parties, the Department found that the dispute centers on Defendant's issuance of tax assessment of 2015, specifically concerning the objection related to nine items:

Item First: Withholding Tax on Salaries:

Plaintiff objects to Defendant's action of imposing a 15% withholding tax of SAR (514,793) on salaries of employees SAR (3,431,953), while the Defendant argued that its action was based on observations of the General Auditing Bureau. Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, as amended by Ministerial Resolution No. (1/1748) dated 20/02/1427 AH stipulates: "(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the



following rates: Royalties or proceeds, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company 15%”. In addition, Article 57.3 stipulated that: “The burden of proof of correctness of information in the taxpayer’s return regarding its revenues, expenses and any other data rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department’s opinion based on relevant circumstances and facts and available information”. Based on the foregoing, since employees’ salaries paid abroad are not subject to withholding tax, because they are amounts arising from an employment relationship for specific employment contracts, but only on the condition that terms of employment contract are fulfilled. Since the dispute between parties is a documentary dispute, and the Department found that Plaintiff had submitted a summary of withholding tax schedule together with bank payment corresponding to the total withholding tax due along with calculated fines, which indicated that there were salaries in the amount of SAR 50,653.61 on which a withholding tax was calculated and matched with the Plaintiff’s statement. Therefore, the Department concluded to amend Defendant’s decision.

Item Second: Withholding Tax on Loan Interest:

Plaintiff objects to Defendant’s action of imposing a 5% withholding tax of SAR (18,036) on loan interest amounting to SAR (360,720), while the Defendant argued that its action was based on observations of the General Auditing Bureau. Article 5 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, as amended by Ministerial Resolution No. (1/1748) dated 20/02/1427 AH stipulates: “The following types of income shall be considered derived from an activity in the Kingdom and are therefore from a source in the Kingdom: 1. Loan charges of a non-resident in any of the following cases: ..., “Loan charges” shall mean any amounts paid for the use of money. This includes income realized from loan transactions of any type, whether secured by guarantees or not, or by granting rights to participate in the profits of the debited person or not. It includes income realized from governmental and non-governmental bonds”. Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, as amended by Ministerial Resolution No. (1/1748) dated 20/02/1427 AH stipulates: “(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Technical or 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%”. Accordingly, since Plaintiff has provided proof of paying the withholding tax in the amount of SAR 16,554.79, the Department therefore concludes to amend Plaintiff’s decision.

Item (3): Withholding Tax on Insurance:

Plaintiff objects to Defendant’s action of imposing a 15% withholding tax of SAR (35,932) on insurance amounting to SAR (239,456), while the Defendant argued that its action was based on observations of the General Auditing Bureau. Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, as amended by Ministerial Resolution No. (1/1748) dated 20/02/1427 AH stipulates: “(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or rent, technical or consulting services, international telecommunication services paid to the head-office or an affiliated company 15%”. Since Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No.



(1535) dated 11/06/1425 AH, as amended by Ministerial Decision No. (1/1748) dated 20/02/1427 AH provides that: “1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, technical or consulting services, international telecommunication services other than payments made to the head office or an affiliated company, rent, air tickets, air or maritime freight, dividends, loan charges, insurance or reinsurance premiums 5%”. Article 57.3 provides that: “The burden of proof of correctness of information in the taxpayer’s return regarding its revenues, expenses and any other data rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department’s opinion based on relevant circumstances and facts and available information”. Based on the foregoing, and since the dispute between parties is a documentary dispute, and having perused the Case file, documents and pleas made, since the Department found that Plaintiff did not provide documents supporting its objection. Therefore, the Department concluded to dismiss Plaintiff’s objection.

Item (4): Withholding Tax on Travel Tickets:

Plaintiff objects to Defendant’s action of imposing a 5% withholding tax of SAR (36,288) on travel tickets amounting to SAR (725,760), while the Defendant argued that its action was based on observations of the General Auditing Bureau. Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, as amended by Ministerial Resolution No. (1/1748) dated 20/02/1427 AH stipulates: “1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, technical or consulting services, international telecommunication services other than payments made to the head office or an affiliated company, rent, air tickets, air or maritime freight, dividends, loan charges, insurance or reinsurance premiums 5%”. Article 57.3 provides that: “The burden of proof of correctness of information in the taxpayer’s return regarding its revenues, expenses and any other data rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department’s opinion based on relevant circumstances and facts and available information”. Based on the foregoing, and since the dispute between parties is a documentary dispute, and having perused the Case file, documents and pleas made, since Plaintiff provided a summary of withholding tax schedule with a statement of tax payment from Bank, which proves that the withholding tax is paid in the amount of SAR 22,007 in a total amount together with late payment fine amounting to SAR (24,302.85), for tickets in the amount of SAR (440,151). Regarding the remaining portion of SAR (285,609), which the Plaintiff argues that they are amounts paid either to purchase services to which withholding tax is not applicable or to purchase goods from outside the Kingdom. Plaintiff was satisfied with submitting a statement of those paid amounts in Excel in the total amount SAR (725,760), and since Plaintiff has not submitted contracts for those purchased services, and argues that they are not subject to withholding tax, together with sufficient sample of invoices from purchase of those goods from abroad. Since what was submitted is not sufficient to cancel the withholding tax due on SAR (285,609), the Department therefore concludes to amend Defendant’s decision.

Item (5): Withholding Tax on Communications:

Plaintiff objects to Defendant’s action of imposing a 15% withholding tax of SAR (53,579) on communications amounting to SAR (357,194), while the Defendant argued that its action was based on observations of the General Auditing Bureau. Article 63.1 of the



Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, as amended by Ministerial Resolution No. (1/1748) dated 20/02/1427 AH stipulates: “(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or rent, technical or consulting services, international telecommunication services paid to the head-office or an affiliated company 15%”. Since Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended by Ministerial Decision No. (1/1748) dated 20/02/1427 AH provides that: “1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, technical or consulting services, international telecommunication services other than payments made to the head office or an affiliated company, rent, air tickets, air or maritime freight, dividends, loan charges, insurance or reinsurance premiums 5%”. Article 57.3 provides that: “The burden of proof of correctness of information in the taxpayer’s return regarding its revenues, expenses and any other data rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department’s opinion based on relevant circumstances and facts and available information”. Based on the foregoing, having perused the Case file, the Department established that Plaintiff attached a summary of withholding tax schedule together with a statement of payment of withholding tax from ... Bank, but at a rate of only 5% with a withholding tax amount of SAR (797.49) for the amount paid of SAR (14,294.98). In addition, the Plaintiff submitted a statement of paid amounts in (Excel) format with a total amount of SAR (357,194). The statement shows that part of amounts paid are as follows: SAR (67,800), SAR (24,177), SAR (58,800), (75,810), SAR (125,875), and the Plaintiff did not provide any documents related thereto, for example: Contracts clarifying nature of services to demonstrate that they are telecommunications services for amounts paid outside the Kingdom, and proving the remaining portion, which the Plaintiff claims to be paid on behalf of (The Niagara College of Applied Arts and Technology) to local suppliers and invoices issued by service provider, and it was satisfied with submitting the (Excel) file. Therefore, the Department concludes to amend defendant’s decision.

Item (6): Withholding Tax on Marketing Services:

Plaintiff objects to Defendant’s action of imposing a 15% withholding tax of SAR (185,718) on marketing services amounting to SAR (1,238,120), while the Defendant argued that its action was based on observations of the General Auditing Bureau. Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, as amended by Ministerial Resolution No. (1/1748) dated 20/02/1427 AH stipulates: “(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or rent, technical or consulting services, international telecommunication services paid to the head-office or an affiliated company 15%”. Since Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended by Ministerial Decision No. (1/1748) dated 20/02/1427 AH provides that: “1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, technical or consulting services, international telecommunication services other than payments made to the head office or an affiliated company, rent, air tickets, air or maritime freight, dividends, loan charges, insurance or reinsurance premiums 5%”. Article 57.3 provides that: “The burden of proof of correctness of information in the taxpayer’s return regarding its revenues, expenses and any other data rests on the taxpayer. If a taxpayer fails to prove the



correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, having perused the Case file, documents and pleas made, since the Department found that the Plaintiff did not submit documents supporting its objection. Therefore, the Department concluded to dismiss objection filed by Plaintiff.

Item (7): Withholding Tax on Technical, Consulting and Administrative Services:

Plaintiff objects to Defendant's procedure of imposing a 15% withholding tax of SAR (148,005) on technical and consulting services amounting to SAR (980,030), while the Defendant merely refused without submitting a substantive response. Since Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended by Ministerial Decision No. (1/1748) dated 20/02/1427 AH provides that: "(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company 15%". In addition, Article 57.3 stipulated that: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, having perused the Case file, the Department established that Plaintiff attached a summary of withholding tax schedule together with a statement of payment of withholding tax from ... Bank, in the amount of SAR 5,986 as withholding tax, including late fines calculated at SAR 688 for a portion of paid amount, in the amount of SAR 35,318. With regard to the remaining portion at SAR 944,712, since the Plaintiff submitted an Excel statement of paid amounts in the total amount of SAR 980,030 and no documents were submitted, for example: Agreements for services rendered, invoices issued by service provider, financial claims, which clarify that dealings are with local suppliers. Plaintiff was satisfied with submitting the (Excel) file only, the Department therefore concludes to amend defendant's decision.

Item (8): Withholding Tax on Other Matters:

Plaintiff objects to Defendant's procedure of imposing a 15% withholding tax of SAR (12,558) on other matters amounting to SAR (83,722), while the Defendant merely refused without submitting a substantive response. Since Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended by Ministerial Decision No. (1/1748) dated 20/02/1427 AH provides that: "(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds, payments for technical or consultancy services or international telecommunications services paid to the head office or affiliated company 15%". In addition, Article 57.3 stipulated that: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, having perused the Case file,



documents and pleas made, since the Department found that the Plaintiff did not submit documents supporting its objection. Therefore, the Department concluded to dismiss objection filed by Plaintiff.

Item (9): Late Payment Fines:

Plaintiff objects to Defendant's procedure of imposing late payment fine for tax differences due, while Defendant argued based on Article No. 77.A of the Income Tax Law, and Article 68.1.B of the Implementing Regulations of the Income Tax Law, and since Article 77.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH stipulated: "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". Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which 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: b. Delay in payment of due tax as per the Department's assessment". Article 67.3 of the Implementing Regulations of Income Tax Law, stipulated: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". Based on the foregoing, since late fine is calculated from end of the deadline for submitting return to the date of paying the due tax arising under the application of provisions of the Law and amendments made by Defendant. Since the dispute between the parties is documentary, and did not arise from a significant difference in the interpretation of legal texts. The Department established the validity of Defendant's action to impose a late payment fine from the due date on items in which Plaintiff's objection was dismissed, and the late payment fine was cancelled on the items in which Defendant's decision was overturned as the basis for imposing the tax is no longer exist. Therefore, the Department concluded to amend Defendant's decision. For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- 1- Amend the Defendant's decision regarding (Withholding Tax on Salaries) item.
- 2- Amend the Defendant's decision regarding (Withholding Tax on Loan Interest) item.
- 3- Dismiss the Plaintiff's objection regarding (Withholding Tax on Insurance) item.
- 4- Amend the Defendant's decision regarding (Withholding Tax on Travel Tickets) item.
- 5- Amend the Defendant's decision regarding (Withholding Tax on Communications) item.
- 6- Dismiss the Plaintiff's objection regarding (Withholding Tax on Marketing Services) item.
- 7- Amend the Defendant's decision regarding (Withholding Tax on technical, Consulting and Administrative Services) item.
- 8- Dismiss the Plaintiff's objection regarding (Withholding Tax on Other Matters) item.
- 9- Amend the Defendant's procedures regarding late payment fine.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Income Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2023-9)
Issued in Case No. (W-93885-2022)

Keywords:

Withholding Tax - Late Payment Fine - Double Taxation - Resulting Occurrence Shall Take the Same Effect

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax for the period from September 2016 to August 2019. - Plaintiff based its objection on two items: First: Withholding Tax. Second: Late Payment Fine. With regard to the first item, ZATCA replied as follows: It calculated a withholding tax of (15%) by discussing with Plaintiff the nature of transactions between the head office and the branch, and the Plaintiff stated that there is technical and technological support, financial support in addition to material support. Regarding the Second Item: It imposed late payment on the due and unpaid tax in accordance with provisions of Income Tax Law and its Implementing Regulations. - It was established for the Department concerning the first item: Plaintiff did not provide documents supporting its point of view. With regard to Plaintiff's indication that paying an amount to a non-resident is a final tax, taking into account that no other tax is imposed on the income from which the tax is deducted, and that technical services provided by the head office are deductible if they represent actual expenditure and are documented, and non-deduction will lead to double taxation. Regarding the Second Item: Resulting occurrence shall take the same effect. Therefore, the Department ruled to: Amend Defendant's decision regarding withholding tax item, and amend Defendant's decision regarding late payment fine item. This decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Instruments:

- [Articles 68.F and 77/A of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- [Articles \(57.3\) and \(67.3\) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 11/01/2023, First Department for the Determination of Income Tax Violations and Disputes Dammam pursuant to Article 67 of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended and constituted by Royal Order No. (13957) of 26/02/1442 AH, held its session remotely via audio and



video conferencing to consider the case mentioned above. Since the Case fulfilled the established regulatory requirements, it was lodged with General Secretariat the Tax Committees under the above number and on 31/01/2022 AD.

The facts of this case are summed up in that Mr....., Iqama No....., in his capacity as the legal representative of the Plaintiff/ **Branch of Company**, (C.R No.), filed its objection to the withholding tax for the period from September 2016 to August 2019 issued by ZATCA. Its objection is represented in the following items: The first item (Withholding Tax): Plaintiff objects to Defendant's action of amending the withholding tax in the amount of SAR (261,365). It stated that there is a contract with Company to provide technical support services, and that the head office provides the service directly to... and issues the invoice in the name of the branch, and the branch issues an invoice in the name of Company, and... transfers directly to the head office after withholding a tax of (5%) and paying it to ZATCA. Plaintiff relied on Article 68 of the Income Tax Law, according to which the tax is due to non-resident entity (head office), responsibility for tax deduction and payment rests with the resident who pays and transfers to non-resident (... Company), and there is no obligation on the branch to deduct and pay the tax to ZATCA. The second item (Late Payment Fine): Plaintiff objects to Defendant's action of imposing a late payment fine, stating that the late fine itself is subject to objection, as it arose due to a difference in viewpoints, and therefore it is only calculated from the date of issuance of a final decision.

Having presented the statement of claim to the Defendant, it responded with a memorandum that included, with regard to withholding tax item, the following: It calculated a withholding tax of (15%) by discussing with Plaintiff the nature of transactions between the head office and the branch, and the Plaintiff stated that there is technical and technological support, financial support in addition to material support. Having reviewed statement submitted to the head office item, credit operations recognized in the books related to services were subject to tax. the most frequently asked questions to answer question 31 stated that: withholding tax is imposed when the payment occurs, except for the related parties, in which case it is imposed at the date of entry or recording in the books. Since services are provided by a related party, they are subject to a 15% tax, so the Plaintiff specified some operations, and stated that operations in the head office account are diverse, including financial support, and that the rest of other operations are support services provided by a third party, and the head office is charged with invoice divided among countries in which the group operates, and the branches are charged each with their share, and that they are subject to (5%) instead of (15%) tax because they are not provided by the head office, as deduction of financial support operations was accepted, in addition to material operations after verifying the account movement provided, which shows that the services provided by the head office were approved and subject to 15% tax. Accordingly, Defendant dismissed Plaintiff's objection. Regarding item (Late payment fines): It stated that it had imposed a late fine on the due and outstanding tax, in accordance with Article 77.A of the Income Tax Law and Article 67.3 of the Implementing Regulations of the Income Tax Law.

On Wednesday, 11/01/2023 AD, the Department held its session remotely to consider the Case. The Plaintiff's representative did not appear despite the fact that it was confirmed to have been notified legally, and, (ID No. ...), appeared in its capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, dated .../12/1442 AH. Having asked Defendant representative about Plaintiff Case, she adhered to Defendant responses previously submitted to General Secretariat of Zakat, Tax and Customs. Having asked the Defendant's representative if she had any other statements, she replied "no". Therefore, the Department decided to close the pleadings and deliberation.



Grounds:

Having perused Zakat Law promulgated by Royal Order No. (17/28/577) of 14/03/1376 AH, as amended, and Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and 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,

In Form: Since Plaintiff instituted this case moving to cancel ZATCA's decision regarding the withholding tax for the period from September 2016 to August 2019. Since this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the case was filed by a party with legal capacity and within prescribed statutory period, the case must therefore be accepted in form.

On Merits: Having examined the Case papers and documents included therein and requests, defenses and pleas made by the parties, the Department found that the dispute lies in Defendant's issuance of withholding tax for the period from September 2016 to August 2019. Its objection is represented in the following items:

Item First: Withholding Tax:

The Plaintiff objects to Defendant's action of amending withholding tax in the amount of SAR 261,365. However, Defendant argued that its procedure was valid and legal. Article 68.F of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulated that "If the amount referred to in this Article is paid to a nonresident who conducts business in the Kingdom through a permanent establishment, and the amount paid is directly connected with the business of the establishment, such amount shall be calculated in determining the tax base of the nonresident". Paragraph (g) thereof stipulated that: "If tax is withheld for an amount paid to a taxpayer which is included in its tax base, the withheld tax shall be deducted from the tax due on the taxpayer against the tax base". Article 57.3 of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) of 11/06/1425 AH provides: "3. The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, and having perused the Case file, defenses and documents submitted, the Department found that Defendant had subjected amounts from the date of accounting entry to tax on the basis that they represented services provided by head office and related entities, and that the accounting entry was a reconciliation of accounts. Therefore, the accounting entry alone is not sufficient evidence of reconciliation between accounts receivable and accounts payable to the head office or associated companies. Since the plaintiff did not provide documents supporting its claim regarding these services, and since deduction of financial support operations in addition to material operations has been accepted after verification of the account movement provided to Defendant. Therefore, the Department concludes to uphold Defendant's action on this item. With regard to Plaintiff's indication that payment to a non-resident is final, bearing in mind that no other tax is imposed on the income from which the tax was withheld. Therefore, since the technical services provided by the head office are considered deductible expenses for tax purposes for the branch if they represent actual expenditure and are documented, and since non-deduction will result



in double taxation of those amounts once to withholding tax and once again to income tax. Accordingly, the Department concludes to amend Defendant's decision to deduct the withheld tax from tax payable to the Plaintiff on the tax base.

Item Second: Late Payment Fine:

Plaintiff objects to Defendant's procedure outlined in imposing a late payment fine. However, Defendant based its action on Article 77.A of the Income Tax Law and Article 67.3 of the Implementing Regulations of the Income Tax Law. In the light of the foregoing, and bearing in mind that this item is related to the first item of this decision, and that the Department decided to amend Defendant's decision, and that resulting occurrence shall take the same effect. the Department concluded to amend Defendant's decision in this item.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

1. Amend the Defendant's decision regarding Withholding Tax item.
2. Amend the Defendant's decision regarding Late Payment Fine item.

This decision was made in presence of parties. The date on which the decision is deposited with the General Secretariat of Zakat, Tax and Customs Committees' electronic system is the date on which the decision is delivered. 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 after the expiry of this period in the event that no objection is submitted.

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

(Judgment has become final by expiration of objection period under Article 33.2 of Rules of Procedure for Zakat, Tax, and Customs Committees).



Income Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2023-89946)

Issued in Case No. (W-89946-2022)

Keywords:

Withholding Tax - Salaries and Wages Paid to Seafarers - Late Payment Fine - Resulting Occurrence Shall Take the Same Effect - Overturn Defendant's Decision

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax for the period from September 2014 to December 2015. - Plaintiff based its objection on two items: First: Salaries and Wages Paid to Seafarers. Second: Late Payment Fine. With regard to the first item, ZATCA replied as follows: It subjected the amounts paid to seafarers to a withholding tax of (15%), as residency requirements for seafarers were not met. Regarding the Second Item: It imposed a 1% late payment fine for every 30 days from the due date that was automatically calculated. - It was established for the Department concerning the first item: Plaintiff submitted documents supporting its objection, seafarers were employees of the Company and controls contained in the circular had been fulfilled regardless of the applicability of their residency requirements. Regarding the Second Item: Resulting occurrence shall take the same effect. The Department ruled to: Cancel Defendant's decision regarding the withholding tax and late payment fines for the period from September 2014 to December 2015. – This decision shall be deemed final and enforceable according to Article (42) of the Tax Dispute and Violation Committee Procedures.

Instruments:

- Articles 66.B and 77.A of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article 168 of [the Saudi Labor Law issued on 23/08/1426 AH.](#)
- Articles (3), (63), (67.33), (68.h.1) and (71.2) of [Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)
- paragraph (2) of Circular No. (8922/9/1438) of 03/01/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 10/01/2023, First Department for the Determination of Income Tax Violations and Disputes Dammam pursuant to Article 67 of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended and constituted by Royal Order No. (13957) of 26/02/1442 AH, held its session remotely via audio and video conferencing to consider the case mentioned above. Since the Case fulfilled the



established regulatory requirements, it was lodged with General Secretariat the Tax Committees under the above number and on 03/01/2022 AD.

The facts of this case are summed up in that Mr....., (ID No. ...), in his capacity as the attorney for the Plaintiff/ Company, (C.R No.), filed its objection to the withholding tax for the period from September 2014 to December 2015 issued by ZATCA. Its objection is represented in the following items: First Item (Salaries and Wages Paid to Seafarers): Plaintiff objects to Defendant's procedure of subjecting amounts paid to seafarers whose stay in the Kingdom is less than 180 days to a 15% withholding tax. It stated that seafarers were employees of the Company under employment contracts concluded between the Company (First Party) and seafarers (Second Party), that salaries were paid to them directly and not to a non-resident, and that they had completed work specified under employment contracts within Saudi territorial waters. Plaintiff stated that definition of activity is any commercial activity, which does not apply to the case of seafarers, since amounts paid thereto were salaries in exchange for work were not the result of a commercial activity and were not intended to make a profit. The second item (Late Payment Fine): Plaintiff objects to Defendant's procedure of imposing a late payment fine, stating that the tax under assessment did not result from the intentional non-payment of tax due on due date, that it fulfilled its obligations according to the Income Tax Law, and filed withholding tax returns for payments to non-residents during the legally specified statutory period.

Having presented the statement of claim to the Defendant, it responded with a memorandum that included, with regard to the item of Salaries and Wages Paid to Seafarers, the following: It subjected amounts paid to seafarers to a withholding tax of 15%, because conditions of seafarers' residence have not been fulfilled, in accordance with Article 63 and Article 3 of the Implementing Regulations of the Income Tax Law. Having taken cognizance of sample of employment contracts attached to the objection, it is evident that some visit visas and employment contracts have dates later than the objection years, and therefore cannot be relied upon to determine the contractual relationship of employment with the Company. Late Payment Fine: It stated that it had imposed a late payment fine of 1% for every 30 days from the due date, calculated automatically, in accordance with Article 68.E of the Implementing Regulations of the Income Tax Law.

On Wednesday, 10/01/2023 AD, the Department held its session remotely to consider the Case. Neither Plaintiff nor its representative did appear despite the fact that it was confirmed to have been legally notified., (ID No. ...), appeared in its capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, dated.../12/1442 AH. Having asked Defendant representative about Plaintiff Case, she adhered to Defendant responses previously submitted to General Secretariat of Zakat, Tax and Customs. Having asked the Defendant's representative if she had any other statements, she replied "no". Therefore, the Department decided to close the pleadings and deliberation.

Grounds:

Having perused Zakat Law promulgated by Royal Order No. (17/28/577) of 14/03/1376 AH, as amended, and Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and 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,

In Form: Since Plaintiff instituted this case moving to cancel ZATCA's decision regarding the withholding tax for the period from September 2014 to December 2015. Since this



dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH. Since the case was filed by a party with legal capacity and within prescribed statutory period, the case must therefore be accepted in form.

On Merits: Having examined the Case papers and documents included therein and requests, defenses and pleas made by the parties, the Department found that the dispute lies in Defendant's issuance of withholding tax for the period from September 2014 to December 2015. Its objection is represented in the following items:

Item First: Salaries and Wages Paid to Seafarers:

Plaintiff objects to Defendant's action of subjecting amounts paid to seafarers whose stay in the Kingdom is less than 180 days to a withholding tax of 15%. However, Defendant based its action on Article 63 and Article 3 of the Implementing Regulations of the Income Tax Law and on the text of Circular No 8922/9/1438 of 03/01/1438 AH, paragraph 2 of which states that salaries and wages shall not be subject to withholding tax if the conditions governing the contract as an employment contract are met, the paragraph stated: "2. Or in return for a work wage resulting from an employment relationship for specific employment contracts (whether the contract is for one year or less), and this income is not subject to tax in the Kingdom as salaries and wages. The contract is classified as an employment contract if the following controls are met: ...". Based on Article 168 of the Saudi Labor Law issued on 23/08/1426 AH, which states that "Marine employment contract: An employment contract for a wage concluded between the vessel's owner or chandler or the representative of either of them and a seaman to work on board said vessel". Based on the foregoing, and having perused the Case file, defenses and documents submitted, since Plaintiff submitted documents supporting its objection, namely: (Employment contracts, payroll statement, proof of receipt of salaries by employees, entry and exit summary of a sample of seafarers). Therefore, the Department found that seafarers were employees of the Company, and controls contained in the circular were fulfilled irrespective of the applicability of their residency requirements. Accordingly, the Department concluded to overturn Defendant's decision.

Item Second: Late Payment Fine:

Plaintiff objects to Defendant's procedure outlined in imposing a late payment fine. Defendant based its action on Article 68.E of the Implementing Regulations of the Income Tax Law. Article 77.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Article 68.1 of the Implementing Regulations of Income Tax Law, issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH, states the following: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: b. Delay in payment of due tax as per the Department's assessment". Article 67.3 of the Implementing Regulations of Income Tax Law, stipulated: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". In the light of the foregoing, and bearing in mind that this item is related to the first item of this decision, and that the Department decided to overturn Defendant's decision. Since resulting occurrence shall take the same effect, the Department concluded to overturn Defendant's decision in this item.

For those grounds and after deliberation, the Department unanimously decided as follows:



Decision

- Cancel Defendant's decision regarding the withholding tax and late payment fines for the period from September 2014 to December 2015.

This decision was made in presence of parties. The date on which the decision is deposited with the General Secretariat of Zakat, Tax and Customs Committees' electronic system is the date on which the decision is delivered. 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 after the expiry of this period in the event that no objection is submitted.

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

(Judgment has become final by expiration of objection period under Article 33.2 of Rules of Procedure for Zakat, Tax, and Customs Committees).



Income Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2023-90290)

Issued in Case No. (W-90290-2022)

Keywords:

Withholding Tax - Capital Gains Tax Item - Statute of Limitation Item - Late Payment Fine Item.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on Withholding Tax of 2010. Plaintiff's objection is represented in three items: Item First: Statute of Limitations. Second item: Capital Gains Tax. Third item: Late Payment Fine - Plaintiff based its case with respect to the first item, on that Defendant issued the assessment five years after the deadline for submitting the return. Regarding the second item, the basis of transferring shares owned by the deceased partner to his heirs to become partners succeeding their testator on the same basis as the cost of obtaining them while the company continues its activity does not entail any tax impact. With regard to the third item, no fines should be imposed since the additional tax obligations arose because of a difference of opinions. Regarding the first item, ZATCA responded that it was clear that there were tax treatments in the Plaintiff's tax return that did not conform with the provisions of the Tax Law and Implementing Regulations thereof, so the return is invalid. Therefore, Defendant has the right to amend the Plaintiff's return to conform to the relevant laws, regulations and instructions within ten years. With regard to the second item, ZATCA stated that made an estimated calculation of capital gains, and calculated the capital gains tax on the share of the withdrawing partner. Regarding the third item, ZATCA further stated that tax was imposed in accordance with clear provisions included in the Tax Law and Implementing Regulations thereof. The Department found, with regard to the first item, that the right of ZATCA to conduct an assessment on Taxpayer is not limited to a time period, and the second item, that transfer of shares occurred as a result of death of a partner and heirs have not disposed of their share of the inheritance, and therefore there is no place for capital gains tax. With regard to the third item, this item is subordinate to the second item, and therefore resulting occurrence shall take the same effect. The Department ruled to: Dismiss Defendant's decision regarding statute of limitations item and overturn Defendant's decision regarding capital gains tax and the related late payment fine of 2010. This decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Instruments:

- [Articles 65.A, 68.D, 65.B and 63 of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)

Facts:





Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 10/01/2023 AD, First Department for the Determination of Income Tax Violations and Disputes in Dammam, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (13957) dated 26/02/1444 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 06/01/2022 AD.

Facts of the case are summarized as follows: Mr., (holder of National ID No.), in his capacity as attorney of Plaintiff//..... Company, (C.R No.), filed an objection to the withholding tax of 2010 issued by ZATCA, which centers in the following items: First Item "Statute of limitations": Plaintiff objects to Defendant's procedure of issuing the assessment five years after the end of deadline for submitting the return. Second Item "Capital Gains Tax": Plaintiff objects to Defendant's procedure of adding the capital gains item to the net profit, stating that the basis in transfer of shares owned by the deceased partner to his heirs to become partners succeeding their testator on the same basis as the cost of obtaining them while the company continues its activity does not entail any tax effect. Third Item "Late Payment Fine": Plaintiff objects to Defendant's action of imposing a late payment fine, stating that no fines should be imposed as the additional tax obligations arose from a difference of opinions.

Having presented the statement of claim to the Defendant, it responded with a memorandum that included, with regard to the item of Statute of limitations, that: It stated that what applies to this case is Article 65.B the Income Tax Law, as it became clear to Defendant that there were tax treatments in the Plaintiff's tax return that did not conform to provisions of the Tax Law and its Implementing Regulations, so the return is incorrect. Therefore, Defendant has the right to amend the Plaintiff's return to conform with the relevant laws, regulations and instructions within ten years. Regarding Capital Gains Tax Item: It stated that it made an estimated calculation of capital gains and calculated capital gains tax for the share of withdrawer partner in accordance with Article 16.7 of the Implementing Regulations of Income Tax Law. Regarding item (Late payment fines): It stated that the tax was imposed in accordance with clear provisions contained in the Tax Law and Implementing Regulations on the basis of Article 77.A of the Income Tax Law and Article 67.3 of the Implementing Regulations of Income Tax Law.

On Tuesday, 10/01/2023 AD, the Department held its session remotely to consider the case. Mr. (.....), holder of National ID No. (...), appeared in his capacity as the attorney of Plaintiff, by virtue of attached POA; and, holder of National ID No., appeared in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No., issued by Deputy Governor for Legal Affairs, dated .../12/1442 AH. Having asked the Plaintiff's attorney about his claims, he replied that his claims are the same as stated in the statement of claims previously filed with the General Secretariat of the Tax Committees. Having asked Defendant Representative regarding its reply, it replied that it maintained Defendant statements presented earlier to General Secretariat of Zakat, Tax and Customs Committees. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's



Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In form, since the Plaintiff aims through her case to overturn the decision of ZATCA regarding 2010 withholding tax, and given that this dispute falls under the category Withholding Tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it must be accepted in form.

On merits, having examined the case papers and documents included in the case file, and the requests, defenses and pleas made by the parties, the Department found that the Plaintiff objects to 2010 withholding tax issued by the Defendant. That objection was related to the following items.

First Item "Statute of Limitations":

Plaintiff objects to Defendant's action of issuing the assessment five years after the end of deadline for submitting returns. in contrast, Defendant argued that its procedure regarding assessment and amendment of the return was in accordance with the legal articles and that there is no statute of limitations. Article 65.A of the Income Tax Law issued by Royal Decree No. M/1 dated 15/01/1425 AH 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" Paragraph (b) of the same Article 65 stated: "The Department may make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year if a taxpayer does not file its tax declaration, or it is found that the declaration is incomplete or incorrect with the intent of tax evasion". According to Article 68.D of the Income Tax Law promulgated by Royal Decree No. M/1 of 15/01/1425 AH: "D. In addition to what is stated in paragraph (B) of this Article, 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".

In the light of the foregoing, having perused legal provisions that allow ZATCA to make the assessment and amend withholding tax declarations and capital gains tax and to make ZATCA's right to make assessment on Taxpayer unlimited by a period of time, as provided for in Article 68.D, and Article 63 of the Income Tax Law promulgated by Royal Decree No. M/1 of 15/01/1425 AH, since the resident "Plaintiff" is obligated and remains indebted to the Department for the amount of tax. Therefore, the Department concluded to dismiss Plaintiff's objection in this item.

Second Item "Capital Gains Tax":

Plaintiff objects to Defendant's action of adding the capital gains item to the net profit. In contrast, Defendant based its action on Article 16.7 of the Implementing Regulations of Income Tax Law, and Article 16.7.E of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No (1535) of 11/06/1425 AH stipulates as follows: "E. The disposing partner shall report the sale to the Department and pay the tax due on the pre-sale period and on resulting capital gains within sixty days from the date of sale. The purchaser together with the disposing partner, shall be deemed jointly and severally liable to pay any amounts that become due to the Department as a result of this transaction". Based on the foregoing, since the legal provision limits the liability for payment of capital



gains tax to the seller and purchaser, and having perused the Case file and documents and pleas made, and since the transfer of shares occurred as a result of the death of a partner, according to quorum of heirs and the heirs did not dispose of their shares of inheritance, therefore there is no place for capital gains tax. As mentioned above, the Department concludes to overturn Defendant's decision on this item.

Third Item "Late Payment Fine":

Plaintiff objects to Defendant's action of imposing late payment fine. In contrast, Defendant argued that late payment fine was imposed in accordance with clearly stated provisions of the Tax Law and the Implementing Regulations. Given that this item is subordinate to the second item, and since the Department concluded to overturn Defendant's decision on that item, the Department therefore concludes to overturn Defendant's decision in the contested item due to lapse of its ground.

Decision

Dismiss Plaintiff's objection to statute of limitations item, and overturn Defendant's decision regarding the capital gains tax and related late payment fine of 2010.

This decision was made in presence of parties. The date on which decision was uploaded to General Secretariat of Zakat, Tax and Customs Committees is the date of decision delivery. Parties to the case may request to appeal the decision in accordance with the law within 30 days from the day following date specified for its receipt. The decision shall become final and enforceable after the end of this period in the event of failure to lodge an objection.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination of Income
Tax Violations and Disputes in Dammam

Decision No. (IZD-2023-
92677)

Issued in Case No. (W-
56462-2021)

Keywords:

Imposing 20% Withholding Tax - Invalidity of the Capital Gains Tax Assessment Issued as a Withholding Tax Assessment - Management Fee Represented by Capital Gains Tax Resulting from Foreign Partner Restructuring - Capital Gains Tax Resulting from Foreign Partner's Exit by 20% - Restructuring of Company Owned by Foreign Partner - Late Payment Fine - Mention the Legal Ground - Amendment Based on Capital Gains Tax Rather Than Withholding Tax - the Assessment Fulfills its Formal Elements- Lack of benefit to the New Partner - Restructuring Without a Real Sale of Shares.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on tax assessment of 2020. Plaintiff's objection is represented in the following items: Item First: Invalidity of the Capital Gains Tax Assessment Issued as a Withholding Tax Assessment Imposing a withholding tax of (20%) under the management fees item, represented by a capital gains tax resulting from restructuring of foreign partner. It stated that ZATCA's assessment was issued under a wrong title and did not contain reasons or details of assessment or sources of numbers on which it relied when the assessment was issued. In contrast, Defendant argued that it had imposed a capital gains tax by including the amount in withholding tax only. Item Second: Capital Gains Tax Resulting from Foreign Partner's Exit by 20% imposing a withholding tax of (20%) under the management fees item, represented by a capital gains tax resulting from restructuring of foreign partner. In contrast, Defendant argued that during 2020 the Company owned by foreign partner was restructured in Pakistan, resulting in exit of the foreign partner in Engineering Company Ltd. and entry of a new partner from the same group of the foreign partner abroad. Item (3): Late Payment Fine: Plaintiff considers that fines are calculated only when the objection procedures are completed. In contrast, Defendant argued that it imposed these fines on tax differences due under the Income Tax Law. With regard to the first item, the Department found that there were several elements that must be available to consider the assessment valid, and having perused Defendant's assessment, it is evident that it includes the elements that must be available, as the assessment stated the legal ground and that amendment is based on capital gains tax rather than withholding tax. In addition, it turned out that Defendant notified Plaintiff of the method of capital gains calculation. Therefore, it is clear that assessment issued by Defendant fulfilled its formal elements including reasons for amendment and amount of tax, which makes ZATCA's assessment valid. Item Second: Capital Gains Tax Resulting from Foreign Partner's Exit by 20% It was found that Plaintiff attached the decision of Lahore High Court (Pakistan) in the Case file approving merger between Company Ltd (former partner) and ... Local Engineering Company Ltd (new partner). The Court decision indicated that there was no benefit for



the new partner. Accordingly, it is clear that the process is merely a restructuring process without a real sale of shares. Item (3): Late Payment Fine: Since late payment fine is imposed on Taxpayer as a result of delay in paying the tax due thereon, and since this item is related to the second item of this Decision, and the resulting occurrence shall take the same effect. Therefore, the Department ruled to Dismiss Plaintiff's objection regarding the item of invalidity of capital gains tax assessment issued as a withholding tax assessment. Overturn Defendant's decision regarding the item of capital gains tax resulting from exit of foreign partner by (20%) and related to the late payment fine item - the decision shall be final and enforceable.

Instruments:

- **Articles 9, 63.A&B and 77.A&B of [Income Tax Law promulgated by Royal Decree No. No. \(1\) dated 15/01/1425 AH.](#)**
- **Articles 9.M and 59.7 [of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)**

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 12/03/2023 AD, First Department for the Determination of Income Tax Violations and Disputes in Dammam, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (13957) dated 26/02/1444 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 03/01/2022AD.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), in his capacity as the attorney for the Plaintiff/ Company, Ltd (C.R No. ...), filed its objection to the tax assessment of 2020, issued by ZATCA. The objection is focused on the following item: Item First: Invalidity of the Capital Gains Tax Assessment Issued as a Withholding Tax Assessment. The Plaintiff objects to the Defendant's procedure of imposing a withholding tax of (20%) under the management fees item, represented by a capital gains tax resulting from restructuring of foreign partner. It stated that ZATCA's assessment was issued under a wrong title and did not contain reasons or details of assessment or sources of numbers on which it relied when the assessment was issued. Furthermore, it stated that withholding tax differs from capital gains tax in its concept and content, and therefore, it considers that ZATCA's assessment is not consistent with provisions of Article 59.7, of the Implementing Regulations of the Income Tax Law, as ZATCA did not explain reasons for calculating the additional amounts or grounds on which the amendments contained in the assessment subject of the objection were made. Item Second: Capital Gains Tax Resulting from Foreign Partner's Exit by 20% Plaintiff objects to Defendant's action of a 20% withholding tax under the management fee of capital gains tax resulting from restructuring of foreign partner. It stated that Article 9.M of the Implementing Regulations of the Income Tax Law issued by Minister of Finance's Decision No. 1535 of 11/06/1425 AH, which does not provide that it applies to resident capital companies subject to income tax in the Kingdom, as the text was absolute including all capital companies. In addition, it stated that what ZATCA relied on in determining the capital companies is contrary to provision of the above paragraph. It also recalled that there was no sale or transfer of shares or disposal of the relevant shares, as the Company owned by the foreign partner (Pakistan) was restructured, which resulted in the replacement and transfer of the foreign partner in ... Company Ltd. (... Company Ltd. and replacement of a new partner, which is



... Local Engineering Limited Company, which is from the same group owned abroad by (100%) as the non-Saudi partner). Accordingly, restructuring resulted in no new sale, payments or new company or the company's shares owned by (49%), and stated that the concept of capital gains tax entitlement is calculated on profits resulting from disposal or sale of the Company's asset. Moreover, it stated that ... Engineering Limited Company (Pakistani Company) and Local Engineering Limited Company belong to the same group and are owned by ... and his family by (100%), and that transfer of ownership took place according to the Lahore High Court in Pakistan so that the Company's main owners remained the same after the immediate transfer of shares (i.e., a Company and his family). Therefore, transfer of shares was entirely within the group of companies owning the Company in the same proportions and is a restructuring within the group, so capital gains tax is not due on this transaction, and change in the Company's shareholders was not due to any transfer, disposal or sale of shares. If a sale or transfer occurs, there must be additional details regarding the share including sale price and profits made for the difference between purchase price and the sale, on which the tax is imposed. In this case, shareholders of Engineering Company Limited did not obtain any shares in ... Local Engineering Company Limited. Item (3): Late Payment Fine: Plaintiff objects to Defendant's procedure of imposing a late payment fine, as it considers that fines are calculated only when the objection procedures are completed, and therefore considers that it is not required to pay late payment fines. It also stated that there are no tax differences due thereon based on the objection details. Therefore, the ground of the claim is not valid and the claim for fine is also invalid, and there is no ill will or intention on the part of Plaintiff to avoid payment of tax due when it is due under the Law. Therefore, Plaintiff requests to cancel claim for paying the late payment fines and requests that late payment fine be calculated.

Having presented the statement of claim to Defendant, it responded with a memorandum that included, with regard to the item of invalidity of capital gains tax assessment issued as a withholding tax assessment, that: Defendant stated that "it imposed a capital gains tax by including the amount in withholding tax box only, bearing in mind that ZATCA had sent the assessment form (method of capital gains calculation) together with a copy of assessment notification, which indicated that the tax was capital gains rather than a withholding tax. During the objection phase, ZATCA met with Taxpayer and explained to Taxpayer's representatives that the assessment sent to Taxpayer clarifies the method of capital gains calculation. Furthermore, the notification indicated the capital gains tax and Taxpayer was aware that the tax was a capital gains tax rather than a withholding tax. The notification provided a clear indication of reasons for assessment and legal provisions that clarify difference in capital gains tax based on Article 16.7.B of the Implementing Regulations of Income Tax Law". Accordingly, ZATCA's assessment was consistent with Article 62.B of the Income Tax Law, which states: (The Department shall notify the taxpayer of the tax assessment under paragraph (a) of this Article and of the tax due on it by a registered official letter, or by any other means that proves its receipt of the notification). With regard to the item of Capital Gains Tax Resulting from Foreign Partner's Exit by 20%: It stated that during examination stage on 23/08/2021 it asked Taxpayer about the following: - Has the capital gains tax for the exiting partner been paid to in 2020, while supporting the answer with documents and attaching the following: 1. Sales agreement. 2. Exit agreement. 3. Draft financial position on exit day, if not available, financial position for the end of fiscal year of exit shall be submitted. 4. Articles of Association before and after amending property percentages. 5. Provide evidence of payment of sold share value for the exit process. The Company stated that during 2020, the company owned by the foreign partner in Pakistan was restructured, resulting in the exit of foreign partner in Engineering Co. Ltd and joining of a new partner from the



same group of foreign partner abroad. Since the transfer was made by a foreign partner to another foreign partner within the group, and based on provided documents and in accordance with his declaration, ZATCA imposed a capital gains tax on the exit of foreign partner in ... Engineering Co. Ltd and joining of another partner from the same group of foreign partners abroad. ZATCA clarifies that, with reference to Article 9.M of the Income Tax Law, which applies to capital companies located within the Kingdom that form a group, the group has the right to transfer the asset, unlike the status of Taxpayer “Plaintiff”. Since ... Company ... and Company are within one group of a capital company outside the Kingdom, and therefore exit process is subject to capital gains tax. Given legal provisions governing the profits or losses resulting from disposal of assets, it stated that it is evident when determining the tax base of a capital company or a company within a group that is directly or indirectly owned by that capital company that no profit or loss is calculated when transferring an asset between the capital company and any of the group companies, or between such companies. No profit or loss is calculated for the companies to which the asset is transferred. In all cases, in order not to calculate the profit or loss, the asset must not be disposed of to a company outside the group before two years have passed from the date of transfer. The term “Asset” means cash, shares, stocks, securities, and other tangible and intangible assets. Article 8.2 of the Implementing Regulations of the Income Tax Law included conditions that must be met when transferring an asset from a capital company to another capital company within a single capital company group, or transferring the asset between companies within a single capital company group in order not to calculate a profit or loss for the company to which the asset is transferred, provided that these companies being within a capital company group fully owned directly and indirectly by a single capital company and that these assets are not disposed of to a company outside the group before two years have passed from the date of transfer. In addition, ZATCA clarifies that the Article is limited in application to capital companies when determining their tax base, and ZATCA, when holding the non-resident accountable for its activity in the Kingdom, whether subject to a permanent establishment, a tax deduction, or subject to a capital gains tax, does not consider his legal entity but rather treats him as a non-resident person. In addition, the Article begins with the phrase (determining the tax base) and Article 6 of the Law defined the person whose tax base is determined, namely: “Capital company - resident natural person - nonresident who performs an activity in the Kingdom through a permanent establishment - person engaged in the production of oil, hydrocarbons and natural gas”, which does not apply to the case of the Plaintiff Taxpayer. Based on the foregoing and in light of explanations, the case in question requires imposition of a capital gains tax as a result of such transfer when the shares are transferred from Engineering Company Ltd. to Local Engineering Company Ltd. as Article 9.M of the Income Tax Law does not apply to the case and the said paragraph applies in the case of transfer of resident capital companies subject to tax in the Kingdom under Article 2.A of the Income Tax Law and the transferring companies are non-resident companies. Therefore, Defendant maintains the validity of its procedure. Regarding item (Late payment fines): It stated that it had imposed these fines on due tax differences according to Article 77.A of the Income Tax Law, “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”.

On Thursday, 16/02/2023 AD, the Department held its session remotely to consider the Case, ..., holding National ID No. (...), appeared in her capacity as attorney by POA No. (...), and (holder of National ID No. ...), appeared in her capacity as representative of the Defendant/ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy



Governor for Legal Affairs, Dated .../12/1442 AH. Having asked Plaintiff's Attorney about its case, it stated that it objects to tax assessment issued by Defendant of 2020, and referred in details of the case to attachments to its file. It added that the Plaintiff had attached an additional memorandum and recent documents dated 29/12/2022. Having presented the same to Defendant's representative, it stated that it requests grace period to submit a response to the Plaintiff's submission. The Department responded to its request, provided that the response is attached to the Case file no later than Thursday 02/03/2023. In addition, it informed Plaintiff's Attorney that it has the right to respond to ZATCA's submission no later than Thursday 09/03/2023 AD. The Department informed both parties to the case that it would not accept any document after the periods granted thereto. Therefore, the Department decided to postpone the hearing of this case and set a date for its consideration on Sunday, 12/03/2023.

On Sunday, 12/03/2023 AD, the Department held its session remotely to consider the Case. ..., holder of National Identity No (...), appeared in his capacity as attorney under POA No. (...). In addition, ..., (holder of National ID No. ...), appeared in his capacity as representative of the Defendant/ ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, dated .../10/1443 AH. Having asked the Plaintiff's attorney about her claim, she replied that her claims are the same as stated in the statement of claims previously filed with the General Secretariat of the Tax Committees. Having asked the Defendant's representative about his reply to the Plaintiff's claims, he replied that he maintains the statements contained in the reply submitted to the General Secretariat requesting that no further documents be accepted from the Plaintiff that hadn't been submitted during the objection and examination stages. Having asked both parties if they had further statements, they replied by reiterating their earlier submissions presented to the Department. Therefore, the Department decided to close the pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since the Plaintiff aims through her case to annul the decision of ZATCA regarding 2020 tax assessment, and given that this dispute falls under the category of tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, case was filed by an authorized party and within the statutory timeframe; it must be accepted in form.

In Merits: Having examined the case papers and documents included in the case file, as well as requests, defenses and pleas made by the parties, the Department found that the dispute centers on Defendant's issuance of 2020 tax assessment, specifically concerning the objection related to the following items:

Item First: Invalidity of the Capital Gains Tax Assessment Issued as a Withholding Tax Assessment

Plaintiff objects to Defendant's procedure of imposing a 20% withholding tax under the management fee item of capital gains tax resulting from restructuring of the foreign partner, while Defendant argued that it imposed a capital gains tax by including the amount only in withholding tax category. Article (63.B) of Income Tax Law issued under Royal



Decree No. (M/1) dated 15/01/1425 AH regarding (Anti-Tax Avoidance Procedures) provides that: A. The Authority shall have the right to correct and amend the tax set forth in the declaration to bring it into conformity with the provisions of this Law. It shall have the right to make a tax assessment if the taxpayer fails to file its declaration. Paragraph B of the same Article stipulates that: the Department shall notify the taxpayer of the tax assessment under paragraph (a) of this Article and of the tax due on it by a registered official letter, or by any other means that proves its receipt of the notification. Article 59.7 of the Implementing Regulations of the Income Tax Law issued by Royal Decree No. (M/1) of 15/01/1425 AH, provides that: “7. If the Department does not agree with the taxpayer’s return, it shall notify the taxpayer of its modifications on the return, the reasons thereof, the amount of tax and subsequent penalties, and of the taxpayer's right to object and the statutory period specified for objection. The notice to the taxpayer shall be sent by registered mail or by any other means that proves the taxpayer’s receipt of such notice”. Based on the foregoing, having perused the Case files, documents and pleas made, since it became clear that there are several elements to be present to consider the assessment valid, and having taken cognizance of Defendant’s assessment, it is evident that it includes the elements that must be present in accordance with Article 59.7 of the Implementing Regulations of the Income Tax Law, since its assessment mentioned the legal ground and that amendment is based on capital gains tax, and not on withholding tax. Moreover, it is evident that Defendant informed Plaintiff of the method of calculating capital gains, and accordingly it appears that the assessment issued by Defendant fulfilled its formal elements of reasons for amendment and amount of tax, which makes ZATCA’s assessment valid. Therefore, the Department concluded to dismiss Plaintiff’s objection.

Item Second: Capital Gains Tax Resulting from Foreign Partner’s Exit by 20%

Plaintiff objects to Defendant’s procedure of imposing a withholding tax of (20%) under the management fees item, represented by a capital gains tax resulting from restructuring of foreign partner. In contrast, Defendant argued that during 2020 the Company owned by foreign partner was restructured in Pakistan, resulting in exit of the foreign partner in ... Engineering Company Ltd. and joining of a new partner from the same group of the foreign partner abroad. Article 9 of the Tax Law stipulates that: “In determining the tax base of a capital company or a company within a group of capital companies wholly owned - directly or indirectly - by that capital company, no profit or loss is calculated when an asset is transferred between the capital company and any of the group companies, or between those companies. No profit or loss shall be calculated for the companies to which the asset is transferred. In all cases, in order not to calculate profit or loss, the asset shall not be disposed of to a company outside the group before two years have passed from the date of transfer...”. Based on the foregoing, having perused the Case file, documents and plead made, and having taken cognizance of 9.M of the Implementing Regulations of the Income Tax Law issued by Minister of Finance’s Decision No. 1535 dated 1/06/1425 AH referred to above, it was found that it did not provide for the establishment of capital companies to impose the tax or not, and with reference to Defendant’s interpretation of the above paragraph, it is considered in breach of the Law, as the Article explicitly stipulated all capital companies in an absolute manner, including the Plaintiff. Assuming that the Defendant’s interpretation of Article (9) of the Tax Law is correct, it turned out that Plaintiff has attached to the Case file the decision of the Lahore High Court (Pakistan) approving the merger between ... Ltd (former partner) and ... Local Engineering Local Engineering Company Ltd (new partner). The Court decision indicated that there was no benefit for the new partner. Accordingly, it is clear that the process is merely a restructuring process without a real sale of shares. Therefore, the Department concluded to overturn Defendant’s decision.

Item (3): Late Payment Fine:



Plaintiff objects to Defendant's procedure of imposing a late payment fine, as it believes that fines are calculated only when the objection procedures are completed. In contrast, Defendant argued that it imposed such fines on tax differences due in accordance with article 77.A of the Income Tax Law "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". On the basis of the foregoing, having perused the Case file, documents and pleas made, and since the late fine is imposed on Taxpayer as a result of delay in paying the tax due thereon, and since this item is related to the second item of this decision, and resulting occurrence shall take the same effect. Therefore, the Department concludes to overturn Defendant's decision.

For these grounds and after deliberation, the Department unanimously decided as follows:

Decision

- 1- Dismiss Plaintiff's objection regarding the item of invalidity of capital gains tax assessment issued as a withholding tax assessment.
- 2- Cancel Defendant's decision regarding the item of Capital Gains Tax Resulting from Foreign Partner's Exit by 20%.
- 3- Cancel Defendant's decision regarding Late Payment Fine item.

This decision was delivered in presence of the parties. The date of entering the decision into the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of 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 upon all his Family and Companions

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2023-93127)

Issued in Case No. (W-93127-2022)

Keywords:

Withholding Tax Assessment - Late Payment Fine Item - Overturn Defendant's Decision.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on withholding tax assessment of September 2019 and 2020. Plaintiff's objection is represented in two items, the first: Withholding Tax, the second: Late Payment Fine - Plaintiff based its objection with regard to the first item, that these divers are employees of the Company, and that, with regard to Defendant's allegation that divers are independent employees who work for the Company and at the same time work with other companies, that Defendant misunderstood structure of the Company's business, that the services it provides to its customers are of a technical nature and cannot in any way be classified as other payments. With regard to the second item, Plaintiff stated that Defendant's decision not to cancel late fine on late tax payments is incorrect. ZATCA responded regarding the first item, that it became clear that temporary employees - non-resident divers - provide services to Plaintiff independently, on their own account, and therefore it is evident that Plaintiff pays amounts to persons who are not under its sponsorship, and are not registered with social insurance. Since these amounts were paid to a non-resident entity and the service was performed entirely within the Kingdom, it is therefore legally necessary to subject amounts paid thereto to non-resident entity tax. With regard to the second item, ZATCA stated that it imposed fines on due tax differences, since Taxpayer must pay a late payment fine of (1%) of the unpaid tax for every (30) days of delay - The Department found that, with regard to the first item, Plaintiff had submitted a sample of employment contracts, time sheet and bank transfers. Therefore, it became clear that divers were employees of Plaintiff and not independent divers. With regard to the second item, the Department found that this item is related to and connected to the first item, and therefore resulting occurrence shall take the same effect. The Department ruled to: Cancel Defendant's decision regarding withholding tax on employees working as seafarers, and cancel Defendant's decision regarding late payment fine item. This decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday, 26/01/2023 AD, First Department for the Determination of Income Tax Violations and Disputes in Dammam, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (13957) dated 26/02/1444 AH, convened its session remotely via video and



audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 03/03/2022 AD.

Facts of the case are summarized as follows: Mr., (Iqama No.), in his capacity as legal representative of Plaintiff (... Company), (C.R No.), filed an objection to the withholding tax assessment for September 2019 and 2020 issued by ZATCA, which centers in the following items: The first item "Withholding Tax": Plaintiff objects to Defendant's action of imposing a tax of (15%) in the amounts of SAR 14,320,636 and SAR 14,249,912, stating that Defendant's position stated in the rejection letter contradicted its written statement submitted at the time of field examination. In addition, Plaintiff stated that these divers were employees of the Company and work in the customer sector as part of the Company's contractual obligations in the Kingdom with their respective customers, that the Defendant assumed that they were other payments and applied 15% tax rate, and that the services provided to its customers were of a technical nature and could not in any way be classified as other payments. With regard to divers as being freelancers working for the Company and working at the same time with other companies, Plaintiff indicated that Defendant's misunderstood the business/group structure of the Company, stating that (...) Saudi is the old name of (...) Company, and (...) is a sister company and the employee in question was working for the sister company for a short period while working with (...), as is common practice in business sector, and (...) is part of (...) group of companies since November 24, 2004. Second Item "Late Payment Fine": Plaintiff objects to Defendant's action of imposing a late payment fine, stating that Defendant's decision not to cancel late tax payment fine is incorrect.

Having presented the statement of claim to the Defendant, it responded with a memorandum that included, with regard to withholding tax item, the following: Defendant stated that Plaintiff's submissions were inadmissible as evidence, and that during the examination and objection phases it became clear that temporary employees (non-resident divers) provide services to Plaintiff independently and on their own account. Accordingly, it was found that Plaintiff pays sums to persons who are not under its sponsorship, as well as not registered with social insurance. Since those sums were paid to a non-resident entity and the service was performed entirely within the Kingdom, it is therefore legally necessary that amounts paid thereto be subject to non-resident entity tax. Regarding item (Late payment fines): Defendant stated that it imposed fines on due tax differences based on Article 77.A of the Income Tax Law, and Article 68.1 of the Implementing Regulations of Income Tax Law.

On Wednesday, 11/01/2023 AD, the Department held its session remotely to consider the case. Mr. (...), Iqama No. (...), appeared in his capacity as the legal representative of Plaintiff Company under the commercial register and articles of association; and, holder of National ID No., appeared in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No., issued by Deputy Governor for Legal Affairs, dated .../12/1442 AH. Having asked Plaintiff's legal representative about its claim, it stated that Plaintiff objected to tax assessment related to the withholding tax on employees working as seafarers for September 2019 and 2020, and related fines. He referred in the details of the case to what was attached to its file, and added that he attached an additional memorandum and a set of documents to the Case file yesterday. Having presented the same to Defendant's representative, it stated that it requests a 10-day grace period to submit response to Plaintiff's submission. The Department responded to its request, provided that the response should be attached to the Case file not later than Sunday 22/01/2023 AD, and gave Plaintiff a grace period to review what ZATCA submits and attach the response thereto to the Case file. Accordingly, the Department decided to postpone hearing of this case to Thursday 26/01/2023 AD.



On Thursday, 26/01/2023 AD, the Department held its session remotely to consider the case. Mr. (.....), Iqama No. (....), appeared in his capacity as the legal representative of Plaintiff Company under the commercial register and articles of association; and, holder of National ID No., appeared in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No., issued by Deputy Governor for Legal Affairs, Dated .../12/1442 AH. It became clear to the Department that Defendant had submitted a Reply on the same day of the session, by attaching it to the Case file. Having asked parties to the Case whether they had further statements, they maintained their statements contained in memoranda submitted to the Department. Accordingly, the Department decided to close pleadings for deliberation.

Grounds:

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH. and the relevant Laws and regulations.

In form, since the Plaintiff aims through her case to overturn the decision of ZATCA regarding withholding tax assessment for September 2019 and 2020, and given that this dispute falls under the category Withholding Tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it must be accepted in form.

On merits, having examined the case papers and documents included in the case file, and requests, defenses and pleas made by the parties, the Department found that the Plaintiff objects to the withholding tax assessment issued by the Defendant for September 2019 and 2020. The objection was related to the following items.

The first item "Withholding Tax":

Plaintiff objects to Defendant's action of imposing a tax of (15%) in the amounts of SAR (14,320,636) and SAR (14,249,912), while Defendant argued that its action was valid and sound. Article 63.1 of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1438 AH, as amended by Ministerial Decision No. (1/1748) dated 20/02/1427 AH stipulates that: "(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Payments for technical or consulting services or international telecommunications services paid to the head office or an affiliated company... (15%)". Article 63.4 of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended by Ministerial Decision No. (1/1748) dated 20/02/1427 AH stipulates that: "Technical and consulting services" means technical, technological and scientific services of any kind, including studies and research in different fields, surveying work of scientific, geological and industrial nature, consulting or supervisory services, or any type of engineering services including relevant designs". Based on the foregoing, and having examined documents submitted in the Case file, and since the Department found that Plaintiff submitted a sample of employment contracts, time sheet, bank transfers, a diving operations booklet and report of the field examination by ZATCA, the Department found that divers were



employees of the Plaintiff and not freelancer divers. Therefore, the Department concluded to overturn Defendant's decision on this item.

Second Item "Late Payment Fine":

Plaintiff objects to Defendant's action of imposing a late payment fine, while the Defendant based its action on Article 77.A of the Income Tax Law and Article 68.1 of the Implementing Regulations of the Income Tax Law. Whereas Paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Article 68.1 of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, stipulates: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every (30) of delay shall be added in the following cases: b. Delay in payment of due tax as per the Department's assessment". Article 67.3 of the Implementing Regulations of Income Tax Law, stipulated: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". In the light of the foregoing, and bearing in mind that this item is related to the first item of this decision, and that the Department decided to overturn Defendant's decision. Since resulting occurrence shall take the same effect, the Department concluded to overturn Defendant's decision in this item.

Decision

- 1- Overturn Defendant's decision regarding the item of imposing withholding tax on employees working as seafarers.
- 2- Cancel Defendant's decision regarding Late Payment Fine item.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2023-98233)

Issued in Case No. (W-98233-2022)

Keywords:

Withholding Tax Assessment - Non-Acceptance of Plaintiff's Refund of Withholding Tax Item - Overturn Defendant's Decision.

Abstract

Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax assessment from January to March 2020, which is represented in the item: Non-Acceptance of Plaintiff's Refund of Withholding Tax - Plaintiff based her objection on the fact that the Company is subject to tax in the UAE and therefore is tax resident in the UAE under the Tax Treaty between Saudi Arabia and the UAE - ZATCA replied that the Company is in the free zone, and not subject to tax in UAE, therefore the Double Tax Treaty will not apply. The Department established that the Company is resident in the United Arab Emirates, and therefore provisions applicable to the UAE shall apply thereto. If the terms and conditions of an international treaty to which the Kingdom is a party conflict with the articles and provisions of the Income Tax Law, then the terms of international treaty or agreement shall apply. Overturn Defendant's decision regarding non-acceptance of plaintiff's refund of tax from January to March 2020. The decision shall be deemed final and enforceable under Article 42 of the Tax Dispute and Violation Committee Procedures.

Instruments:

- Article (4) of [the Agreement Between the Government of the Kingdom of Saudi Arabia and the Government of the United Arab Emirates on the Avoidance of Double Taxation and Prevention of Tax Evasion with Respect to Taxes on Income and on Capital, signed on 23/05/2018 and effective as of 01/04/2019.](#)
- Article (35) of [the Income Tax Law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 31/01/2023 AD, First Department for the Determination of Income Tax Violations and Disputes in Dammam, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (13957) dated 26/02/1444 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 15/03/2022 AD.



Facts of this Case are summarized as follows: Mr., (holder of National ID No.), in his capacity as attorney of Plaintiff/..... Company, (C.R No.), filed an objection to the withholding tax assessment from January to March 2020 issued by ZATCA, which centers in its objection to the Item “Non-Acceptance of Plaintiff’s Refund of Withholding Tax” Plaintiff objects to non-acceptance of Plaintiff’s refund of tax in the amount of SAR (85,869,70), SAR (801,192,15) and SAR (36,703,75), stating that (...) Company is subject to tax in the UAE and therefore is a tax resident in the UAE under the Tax Treaty between Saudi Arabia and the UAE, and according to explanations on the UN-OECD Model Tax Conventions, most countries consider a person to be “taxable” if that person is subject to other comprehensive taxes, even in cases where the country does not impose actual taxes, and a person is considered a resident under a tax agreement, if that person is subject to comprehensive taxes in a particular jurisdiction, regardless of whether the tax is actually imposed or not. Therefore, Plaintiff demands a refund of withholding tax.

Having presented the statement of claim to Defendant, it responded with a memorandum stating that it had refused to refund withholding taxes of the entity (... Company) for January/ February/ March respectively, on the grounds that it is in the free zone and is not subject to tax in the United Arab Emirates, therefore the Double Tax Treaty would not apply.

On Tuesday, 31/01/2023 AD, the Department held its session remotely to consider the case. No one representing the Plaintiff appeared, despite being legally notified., holder of National ID No. (...), appeared in its capacity as Defendant’s (ZATCA) Representative, by virtue of Authorization No., issued by Deputy Governor for Legal Affairs, dated .../12/1442 AH. Having asked Defendant representative about Plaintiff Case, she adhered to Defendant responses previously submitted to General Secretariat of Zakat, Tax and Customs. Having asked the Defendant representative if she had any other statements, she replied “no”. Therefore, the Department decided to close the pleadings and deliberation.

Grounds:

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff aims through her case to overturn the decision of ZATCA regarding withholding tax assessment from January to March 2020, and given that this dispute falls under the category Withholding Tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it must be accepted in form.

On merits, having examined the Case papers and documents included therein, and requests, defenses and pleas made by the parties, the Department found that the dispute lies in Defendant’s issuance of withholding tax assessment from January to March 2020. The objection was related to the item “Non-Acceptance of Plaintiff’s Refund of Tax”. Plaintiff objects to non-acceptance of refund of the withholding tax in the amount of SAR (85,869,70), SAR (801,192,15) and SAR (36,703,75). In contrast, Defendant based its action on Article 68.E of the Income Tax Law issued by Royal Decree No M/1 of 1425 AH. Article (3) Paragraph (1/b) of the Agreement Between the Government of the Kingdom of Saudi Arabia and the Government of the United Arab Emirates on the



Avoidance of Double Taxation and Prevention of Tax Evasion with Respect to Taxes on Income and on Capital stipulates that the term “UAE” means the United Arab Emirates, and when used in its geographical meaning, means the territories and islands of the United Arab Emirates which include the territorial sea, maritime zones, the economic zone and the continental shelf over which the United Arab Emirates exercises sovereign rights in accordance with its domestic laws and international law, with regard to exploitation and exploration of natural resources found in the seawater, seabed and the subsoil of these waters”. Article (4), paragraph (1/a) of the Agreement provides that: “Resident: For the purposes of this Agreement, the term “resident of a Contracting State”: (A) means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local government thereof. Article 7.1 of the Agreement stipulates: “Business Profits: (1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein...”. Based on the foregoing, and having examined documents submitted by Plaintiff in form B/7, in addition to the Tax Residency Certificate in the United Arab Emirates submitted by the Federal Tax Authority on 22/12/2020. Furthermore, the Department established that the company is a resident of the United Arab Emirates, and since the Agreement provides that the resident is subject to tax in accordance with the Contracting State’s tax system, including in the economic zones (free zones) within the scope of UAE, and what applies to UAE applies thereto. Article 35 of the Income Tax Law stipulates that “in case the conditions of a treaty or an international agreement to which the Kingdom is party are inconsistent with the articles and provisions of this Law, the conditions of the treaty or international agreement shall prevail”. Therefore, the Department concluded to overturn Defendant’s decision.

Decision

Overturn Defendant’s decision regarding not accepting Plaintiff’s refund of tax from January to March 2020.

This decision was made in presence of parties. The date on which decision was uploaded to General Secretariat of Zakat, Tax and Customs Committees is the date of decision delivery. Parties to the case may request to appeal the decision in accordance with the law within 30 days from the day following date specified for its receipt. The decision shall become final and enforceable after the end of this period in the event of failure to lodge an objection.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2023-142627)

Issued in Case No. (W-142627-2022)

Keywords:

Withholding Tax – Late Payment Fine – Overturn Defendant's Decision

Abstract

Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax and late payment fine from 2016 to 2018. On merits, Plaintiff's objection is limited to two items: First item: Withholding Tax Item. Plaintiff objects to Defendant's procedure of subjecting amounts paid to third parties in exchange for technical and consulting services to a 15% withholding tax, while Defendant maintained validity and soundness of its procedure. With reference to the Case file, defenses and documents submitted, and since amounts paid to the head office for technical or consulting services are subject to a 15% withholding tax. Since Defendant states in its reply that the text of article mentioned by Plaintiff in the Tax Law concerns only related persons subject to single control, which explained the type of association in partnership companies or capital companies. Since Plaintiff argues in its statement of claim that the non-resident company an unrelated entity, as it controls less than (50%) of the Company's shares, which is confirmed by the letter of incorporation attached to the Case documents that the foreign partner owns 49% of Plaintiff's shares, and it is a resident capital company. Therefore, the Department concludes to overturn Defendant's decision in this item. Second item: Late Payment Fine Item: Plaintiff objects to Defendant's procedure of imposing a late payment fine on the contested items, while Defendant did not reply to this item. Since this item is related to the first item of this decision, and since the Department decided to overturn Defendant's decision and the resulting occurrence shall take the same effect. Therefore, the Department concluded to overturn Defendant's decision on this item. Accordingly, the Department ruled to: Cancel the Defendant's decision regarding the two items subject of the Case.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday, 09/02/2023 AD, First Department for the Determination of Income Tax Violations and Disputes in Dammam, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (13957) dated 26/02/1444 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 22/08/2022 AD.

The facts of this Case are summed up as follows: Mr. (...), (ID No.....), In its capacity as legal Representative of Plaintiff/...., C.R. No. (...), filed an objection to withholding tax



assessment and late payment fine for 2016 to 2018 issued by ZATCA. First: Withholding Tax Item: Plaintiff objects to Defendant's procedure of subjecting payments made to third parties for technical and consulting services to a withholding tax of 15%, stating that the foreign partner owns only 49%, which is less than the percentage required to be considered an associated party. Second: Late Payment Fine: Plaintiff objects to Defendant's action of imposing a late payment fine on the contested items, stating that it submitted tax returns on the prescribed legal dates, and that late fines arising from tax difference are the result of errors and differences of opinion, not the result of intentional non-payment of tax on the legal date.

Having presented the statement of claim to the Defendant, it responded with a memorandum that included, with regard to withholding tax item, it subjected the amounts paid abroad for technical services to (...) Company to withholding tax for the months in each of the years (2016, 2017, 2018) at a rate of (15%) on the following payments: SAR (207,720), SAR (216,568.10), SAR (197,845.46) respectively, as being paid to a related party (partner) based on the data provided by Plaintiff.

On Thursday, 09/02/2023 AD, the Department held its session remotely to consider the Case, ..., holding National ID No. (...), in his capacity as Plaintiff's legal representative as per the articles of association., (holder of National ID No. ...), appeared in its capacity as representative of Defendant/ ZATCA, by virtue of Authorization No. (...) issued by ZATCA Deputy Governor for Legal Affairs, dated .../12/1442 AH. Having asked the Plaintiff's attorney about its claims, he replied that its claims are the same as stated in the statement of claims previously filed with the General Secretariat of the Tax Committees. Having asked Defendant Representative regarding its reply, it replied that it maintained Defendant statements presented earlier to General Secretariat of Zakat, Tax and Customs Committees. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds:



Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff aims through her case to overturn the decision of ZATCA regarding withholding tax assessment and late payment fine from 2016 to 2018, and given that this dispute falls under the category Withholding Tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it must be accepted in form.

On merits, having examined the case papers and documents included in the case file, and requests, defenses and pleas made by the parties, the Department found that the Plaintiff objects to withholding tax assessment and late payment fine from 2016 to 2018 issued by the Defendant. That objection was related to the following items:

First "Withholding Tax Item":

Plaintiff objects to Defendant's action of subjecting amounts paid to third parties for technical and consulting services to a withholding tax of (15%), while Defendant argued that its action was valid and legal. Article 63.1 of the Implementing Regulations of Income



Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1438 AH stipulates that: “A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or rent; technical or consulting services, international telecommunication services paid to the head-office or an affiliated company”. In addition, Article 64.C.2 of the Tax Law stipulated that: “C. Companies and agencies shall be deemed under common control if the same person or related persons control 50% or more according to this Article as follows: 2. With respect to capital companies, control means ownership of the voting rights therein or ownership of its value, either directly or indirectly, through a subsidiary company or companies of any type”. Based on the foregoing, and with reference to the Case file, defenses and documents submitted, and since amounts paid to the head office for technical or consulting services are subject to a 15% withholding tax. Since Defendant states in its reply that the text of article mentioned by Plaintiff in the Tax Law concerns only related persons subject to common control, which explained the type of association in partnership companies or capital companies. Since Plaintiff argues in its statement of claim that the non-resident company an unrelated entity, as it controls less than (50%) of the Company's shares, which is confirmed by the letter of incorporation attached to the Case documents that the foreign partner owns 49% of Plaintiff's shares, and it is a resident capital company. Therefore, the Department concludes to overturn Defendant's decision in this item.

Second “Late Payment Fine”:

Plaintiff objects to Defendant's procedure of imposing late payment fine on the contested items, while Defendant did not respond to this item. In addition, Article 77.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates: “In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. Article 68.1 of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, stipulates: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every (30) of delay shall be added in the following cases: b. Delay in payment of due tax as per the Department's assessment”. Article 67.3 of the Implementing Regulations of Income Tax Law, stipulated: “Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment”. In the light of the foregoing, and bearing in mind that this item is related to the first item of this decision, and that the Department decided to overturn Defendant's decision. Since resulting occurrence shall take the same effect, the Department concluded to overturn Defendant's decision in this item.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

- Cancel the Defendant's decision regarding the two items subject of the Case.

This decision was made in presence of parties. The date on which decision was uploaded to General Secretariat of Zakat, Tax and Customs Committees is the date of decision delivery. Parties to the case may request to appeal the decision in accordance with the law within 30 days from the day following date specified for its receipt. The decision shall become final and enforceable after the end of this period in the event of failure to lodge an objection.



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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2369)

Issued in Case No. (W-46207-2021)

Keywords:

Withholding Tax - Late Payment Fine - Failure to Provide Required Data within the Statutory Period - External Transfers - Accept Plaintiff's Objection.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on withholding tax of June 2019. Plaintiff's objection is limited to two items: Item First: Withholding Tax of June 2019. Second item: Late Payment Fine. Plaintiff based his case regarding the first item on that: Defendant amended the withholding tax return because the required data was not provided during the statutory period, as Defendant considered Plaintiff to be convicted of tax evasion. In contrast, Plaintiff believed that there were no external transfers during the period subject of dispute. ZATCA responded with respect to the second item that: It has imposed a late payment fine in accordance with provisions of Article 77.A of the Income Tax Law. The Department established with regard to the first item that: It is evident from Plaintiff's statements of account that there were no external transfers, Defendant did not explain how it received those external transfers, and that Defendant did not provide evidence of its procedure. Regarding the second item: It is related to the first item and that the resulting occurrence shall take the same effect. Therefore, the Department ruled to Accept Plaintiff's decision regarding the item of withholding tax of 2019 and accept Plaintiff's objection to the item of late payment fine of 2019. This decision shall be deemed final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Instruments:

- [Articles \(77.A\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 05/10/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) of 15/01/1425 AH as amended, and formed by Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 16/12/2021 AD.



Facts of the case are summarized that, holding Resident ID No.: (...), in his capacity as Owner of Enterprise, C.R. No.: (...), filed an objection to withholding tax of June 2019 issued by ZATCA. The Plaintiff's objection is limited to two items. Regarding the first item: Withholding tax of June 2019. Plaintiff objects to Defendant's action of amending the withholding tax of June of the disputed year, as Plaintiff explained that Defendant amended the withholding tax declaration for June 2019, because the required data were not provided during the statutory period, as Defendant considered that Plaintiff was evading taxes, while the Plaintiff considered that there were no external transfers during the disputed period. Regarding the Second Item: Late Payment Fine: Plaintiff objects to Defendant's procedure of imposing a late payment fine.

Having presented the statement of claim to Defendant, it responded in Reply (1) that: It argues that the case is not accepted in form in accordance with Article 60.1 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH. Reply No. (2) included: Regarding First Item: Withholding Tax for July 2019: ZATCA make an assessment on the Plaintiff to a plaintiff based on discovery of a case of tax evasion in external transfers in the amount of SAR 91,192 for July 2019. ZATCA amended the withholding tax declaration because Plaintiff did not respond during the examination phase. Having reviewed Plaintiff's data and statements, ZATCA found that they concerned the period from 15/05/2019 to 31/12/2019. Plaintiff did not submit statements of accounts for the remaining months. Accordingly, Plaintiff's objection was rejected based on Article 68.A.6 of the Income Tax Law. Regarding the Second Item: Late Payment Fine: Defendant imposed a late payment fine in accordance with provisions of Article 77.A of the Income Tax Law.

On Sunday, 31/07/2022 AD, the Department held a remote session to hear the Case. No one appeared to represent Plaintiff despite being duly notified. Representative of Defendant..., holder of National ID No. (...), appeared by virtue of Authorization issued by GAZT's Deputy Governor for Legal Affairs No. dated: .../06/1442 AH. After deliberation and pursuant to the provisions of the Law and its Implementing Regulations, and Tax Dispute and Violation Committee Procedures, the Department unanimously decided to: Dismiss the Case. The hearing concluded at exactly 8 p.m.

On 08/08/2022, the plaintiff filed an application to set case in motion. On Wednesday, 05/10/2022 AD, the Department held a remote session to hear the Case. Representative of Plaintiff, holding ID No. (...) appeared. Representative of Defendant, holding National ID No. (...), appeared by virtue of Authorization, issued by GAZT's Deputy Governor for Legal Affairs No. dated: .../06/1442 AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. The Department decided to adjourn the session for deliberation before adjudication.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended. Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) (M/1) of dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) of 21/4/1441 AH, and the relevant Laws and regulations.

In form, Plaintiff seeks by this Case to cancel ZATCA's decision regarding withholding tax for June 2019, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) of 21/04/1441 AH. Since the Case was filed by a party having



capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On merits, having examined the case papers and documents included in the case file, and requests, defenses and pleas made by the parties, the Department found that the Plaintiff objects to withholding tax for June 2019 issued by the Defendant. That objection was related to the following item:

Regarding the First Item: Withholding Tax for June 2019. Plaintiff objects to Defendant's action of withholding tax for June 2019 and requests that Defendant's action be revoked, while Defendant argues that it made an assessment on Plaintiff as a result of an evasion, and because Plaintiff has not provided the required. Based on the foregoing, having perused data provided by the parties, it is evident from Plaintiff's statements of accounts that there are no external transfers, and Defendant has not explained how it accessed those external transfers, nor has the Defendant provided evidence of its procedure's validity. The Department concluded to accept Plaintiff's objection to withholding tax for July 2019.

Regarding the Second Item: Late Payment Fines: Plaintiff objects to Defendant's action in question of imposing a late payment fine and requests its cancelation, while Defendant argues that it has imposed the late payment fine in accordance with Article 77.A of the Income Tax Law.

Based on the foregoing, the Department, with regard to the first item, concluded to accept Plaintiff's objection to this item, and because Defendant is not entitled to impose withholding tax for the period subject of the case. Since the resulting occurrence shall take the same effect, the Department concluded to accept objection filed by Plaintiff regarding late payment fine item.

Decision

- Accept Plaintiff's objection regarding the item of withholding tax of 2019.
- Accept Plaintiff's objection regarding the item of late payment fines of 2019.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(The Decision is deemed final and imperative by expiration of objection period under Article (42) of Tax Dispute and Violation Committee Procedures).



Withholding Tax

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2642)

Issued in Case No. (W-52575-2021)

Keywords:

Withholding Tax Assessment - Imposing Withholding Tax on Amounts Related to Dubai Branch - Imposing Withholding Tax on Amounts Paid to the Company's Branch in KSA - Material Error in Calculating Amounts Paid to Relevant Parties - Late Payment Fines.

Abstract

Plaintiff instituted this case moving to cancel ZATCA's decision on withholding tax assessment from 2015 to 2019. Plaintiff based its objection on four items: Item First: Imposing Withholding Tax on Amounts Related to Dubai Branch of 2016 and 2017. Second item: Imposing Withholding Tax on Amounts Paid to the Company's Branch in KSA of 2015 and 2016. Third item: Material Error in Calculating Amounts Paid to Relevant Parties during 2019. Fourth item: Late Payment Fines. Plaintiff based his case regarding the first item on that: Revenues of Dubai branch were as a result of contract between Dubai branch and Saudi customers. Therefore, the Company's branch in KSA has no relation to these contracts except to declare revenues resulting from these contracts. Second item: The branch accidentally wrote the Company's address as being in Dubai, but in fact these amounts were paid to the Company's branch in KSA. In addition, the branch attached a sample of invoices issued by the Company's branch in KSA. Third item: ZATCA requested that the form for these transactions be filled out, which was prepared by it. During the objection phase, the branch noticed that there was a difference in movement with non-resident entities, especially the item of paid amounts during the year. The branch corrected and submitted the movement to ZATCA together with the objection memorandum. Fourth item: Late payment fines arising from tax difference are the result of errors and differences of viewpoints and not the result of deliberate non-payment of tax in the statutory date. With regard to the first item, ZATCA responded that: ZATCA was not provided with a copy of the services agreement signed between the Dubai branch and Saudi customers together with the relevant invoices. The branch also did not provide an analysis of revenues showing amounts paid to the Dubai branch. Second item: The branch did not provide it with supporting documents proving that amounts were paid to the Company's branch in KSA, so that ZATCA could verify that the service was actually provided by the Company's branch in KSA. In addition, permanent establishment in the Kingdom of a non-resident is required to withhold a tax from paid amount. Third item: Burden of proof lies with the Plaintiff to prove these amounts, and since the branch has provided an excel file not extracted from the accounting system and ZATCA has not been provided with the general ledger for each supplier so that it can verify that the transaction is in conformity with the branch accounts. Fourth item: A late payment fine of 1% of the unpaid tax is imposed for every 30 days, including a delay in payment of the tax. - With regard to the First Clause, the Department established that: Plaintiff did not provide



supporting documents. Second item: The contract was concluded between the Company's branch in Dubai and KSA. Thus, these amounts are not subject to the withholding tax as they were made between resident parties. Third item: It was proven that Plaintiff did not submit the ledger for each supplier to verify conformity of the amounts. Fourth item: Dispute between the parties is documentary and did not arise from a significant difference in interpretation of legal texts. Since late payment fine is calculated from end of the deadline for filing the declaration to the date of payment of due tax arising under the application of provisions of the Law. Therefore, the Department ruled to: Dismiss Plaintiff's objection to the item of imposing withholding tax on amounts related to the Dubai branch for 2016 and 2017. Accept Plaintiff's objection to the item of imposing withholding tax on amounts paid to the Company's branch in KSA for 2015 and 2016. Dismiss Plaintiff's objection to the item of material error in calculating amounts paid to the Company's related parties in Dubai during 2019. Amend Defendant's decision regarding late payment fines according to grounds of the decision. The decision is final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Instruments:

- **Articles 68.A, 59.9 and 77.A of [Income Tax Law promulgated by Royal Decree No. \(M/1\(59/ 9\) dated 15/01/1425 AH.](#)**
- Article 68.1 of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)
- Jurisprudential rule that stated that: "Onus of proof lies with the plaintiff".

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 18/10/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) of 15/01/1425 AH as amended, and formed by Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 31/05/2021 AD.

Facts of the case are summarized that, holder of National Identity No. (...), in his capacity as a legal representative of Plaintiff/ Company branch, C.R No.: (...), pursuant to AOA, filed an objection to ZATCA's withholding tax assessment from 2015 to 2019. Plaintiff's objection is limited to four items. Regarding the first item: Imposing withholding tax on amounts related to the Dubai branch for 2016 and 2017. Plaintiff objects to Defendant's procedure of imposing a 15% withholding tax on amounts paid to the Dubai branch in the amount of SAR 291,324.49 for May 2016, SAR 154,676.96 for February 2017 and SAR 2,460.50 for December 2017. The Plaintiff, in its statement of claim, indicated that: "Revenues of the Dubai branch were generated as a result of contract between the Dubai branch and Saudi customers. The Dubai branch issues invoices to Saudi customers, whereby payment is made directly to the Dubai branch. According to the foregoing, the Company's Saudi branch has no relation to these contracts other than declaring revenues resulting from these contracts only in its annual tax return as revenues resulting from activities carried out in the Kingdom and subject to tax in the Kingdom at 20%. Dividends to the head office are subject to a withholding tax of 5%. While these same amounts were subject to the aforementioned tax, ZATCA insists on subjecting the same once again to a withholding tax of 15%. Regarding ZATCA's understanding of the matter, there is a clear



ambiguity and a clear contradiction with the provisions of Article 68.F&G of the Income Tax Law. Accordingly, the Branch wishes to inform you that ZATCA did not request this analysis in advance during the examination phase and objection review phase. For convenience of reference, we attach an analytical statement of revenues of Dubai branch for 2016 and 2017, which were included in revenues of the Saudi branch (Statement No. 2). In addition, ZATCA stated that the branch did not provide it with a copy of contracts concluded between the Dubai branch and Saudi customers. Accordingly, we provide Your Excellency with a copy of some of contracts with Saudi customers, as an example, to facilitate your reference thereto (Statement No. 3). Besides, the branch attaches to your Excellency a sample of invoices issued by Dubai branch to Saudi customers along with a copy of payment receipts (Statement No. 4). It will be clear to your Excellency from documents attached above that contracts, invoices and payment were made between Dubai branch and Saudi customers only". With regard to the second item: Imposing Withholding Tax on Amounts Paid to ... for 2015 and 2016. Plaintiff objects to Defendant's action of imposing withholding tax on amounts paid to ... in the amount of SAR 11,700.40 for December 2015 and December 2016 in the amount of SAR 2,285. The Plaintiff, in its statement of claim, indicated that: "The branch accidentally wrote the address of ... Company as being in Dubai, but amounts were in fact paid to Company branch in KSA, which is a resident company in KSA and registered with ZATCA. In addition, ZATCA stated in its memorandum that the branch did not submit documents supporting its view. In this regard, the branch attached a sample of invoices issued by ... Company branch in KSA (Statement No. 5) regarding the years under objection". As for the third item: Material Error in Calculating Amounts Paid to Relevant Parties ... during 2019. Plaintiff objects Defendant's action of material error in calculating amounts paid to relevant parties ... during 2019, amounting to SAR 747,879.38. Plaintiff indicated in its statement of claim, that: "ZATCA requested a summary of transactions with resident and non-resident entities. ZATCA also requested that the form for these transactions be filled out, which was prepared by it. The branch filled in the details of required transaction in the above-mentioned form. Therefore, the form submitted to ZATCA is not an Excel file, as stated by the Authority, but rather the form submitted by ZATCA. During the objection phase, the branch noticed that there was a difference in transaction with non-resident entities, especially the item of paid amounts during the year. The branch corrected and submitted the transaction to ZATCA together with the objection memorandum (Statement No. 6). It will be clear to Your Excellency from the attached transaction that the total amounts paid to related non-resident entities amounted to SAR 2,037,672.38, and the 15% withholding tax amounted to SAR 305,650.89. The withholding tax was paid for these amounts when the withholding tax returns of 2019 were submitted. Therefore, we kindly ask you to take the aforementioned transaction into consideration and to support the branch's point of view by canceling the withholding tax of July 2019". As for the fourth item: Late Payment Fines: The Plaintiff objects to Defendant's procedure of imposing a late payment fine on the above contested items. Plaintiff submitted tax returns at the prescribed legal dates, and that the late payment fines arising from tax difference are the result of errors and differences of opinions, not of deliberate non-payment of tax on the legal dates, and that it based its tax treatment of the item that resulted in the imposition of withholding tax on ZATCA's answer included in FAQs. Therefore, Plaintiff requests to calculate late payment fine from the date of final decision.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Imposing Withholding Tax on Amounts Related to the Dubai Branch for 2016 and 2017. With reference to the branch's financial statements and its complementary notes, transactions between the branch of ... in Dubai (Dubai Branch) and Saudi customers were not disclosed. Furthermore, ZATCA added that the branch did not provide an



analysis of revenues indicating amounts paid to Dubai branch, nor was it provided with a copy of the services agreement signed between the Dubai branch and Saudi customers together with related invoices. Regarding the Second Item: Imposing Withholding Tax on Amounts Paid to ... for 2015 and 2016. ZATCA reviewed the professional fee schedule for the years under objection, and subjected the amounts included therein to a withholding tax of 5%. In addition, ZATCA added that the branch did not provide it with supporting documents proving that the amounts were paid to branch of ... in KSA, so that ZATCA can verify that the service is actually provided by the branch of Company in KSA. As for the third item: Material Error in Calculating Amounts Paid to Relevant Parties ... during 2019. During examination and auditing phase, ZATCA requested movement of transactions with resident and non-resident entities, and that the branch submitted an excel file not extracted from the accounting system, and ZATCA was not provided with the general ledger for each supplier so that it could verify that the transaction matched the branch accounts. As for the fourth item: Late Payment Fines: It subjected the withholding tax differences to a late payment penalty of (1%) for every (30) days of delay, in accordance with the Tax Law and its Implementing Regulations.

On Wednesday, 05/10/2022 AD, the Department held its session remotely to consider the Case. Plaintiff's Attorney ..., holder of National ID No. (...), appeared, under the commercial register attached to the Case file. Defendant's Representative ..., holder of National ID No. (...) appeared by virtue of Authorization, issued by ZATCA's Deputy Governor for Legal Affairs No. (...) dated: .../06/1442 AH. Having asked Plaintiff's attorney about the supporting documents relating to withholding tax paid by Saudi customers, he replied that he requested a grace period to submit the same in a Reply. Accordingly, the Department requested it be uploaded on the website of the General Secretariat of Tax Committees within five days from the date of hearing. Accordingly, the Department decided to postpone hearing of the Case to a later session scheduled for Tuesday, 18/10/2022 AD.

On Tuesday, corresponding to 18/10/2022 AD, the Department held its session remotely to consider the Case. Plaintiff's Attorney ..., holder of National ID No. (...), appeared, under the commercial register attached to the Case file. Defendant's Representative ..., holder of National ID No. (...) appeared by virtue of Authorization, issued by ZATCA's Deputy Governor for Legal Affairs No. (...) dated: .../06/1442 AH. Having asked Plaintiff's attorney about he had requested for a grace period, he replied: After referring to the Company, it became clear that Saudi customers did not pay the withholding tax, and that the Company paid the income tax for these amounts. Having asked parties to the Case about what they would like to add, they satisfied with what has been previously submitted. Therefore, the Department decided to adjourn the session for deliberation before adjudication.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) (M/1) of dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) of 21/4/1441 AH, and the relevant Laws and regulations.

In form, since Plaintiff seeks by this Case to cancel ZATCA's decision regarding withholding tax assessment from 2015 to 2019, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) of 21/04/1441 AH. Since



the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On Merits, having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of withholding tax assessment from 2015 to 2019. The Plaintiff's objection is limited to four specific items as follows:

Regarding First Item: Imposing withholding tax on amounts related to the Dubai branch for 2016 and 2017. Plaintiff objects to Defendant's procedure of imposing a 15% withholding tax on amounts paid to the Dubai branch in the amount of SAR 291,324.49 for May 2016, SAR 154,676.96 for February 2017 and SAR 2,460.50 for December 2017. In contrast, Defendant argued that the transactions between the branch of in Dubai (Dubai Branch) and Saudi customers were not disclosed. Furthermore, ZATCA added that the branch did not provide an analysis of revenues indicating amounts paid to Dubai branch, nor was it provided with a copy of the services agreement signed between the Dubai branch and Saudi customers together with related invoices. With reference to the Case file, defenses and documents contained therein, since the Department gave Plaintiff a grace period to submit documents related to its argument regarding withholding tax paid by Saudi customers, since Plaintiff did not provide supporting documents, and according to the jurisprudence rule that stated that: "Onus of proof lies with the plaintiff", since Plaintiff did not provide evidence supporting its objection. Therefore, the Department concluded to dismiss Plaintiff's objection to the item of imposing withholding tax on amounts related to Dubai branch for 2016 and 2017.

Regarding the Second Item: Imposing Withholding Tax on Amounts Paid to ... For 2015 and 2016. Plaintiff objects to Defendant's action of imposing withholding tax on amounts paid to in the amount of SAR 11,700.40 for December 2015 and December 2016 in the amount of SAR 2,285. In contrast, Defendant argued that ZATCA reviewed the professional fee schedule for the years under objection, and that ZATCA subjected the amounts included therein to a withholding tax of 5%. In addition, ZATCA added that the branch did not provide it with supporting documents proving that the amounts were paid to the branch of ... in KSA, so that ZATCA can verify that the service is actually provided by the branch of Company in KSA. Based on Article 68.A of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH stipulating: "A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates....". According to the foregoing, and having taken cognizance of data provided by the parties, it was found that the contract had been concluded between the branch and the branch of Company in KSA. Accordingly, these amounts are not subject to withholding tax as they were made between resident parties, and the fact that ZATCA's reliance on rejection of the branch's view was based on the lack of supporting documentation, which meant that the dispute with ZATCA was a documentary dispute. Since Plaintiff has attached a sample of invoices issued by the branch of Company in KSA (Statement No. 5), and having perused these invoices, it is clear that Plaintiff made a mistake in listing the correct company name, and that invoices were sent to ... KSA. Therefore, the Department concluded to accept Plaintiff's objection to the item of imposing withholding tax on amounts paid to For 2015 and 2016.

Regarding the third item: Material Error in Calculating Amounts Paid to Relevant Parties ... during 2019. Plaintiff objects Defendant's action of material error in calculating amounts paid to relevant parties ... during 2019 in the amount of SAR 747,879,38. However, Defendant argued that, during examination and auditing phase, it requested movement of transactions with resident and non-resident entities, and that the branch



submitted an excel file not extracted from the accounting system, and ZATCA was not provided with the general ledger for each supplier so that it could verify that the transaction matched the branch accounts. Article 59.9 stipulates: “The Department may correct mathematical and material errors within ten years from the end of the due date of filing the tax return of the taxable year, pursuant to the taxpayer’s request, or if the Department or audit agencies discover such errors. A Mathematical and materiel error shall mean an error resulting of a mathematical operation, such as (addition, subtraction, multiplication and division), or from posting an erroneous number or similar errors”. According to the foregoing, having taken cognizance of data provided by the parties, it was found that the dispute is over the correct value of amounts paid to related non-resident entities. Taxpayer submitted transactions with resident and non-resident entities during the year only, which was manually prepared by Plaintiff without submitting the ledger for each supplier to verify conformity of amounts with the form prepared by Plaintiff. Since the burden of proof rests on Plaintiff to prove these amounts, the Department concluded to dismiss Plaintiff’s objection to the item of material error in calculating amounts paid to related parties ... during 2019.

Regarding the fourth item: Late payment fines. Plaintiff objected to Defendant’s procedure of calculating a late payment fine on the contested items, while the Defendant argued that it had subjected the withholding tax differences to a late payment fine of (1%) for every (30) days of delay, in accordance with the Tax Law and its Implementing Regulations. Based on Article 77.A of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, stipulating that: “In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. Based on Article 68.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which 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: (b). Delay in payment of due tax as per the Department’s assessment. E. 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”. On the basis of the foregoing, and with reference to the Case file, defenses and documents contained therein, since late payment fine is calculated from the end of the deadline for filing the declaration to the date of payment of due tax arising under the application of Law and amendments made by Defendant. Since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in interpretation of legal texts, we therefore consider validity of ZATCA’s procedure of imposing late payment fine from the due date on items regarding which Plaintiff’s objection was dismissed, and cancelation of late payment fine on items regarding which Defendant’s decision was overturned due to lapse of its basis.

Decision

First: Dismiss Plaintiff’s objection to the item of Imposing Withholding Tax on Amounts Related to Dubai Branch for 2016 and 2017.

Second: Accept Plaintiff’s objection to the item of Imposing Withholding Tax on Amounts Paid to for 2015 and 2016.

Third: Dismiss Plaintiff’s objection to the item of Material Error in Calculating Amounts Paid to Relevant Parties ... during 2019.

Fourth: Amend Defendant’s decision on the item of Late Payment Fines in accordance with grounds of the decision.



This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2646)

Issued in Case No. (W-25970-2020)

Keywords:

Withholding Tax Assessment - Withholding Tax Paid under Declarations Item - Letter of Amendment Does not Conform to Legal Procedure for Issuing Assessment - Late Payment Fines Item - “Onus of Proof Lies with the Plaintiff”

Abstract

Plaintiff instituted this case moving to cancel ZATCA’s decision on withholding tax assessment for December 2013, 2014 and November 2015. Plaintiff based its objection on six items: First: Withholding Tax Paid under Declarations. Second: Letter of Amendment Does not Conform to Legal Procedure for Issuing Assessment. Third: Withholding Tax - December 2013. Fourth: Withholding Tax - December 2014. Fifth: Withholding Tax - November 2015. Sixth: Late Payment Fines. ZATCA replied, with regard to the first item, that: It found that no tax amounts were paid for those services. With regard to the second item: Late Payment Fine: ZATCA imposed the fine on unpaid tax differences on the legal date. The Department established, with regard to the first item, that: Plaintiff submitted supporting documents for payment of withholding tax. With regard to the second item: Plaintiff objected to the items, indicating its knowledge of assessment details. With regard to the third item: Amounts paid to the head office for technical or consulting services during the years prior to the issuance of Ministerial Decision No. 1776 dated 18/05/1435 AH are subject to a withholding tax of 5%. With regard to fourth item: Plaintiff did not provide evidence of payment. With regard to fifth item: ZATCA did not prove that there are payments or settlement in the accounts between the head office and the branch. With regard to sixth item: Validity of ZATCA’s action to impose a late payment fine from the due date on items regarding which Plaintiff’s objection was dismissed, and cancellation of the late payment fine on items regarding which Defendant’s decision was overturned - The Department ruled to: Dismiss Plaintiff’s objection regarding the item (Letter of Amendment Does not Conform to Legal Procedure for Issuing Assessment), accept its objection to the items (Withholding Tax - December 2013, Withholding Tax - December 2013, Withholding Tax - December 2014, Withholding Tax - November 2015), and amend Defendant’s decision regarding the item (Late Payment Fine) - The decision shall be considered final and enforceable under Article 42 of Tax Dispute and Violation Committee Procedures.

Instruments:

- Articles 76.B and 77.A of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles (63.1) and (68.1) of [the Implementing Regulations of Income Tax Law, issued by Minister of Finance Decision No. \(1535\) dated 11/06/1425 AH.](#)



- [Ministerial Resolution No. \(1776\) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)
- Jurisprudence rule “Onus of proof lies with the plaintiff”.

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 18/10/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) of 15/01/1425 AH as amended, and formed by Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 11/10/2020 AD.

The facts of this Case are summed up as follows: Mr. (...), holder of National ID No. in his capacity as Representative of the Plaintiff (... Co.), C.R. No. (...), pursuant to AOA, filed an objection to ZATCA's withholding tax assessment for December 2013 and 2014 and November 2015. Plaintiff's objection is limited to six items. Regarding the first item: Withholding Tax Paid under Declarations: Plaintiff objected to Defendant's procedure of not deducting withholding tax balances paid according to the monthly withholding tax declarations under assessment from 2013 to 2015, as it paid withholding tax amounts according to declarations submitted by it. Therefore, Plaintiff requested that the assessment be amended by deducting withholding tax amounts paid out of the total tax due under assessment. Regarding the Second Item: Letter of amendment does not conform to legal procedure for issuing assessment: Plaintiff objected to Defendant's action of failing to notify it of the reasons for amendments made by it, which led to the existence of these unjustified tax claims. Since Defendant did not explain the basis on which it relied in making the amendments, merely sending the amendment letter to the branch by e-mail without any clarifications or explanation of reasons. In addition, this action is inconsistent with Article 62.C of the Income Tax Law, Article 59.7 of the Income Tax Law, as well as Article 59.8 of the Implementing Regulations, which stipulated that “the Department shall notify the taxpayer of its modifications on the return and the reasons thereof”. Based on the foregoing, it is clear that the above-mentioned e-mail notification regarding withholding tax assessment for the aforementioned months was incorrect, as it does not comply with the provisions of the Income Tax Law and its Implementing Regulations due to ZATCA's failure to notify it of amendments it made to the monthly withholding tax forms submitted by it, as well as failure to clarify reasons for the amendments or on which it relied. As for the third item: Withholding Tax - December 2013: Plaintiff objected to Defendant's procedure of amending the withholding tax for December 2013, as ZATCA subjected the technical services transferred to (...) to a rate of (15%) instead of (5%) on the grounds that they were technical services provided by a related party. Moreover, Plaintiff stated that the beneficiary does not represent a party related to the Company, and that the amount paid to the aforementioned entity is subject to a 5% withholding tax. It confirmed that (...) is a third party for tax purposes (ownership less than 50% (direct/indirect ownership)), as the next shareholder has ownership of (40%) only directly/indirectly. Accordingly, it is considered a third party in accordance with Article 64.B, as ZATCA considered the beneficiary to be a related party based on contents of the audited financial statements, but the beneficiary above is not considered as a related party for tax purposes. Regarding amounts paid to (...), Plaintiff stated that the amount due under the declaration and resulting fines were paid. With regard to the amounts paid to (...), Plaintiff indicated



that ZATCA had issued an additional amount of SAR (1,115,430) in the assessment, and that Plaintiff was unable to find out the source of that amount through its accounts, or financial statements and tax returns. Regarding amounts paid to (...) and other parties), Plaintiff stated that the Company works in the field of insurance and reinsurance brokerage, where it collects the insurance premium and pays the reinsurance premium to non-residents. In exchange for this, it receives a commission for paid reinsurance premium. The entitlement was settled at a rate of 5% and disclosed in the monthly and annual withholding tax returns. During December 2013, the Company paid SAR 2,244,638 as a reinsurance premium, which was disclosed in the monthly withholding tax return under the description of “insurance”, on which the withholding tax was paid at a rate of (5%). In addition, ZATCA did not clarify the source of additional amount under the assessment, and Plaintiff was unable to identify the same. As for the fourth item: Withholding Tax - December 2014: Plaintiff objected to Defendant’s procedure of amending the withholding tax for December 2014. With regard to payments for technical or consulting services transferred to (...), Plaintiff indicated that these amounts have been taken into account from Statement No. 6 of 2014 tax return on “Professional Fees”. Statement No. 6 of 2014 tax return shows details of calculation of the benefit for the tax year that may or may not have been paid during the year in accordance with Tax Regulations. Withholding tax shall be applied only to payments and not to the benefit, as these accrued expenses were paid in December 2014 under services paid to the head office, and the withholding tax due was paid thereunder. Regarding amounts paid to (...), Plaintiff stated that the amount due under the declaration and resulting fines were paid. With regard to the amounts paid to (...), Plaintiff stated that the withholding tax was paid on reinsurance premiums paid at 5%, as explained under the monthly withholding tax forms. During December 2014, the Company paid SAR 1,616,593 as a reinsurance premium, which was disclosed in the monthly withholding tax return under the description of “Insurance”, on which the withholding tax was paid at a rate of 5%. Moreover, ZATCA did not explain the source of additional amount under the assessment, and Plaintiff was unable to identify it. As for the fifth item: Withholding Tax - November 2015: Plaintiff objected to Defendant’s procedure of amending the withholding tax for November 2014. With regard to payments for technical or consulting services transferred to (...), Plaintiff indicated that these amounts have been taken into account from Statement No. 8 of 2015 tax return on “Professional Fees”. Statement No. 8 of tax return shows details of full accrual account for the tax year that may or may not have been paid during the year in accordance with Tax Regulations. Withholding tax shall be applied only to payments and not to the benefit, as these accrued expenses were paid in August 2016 and the withholding taxes were duly settled. Regarding amounts paid to (...), Plaintiff stated that the withholding tax was paid on reinsurance premiums paid at 5%, as explained under the monthly withholding tax forms. During November 2014, the Company paid SAR 1,256,524 as a reinsurance premium, which was disclosed in the monthly withholding tax return under the description of “Insurance”, on which the withholding tax was paid at a rate of 5%. Moreover, ZATCA did not explain the source of additional amount under the assessment, and Plaintiff was unable to identify it. As for the sixth item: Late Payment Fines: Plaintiff objected to Defendant’s procedure of imposing a late payment fine arising from tax receivables issued under an assessment issued by ZATCA, requesting that the late payment fine arising from additional tax imposed by Defendant, which was due to different views and not the Company’s violation of clear legal texts, be cancelled. The fine is calculated from the date when the obligation becomes final, i.e., from the date of completion of objection and appeal proceedings until the date of paying final tax obligation. Having presented the statement of claim to Defendant, it responded, with regard to item: Withholding Tax - ZATCA found that no tax amounts were paid for these services, as



shown by the monthly deduction form and Taxpayer's account statement. Regarding the Second Item: Late Payment Fine: ZATCA imposed the fine on unpaid tax differences on the legal date.

On Tuesday, corresponding to 20/09/2022, the Department held its session remotely to consider the Case. Plaintiff's Attorney..., Holder of national ID No.: under POA No. (...) appeared, (...) and (...). Defendant's representative, appeared national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated: .../06/1442 AH. The Department dismissed Defendant's formal plea because Plaintiff filed the case during the legal period by e-mail. Therefore, the Department decided to accept the case in form and to proceed on merits. Having requested a substantive response from Defendant's representative, he responded by requesting a grace period to submit the approved memorandum before the next hearing. The Department requested that the memorandum be uploaded to the website of the General Secretariat of the Tax Committees in the next hearing. Accordingly, the Department decided to postpone hearing of the Case to a later session scheduled for Tuesday, 27/09/2022 AD.

On Tuesday, corresponding to 27/09/2022, the Department held its session remotely to consider the Case. Plaintiff's Attorney..., Holder of national ID No.: under POA No. (...) appeared, (...) and (...). Defendant's representative, appeared national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated: .../06/1442 AH. The Department perused the memorandum submitted by Defendant's representative, and having presented the same to plaintiff's attorney, it responded that response to this memorandum had previously been submitted and that it did not go beyond what was previously mentioned, and did not respond the memorandum and attachments submitted by mail. Therefore, Defendant's representative requested a grace period to submit a detailed response to Plaintiff's appended memorandum and attachments thereof. The Department requested that it be uploaded to the website of the General Secretariat of the Tax Committees within (10) days. Accordingly, the Department decided to postpone hearing of the Case to a later session scheduled for Tuesday, 18/10/2022 AD.

On Tuesday, corresponding to 18/10/2022, the Department held its session remotely to consider the Case. Plaintiff's Attorney..., Holder of national ID No.: under POA No. (...) appeared, (...) and (...). Defendant's representative, appeared national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No. dated: .../06/1442 AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) (M/1) of dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) of 11/06/1425 AH , as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) of 21/4/1441 AH, and the relevant Laws and regulations.

In form, since Plaintiff seeks by this Case to cancel ZATCA's decision regarding withholding tax assessment for December 2013 and 2014, and November 2015, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) of 21/04/1441 AH. Since the Case was filed by a party having capacity and within



the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On Merits, having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the parties, the Department found that the dispute lies in Defendant's issuance of withholding tax assessment for December 2013 and 2014, and November 2015. Plaintiff's objection is limited to six items as follows:

Regarding First Item: Withholding Tax Paid under Declarations: Plaintiff objected to Defendant's procedure of not deducting withholding tax balances paid under the monthly withholding tax returns pursuant to the assessment. Having perused the Case file, it became clear to the Department that Plaintiff submitted documents proving payment of withholding tax under the monthly withholding tax returns, and based on the jurisprudence rule that states: "Onus of proof lies with the plaintiff". Since plaintiff provided evidence of its objection, the Department concludes to amend Defendant's procedure regarding the item of not deducting the withholding tax amounts paid under declarations. By deducting withholding tax amounts paid pursuant to Plaintiff's declarations.

Regarding the Second Item: Letter of amendment does not conform to legal procedure for issuing assessment: Plaintiff objected to Defendant's action of failure to it him of the reasons for amendments made by it, which resulted in these unjustified tax claims. Accordingly, since Plaintiff objected to the items, which indicates that it was aware of the details of assessment, and since Defendant stated in the objection rejection letter the full details of assessment. Therefore, the Department concluded to dismiss Plaintiff's objection regarding the item: Letter of Amendment Does not Conform to Legal Procedure for Issuing Assessment.

As for the third item: Withholding Tax - December 2013. Plaintiff objected to Defendant's procedure of amending the withholding tax for December 2013, as ZATCA subjected the technical services transferred to (...) at a rate of (15%) instead of (5%), considering that they were technical services provided by a related party at a rate of (15%). In contrast, Defendant argued that no tax amounts were paid for those services, and this was evident from the monthly withholding form and Taxpayer's account statement. Ministerial Resolution No. (1776) dated 18/05/1435 AH regarding the amendment to a number of articles of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH to be as follows: "First: I: The second and third boxes of the following table included in Paragraph (1) of Article (63) of the Regulations shall be added to be as follows: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: - Any royalty or rent, payments for technical or consulting services or international telecommunications services paid to the head office or an affiliated company... At %15". - Technical or consultancy services, international telecommunications services other than the amounts paid to the head office or an affiliated company, rent, airline tickets, air cargo or freight transport, profits distributed, loans returns or insurance or reinsurance premiums... by 5%. Second: This Decision shall be communicated to those concerned for implementation and shall be applied from its date, including the contested cases in which the assessment has not become final". Based on Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Minister of Finance's Decision No. 1535 of 11/06/1425 AH (before amendment), which stipulated the following: "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: - Royalties or proceeds; payments for services to the head-office or an affiliated company.... 15%. - Rent; technical or consulting services; air tickets, air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums... 5%". Based on the foregoing, and with reference to



the Case file, defenses and documents contained therein, with regard to the amounts paid to (...), It is clear that amounts paid to the head office for technical or consulting services during the years preceding the Ministerial Decision No. 1776 of 18 //05/1435 AH are subject to a withholding tax of 5%, because the Ministerial Decision included an amendment to the classification of technical or consulting services paid to the head office or affiliated company in Article 63 of the Implementing Regulations of the Income Tax Law, so that they would be subject to 15% clearly and explicitly. Since amendment of the text of Article is proof of lack of clarity of text before the amendment, which led to Taxpayers subjecting technical or consulting services to a rate of 5% based on the text of the Article before amendment. Accordingly, in the light of non-retroactive application of the text, and since the dispute relates to amounts paid to an affiliated company prior to the issuance of the aforementioned Ministerial Decision, the Department decided to accept Plaintiff's objection regarding its request to subject amounts paid to the affiliated company for technical or consulting services at a rate of 5%, and overturn ZATCA's procedure regarding this item. Regarding amounts paid to (... Company), Plaintiff stated that it paid the amount due under the declaration and resulting fines, but it did not provide evidence of payment. Accordingly, the Department concluded to dismiss Plaintiff's objection for failure to provide supporting documents. With regard to amounts paid to (...), and (... and other parties): Since Article 13 of Tax Dispute and Violation Committee Procedures provides that: "The General Secretariat shall serve the statement of claim to the defendant who in return must file a response within a period not exceeding 30 days from the date of service. The circuit may, upon a reasoned request from the defendant, extend such period for an additional period of not more than 30 days. If the defendant fails to file such response within the prescribed period, the General Secretariat shall examine the suit and refer it to the competent circuit". Accordingly, it is a well-established principle of administrative jurisprudence that the administration is obliged to provide all papers and documents related to subject of the dispute, and effective in proving it positively or negatively whenever requested. Therefore, it is not legally or sharia-based permissible to delay the adjudication of cases due to Defendant's refusal to submit the required documents, in addition to responding to the case. Accordingly, the Department decided to accept Plaintiff's objection and overturn Defendant's decision.

As for the fourth item: Withholding Tax - December 2014: Plaintiff objected to Defendant's procedure of amending the withholding tax for December 2014. In contrast, Defendant argued that no tax amounts were paid for those services, and this was evident from the monthly withholding form and Taxpayer's account statement. Based on Article 63.1 of Implementing Regulations of Income Tax law issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH (before amendment), which stipulates: "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: - Royalties or proceeds; payments for services to the head-office or an affiliated company.... 15%. - Rent; technical or consulting services; air tickets, air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums... 5%". Based on the foregoing, and with reference to the Case file, defenses and documents contained therein, it becomes clear that the item is divided into (3) sub-items, as follows: A. Amounts paid to (...): It is clear that imposition of a withholding tax on amounts paid to non-resident entities is based on occurrence of the actual payment or its equivalent, such as settlement, set-off or any other means. Since the dispute lies in ZATCA's procedure of imposing a withholding tax on amounts paid to a non-resident for technical and consulting services, and since ZATCA did not respond objectively, which makes it impossible to know the reason for ZATCA's amendment of this item. Since ZATCA did not prove payments or settlements in the accounts between



the head office and the branch, and given that ZATCA did not provide evidence of payment, settlement or the like. Accordingly, the Department concluded to accept Plaintiff's objection and overturn ZATCA's procedure under this item. B. Amounts paid to (...): Plaintiff stated that it paid the amount due under the declaration resulting fines, but it did not provide evidence of payment. Accordingly, the Department concluded to dismiss Plaintiff's objection for failure to provide supporting documents. C. Amounts paid to (...): Since Article 13 of Tax Dispute and Violation Committee Procedures provides that: "The General Secretariat shall serve the statement of claim to the defendant who in return must file a response within a period not exceeding 30 days from the date of service. The circuit may, upon a reasoned request from the defendant, extend such period for an additional period of not more than 30 days. If the defendant fails to file such response within the prescribed period, the General Secretariat shall examine the suit and refer it to the competent circuit". Accordingly, it is a well-established principle of administrative jurisprudence that the administration is obliged to provide all papers and documents related to subject of the dispute, and effective in proving it positively or negatively whenever requested. Therefore, it is not legally or sharia-based permissible to delay the adjudication of cases due to Defendant's refusal to submit the required documents, in addition to responding to the case. Accordingly, the Department decided to accept Plaintiff's objection and overturn Defendant's decision.

As for the fifth item: Withholding Tax - November 2015: Plaintiff objected to Defendant's procedure of amending the withholding tax for November 2015. In contrast, Defendant argued that no tax amounts were paid for those services, and this was evident from the monthly withholding form and Taxpayer's account statement. Based on Article 63.1 of Implementing Regulations of Income Tax law issued by Minister of Finance Decision No. (1535) dated 11/06/1425 AH (before amendment), which stipulates: "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: - Royalties or proceeds; payments for services to the head-office or an affiliated company.... 15%. - Rent; technical or consulting services; air tickets, air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums... 5%". Based on the foregoing, and with reference to the Case file, defenses and documents contained therein, it becomes clear that the item is divided into (2) sub-items, as follows: A. Amounts paid to (...): It is clear that imposition of a withholding tax on amounts paid to non-resident entities is based on occurrence of the actual payment or its equivalent, such as settlement, set-off or any other means. Since the dispute lies in ZATCA's procedure of imposing a withholding tax on amounts paid to a non-resident for technical and consulting services, and since ZATCA did not respond objectively, which makes it impossible to know the reason for ZATCA's amendment of this item. Since ZATCA did not prove payments or settlements in the accounts between the head office and the branch, and given that ZATCA did not provide evidence of payment, settlement or the like. Accordingly, the Department concluded to accept Plaintiff's objection and overturn ZATCA's procedure under this item. B. Amounts paid to (...): Since Article 13 of Tax Dispute and Violation Committee Procedures provides that: "The General Secretariat shall serve the statement of claim to the defendant who in return must file a response within a period not exceeding 30 days from the date of service. The circuit may, upon a reasoned request from the defendant, extend such period for an additional period of not more than 30 days. If the defendant fails to file such response within the prescribed period, the General Secretariat shall examine the suit and refer it to the competent circuit". Accordingly, it is a well-established principle of administrative jurisprudence that the administration is obliged to provide all papers and documents related to subject of the dispute, and effective in proving it positively or negatively



whenever requested. Therefore, it is not legally or sharia-based permissible to delay the adjudication of cases due to Defendant's refusal to submit the required documents, in addition to responding to the case. Accordingly, the Department decided to accept Plaintiff's objection and overturn Defendant's decision.

As for the sixth item: Late Payment Fines: Plaintiff objected to Defendant's action of imposing a late payment fine arising from tax dues issued pursuant to ZATCA's assessment, while Defendant argued for imposing the fine on tax differences not paid on the legal date. Based on Article 77.A of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates: "In addition to the fines stipulated in Article 76 of this Law and in Paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". In accordance with Article 68.1 of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which states: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: B. Delay in payment of due tax as per the Department's assessment". Based on the above, and after reviewing case file and its included defenses and documents, since the late payment fine is calculated as of end of the deadline for submitting the return to the date of payment of due tax, in accordance with application of Law provisions and the adjustments made by the Defendant, and considering that the dispute between the parties is based on documentation rather than a significant difference in the interpretation of the legal texts. Therefore, we consider the validity of ZATCA's action of imposing the late payment fine from the due date on the items regarding which the Plaintiff's objection was dismissed, in addition to cancelling the late payment fine on items regarding which Defendant's decision was overturned, as the basis for imposing the tax was invalidated. For these grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss Plaintiff's objection regarding the item: Letter of Amendment Does not Conform to Legal Procedure for Issuing Assessment.

Second: Accept Plaintiff's objection to the item: Withholding Tax - December 2013.

Third: Accept Plaintiff's objection to the item: Withholding Tax - December 2013.

Fourth: Accept Plaintiff's objection to the item: Withholding Tax - December 2014.

Fifth: Accept Plaintiff's objection to the item: Withholding Tax - November 2015.

Sixth: Amend Defendant's decision on the item: Late payment fine, in accordance with grounds of the decision.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2437)

Issued in Case No. (W-67305-2021)

Keywords:

Withholding Tax - Financial Statements - Tax Differences - Late Payment Fine - Tax Due - Income Tax.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax assessment of 2015 - Plaintiff based its objection on the fact that, with regard to the first item: Withholding tax of 2015: ZATCA imposed the withholding tax on the difference between expenses from non-resident companies declared in the financial statements in the annual withholding tax returns. Plaintiff explains that the amount charged in the income statement represents the total expenses for the year and not what was actually paid. In addition, plaintiff states that withholding tax was paid on the amounts paid during the period. In its annual withholding tax return, plaintiff stated that all services provided by the said companies, some of them are royalties and some are consultations, they are detailed in the annual withholding tax return. Regarding the Second Item: late Payment Fine: Plaintiff objects to Defendant's action on imposing a late payment fine, as ZATCA must not impose any late fine because the additional tax obligation arose from errors and technical differences in views between Taxpayer and ZATCA. - With regard to the first item, ZATCA replied as follows: Withholding Tax of 2015: A withholding tax was imposed on royalties and rents at 15% instead of Taxpayer calculation of 5%. Plaintiff objects to the amount of withholding tax-subject payment, while ZATCA imposed tax on the amount of payments previously paid by Taxpayer at 5% to 15%. Plaintiff was asked to provide supporting documents, and Taxpayer did not provide clarification or documents. After meeting with Plaintiff, it stated in accordance with the agreement with (...) Company that these agreements are manufacturing and distribution rights and are considered a royalty. Regarding the Second Item: Late Payment Fine: A fine was imposed for delay in paying tax differences on legal date. The Department established, with regard to the first item, that: Withholding Tax of 2015: having perused the Case documents, it is clear that the Plaintiff submitted daily entries, bank transfers and a number of invoices, but they are not clear. In addition, Plaintiff did not submit agreements to establish the nature of dealings between Plaintiff and companies. Plaintiff also mentioned in its statement of objection in response to ZATCA's reply that some services are royalties, some are consultations, and this was detailed in its return regarding in withholding tax. Regarding the Second Item: Late Payment Fine: having referred to the Case file, and pleas and documents contained therein, since the late payment fine is calculated from the due date of tax on Taxpayer until the date of payment. However, having perused the Case file, it is evident that the outstanding tax resulted from amendments to items that are not governed by clear legal provisions. Therefore, the Department ruled to: Dismiss Plaintiff's objection



to both items, and calculate the late payment fine from the date of notification of this decision to Plaintiff.

Instruments:

- Articles (77.A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Articles 63.1 and 68.1 [of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 12/10/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) of 15/01/1425 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 26/08/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), holder of National ID No. in his capacity as attorney of Plaintiff/ ... Company, C.R. No. (...), under POA No. (...) appeared, filed an objection to withholding tax assessment of 2015 issued by ZATCA. The Plaintiff's objection is limited to two items. Regarding the first item: Withholding tax of 2015: ZATCA imposed the withholding tax on the difference between expenses from non-resident companies declared in the financial statements in the annual withholding tax returns. Plaintiff explains that the amount charged in the income statement represents the total expenses for the year and not what was actually paid. In addition, plaintiff states that withholding tax was paid on the amounts paid during the period. In its annual withholding tax return, plaintiff stated that all services provided by the said companies, some of them are royalties and some are consultations, they are detailed in the annual withholding tax return. Regarding the Second Item: Late Payment Fine: Plaintiff objects to Defendant's action on imposing a late payment fine, as ZATCA must not impose any late fine because the additional tax obligation arose from errors and technical differences in views between Taxpayer and ZATCA.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Withholding Tax of 2015: A withholding tax was imposed on royalties and rents at 15% instead of Taxpayer calculation of 5%. Plaintiff objects to the amount of withholding tax-subject payment, while ZATCA imposed tax on the amount of payments previously paid by Taxpayer at 5% to 15%. Plaintiff was asked to provide supporting documents, and Taxpayer did not provide clarification or documents. After meeting with Plaintiff, it stated in accordance with the agreement with (...) Company that these agreements are manufacturing and distribution rights and are considered a royalty. Regarding the Second Item: Late Payment Fine: A fine was imposed for delay in paying tax differences on legal date.

On Wednesday, 12/10/2022 AD. The Department held a remote session to hear the Case. However, the Plaintiff's representative did not appear, despite being duly notified of the session date. Representative of the Defendant ..., appeared, national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated: Having taken cognizance of Case file, and since the Case was ripe for adjudication in accordance with Article (20) of Tax Dispute and Violation Committee Procedures, the Department decided to adjourn the session for deliberation.



Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) (M/1) of dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) of 21/4/1441 AH, and the relevant Laws and regulations.

In form, the Plaintiff seeks by this Case to cancel ZATCA's decision regarding withholding tax assessment of 2015, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) of 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On Merits: Upon reviewing the documents included in the Case file, as well as the requests, defenses, and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of withholding tax assessment of 2015. The Plaintiff's objection is limited to two as follows:

Regarding First Item: Withholding Tax of 2015: ZATCA imposed a withholding tax on difference between expenses from non-resident companies declared in the financial statements in the annual withholding tax returns, while Defendant argued that a withholding tax was imposed on royalties and rents at 15% instead of taxpayer's calculations of 5%, and that Plaintiff objects to the amount of payment subject to withholding tax. In contrast, ZATCA imposed tax on the amount of payments previously paid by Taxpayer: at a rate of 5% and 15%, and asked the plaintiff to provide supporting documents, but Taxpayer did not provide clarification or documents. Based on Paragraph Article 63.1 of the Implementing Regulations of Income Tax Law stating that: "1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: - Any royalty or rent, payments for technical or consulting services or international telecommunications services paid to the head office or an affiliated company...15%." According to Article 1 of the Income Tax Law: Royalties: Payments received for the use of or the right to use intellectual rights, including, but not limited to, copyrights, patents, designs, industrial secrets, trademarks and trade names, know-how, trade and business secrets, goodwill, and payments received against the use of information related to industrial, commercial, or scientific expertise, or against granting the right to exploit natural and mineral resources. Based on the foregoing, having perused the Case documents, it is clear that the Plaintiff submitted daily entries, bank transfers and a number of invoices, but they are not clear. In addition, Plaintiff did not submit agreements to establish the nature of dealings between Plaintiff and companies. Plaintiff also mentioned in its statement of objection in response to ZATCA's reply that some services are royalties, some are consultations, and this was detailed in its return regarding in withholding tax. Accordingly, the Department decided to dismiss Plaintiff's objection to this item.

Regarding the Second Item: Late Payment Fine: Plaintiff objects to Defendant's action on imposing a late payment fine, as ZATCA must not impose any late fine because the additional tax obligation arose from errors and technical differences in views between Taxpayer and ZATCA. However, Defendant argued that a fine had been imposed for delays in non-payment of tax differences on the legal date. Based on Article 77.A of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates: "In addition to the fines stipulated in Article 76 of this Law and in paragraph



(b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. Based on Article 68.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which 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 due tax as per the Department’s assessment”. In the light of the foregoing, having perused to the Case file, pleas and documents contained therein, and since late payment fine is calculated from the due date of tax on Taxpayer to the date of payment, however, having examined the Case file, it is clear that the unpaid tax due resulted from amendments to items not governed by clear legal provisions. Therefore, the Department decided to impose a late payment fine on the unpaid withholding tax, provided that the fine is calculated from the date Plaintiff was notified of the decision delivered in this case.

For these grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss Plaintiff’s objection to the item of Withholding Tax.

Second: Dismiss Plaintiff’s objection to late payment fine item, and calculate it from the date of notification of this decision to the Plaintiff.

This decision was delivered in presence of the parties in accordance with Article 56 of the Law of Civil Procedure. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(The Decision is deemed final and imperative by expiration of objection period under Article (42) of Tax Dispute and Violation Committee Procedures).



Withholding Tax

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2589)

Issued in Case No. (W-73416-2021)

Keywords:

Withholding Tax - Tax Year - Residency Conditions - Partner Residency - Dividends.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding withholding tax assessment for April 2014 - Plaintiff based its objection on the fact that partners are subject to residency conditions. - ZATCA responded that it requested the Plaintiff to provide supporting documents validating its return, as follows: Housing rental contracts for partners proving their residence in the Kingdom during the specified periods, and a statement from Absher including the exit and return of partners (each partner separately). Plaintiff provided a copy of the partners' residencies and housing leases related to the required periods. It did not provide evidence that the contracts were valid, and submitted an Absher statement for some partners confirming that their residency during the year was less than 183 days. Accordingly, ZATCA imposed a withholding tax on dividends paid to non-resident partners. During the objecting phase, and having perused documents and data submitted by Plaintiff, and since it was not confirmed that residency conditions of the partners were applicable during the objecting period. Accordingly, ZATCA imposed a withholding tax on dividends paid to non-resident partners - the Department established that the total number of evidence confirms the existence of a permanent residence for partners, as well as their residence for a period exceeding 30 days during the year within the Kingdom. Further to Defendant's failure to provide a substantive response to Plaintiff's pleas, the Department decided to accept Plaintiff's objection to a withholding tax on dividends by 5% for partners ... and With regard to Plaintiff's objection to the withholding tax of April 2014 for the partner ..., the Department found that it was a groundless statement that the plaintiff did not provide evidence of its validity, nor did it provide the supporting documents. According to the jurisprudence rule: "Onus of proof lies with the plaintiff", and since Plaintiff did not provide evidence to support its objection, the Department ruled to: Amend Defendant's procedure regarding estimated zakat assessment of 1441 AH.

Instruments:

- Articles 1.3, 57.3 and 63.3 of [the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.



On Sunday, 06/11/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) of 15/01/1425 AH as amended, and formed by Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 30/09/2021 AD.

Facts of the case are summarized that, holding Resident ID No.: in his capacity as the Representative of the Plaintiff ..., Ltd, C.R. No.: (...), filed its objection to the withholding tax assessment of April 2014, issued by ZATCA. Since Plaintiff's objection is limited to the item of amendment to withholding tax return of April 2014, with regard to the item: Plaintiff objects to Defendant's procedure of imposing a 5% withholding tax on dividends to partners, and Plaintiff stated that the partners are subject to residency conditions. Having presented the case to Defendant, it replied that it explained to the Department that it requested Plaintiff to submit the supporting documents to confirm validity of its declaration, namely: Housing rental contracts for partners proving their residence in the Kingdom during the specified periods, and a statement from Absher including the exit and return of partners (each partner separately). Plaintiff provided a copy of the partners' residencies and housing leases related to the required periods. It did not provide evidence that the contracts were valid, and submitted an Absher statement for some partners confirming that their residency during the year was less than 183 days. Accordingly, ZATCA imposed a withholding tax on dividends paid to non-resident partners, based on Article 68 of the Income Tax Law, and Article 63 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. 1535 of 1425 AH. During the objecting phase, and having perused documents and data submitted by Plaintiff, and since it was not confirmed that residency conditions of the partners were applicable during the objecting period. Accordingly, ZATCA imposed a withholding tax on dividends paid to non-resident partners in accordance with Article 3 of the Income Tax Law issued by Royal Decree M/1 of 1425 AH, and in accordance with Article 68.A of the same Law, and Article 63.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. 1535 of 1425 AH. With regard to the claims referred to by Plaintiff in its statement of claim, it is contrary to the above-mentioned legal provisions and given reasons, which proves validity of ZATCA's procedure in dismissing the objection and ZATCA confirms validity and regularity of its procedure.

On Tuesday, corresponding to 01/11/2022 AD, the Department held its session remotely to consider the Case. Plaintiff's Attorney, holder of National ID No. under POA No. (...), and Defendant representative (...), holder of National ID No. appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No. (...), dated: .../06/1442 AH. The Department perused the memorandum submitted by Defendant's representative, and requested the Plaintiff to respond to contents therein and provide supporting documents on Defendant's claims. Accordingly, the Department requested that it be uploaded to the website of the General Secretariat of Tax Committees before the date of next hearing. Accordingly, the Department decided to postpone consideration of the Case to a later hearing.

On Sunday, 06/11/2022 AD, the Department held its session remotely to consider the Case. Plaintiff's Attorney, holder of National ID No. under POA No. (...), and Defendant representative (...), holder of National ID No. appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No. (...), dated: .../06/1442 AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation.



Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) (M/1) of dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) of 21/4/1441 AH, and the relevant Laws and regulations.

In form, Plaintiff seeks by this Case to cancel ZATCA's decision regarding tax period of April 2014, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) of 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On merits, having perused papers and documents included in the Case file, and requests, defense and pleas made by its parties, the Department found that the dispute lies in Defendant's imposition of a withholding tax on dividends by 5%. The Plaintiff's objection is limited to the item of withholding tax of April 2014, since Plaintiff objects to Defendant's procedure of imposing a withholding tax on dividends. Defendant responded by rejecting the objection, confirming the validity and regularity of its procedure, based on Article 63.1 of the Implementing Regulations of the Income Tax Law, which stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Dividends 5%". Article 3.1 of the Implementing Regulations of the Income Tax Law stipulates: "A natural person shall be deemed a resident in the Kingdom during a taxable year if he has a permanent place of abode in the Kingdom and is present in the Kingdom for a period of not less than thirty days, continuous or in aggregate, during the taxable year. A natural person shall also be deemed a resident in the Kingdom if he is present in the Kingdom for a period of not less than one hundred and eighty-three days, continuous or in aggregate, in the taxable year even if he has no permanent place of abode in the Kingdom". Article 75.3 of the Implementing Regulations stipulates: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, since Plaintiff has provided a statement from Absher platform for entry and exit from the Kingdom for each of the partners ... and partner for the period from 17/04/1434 AH to 31/05/1435 AH and a detailed statement in Excel for the number of days the partner traveled for several periods of the year outside the Kingdom, as well as Plaintiff submitted a resident ID of the partner ..., in addition to submitting a lease contract for by (... Holding Group) in the name of ... covering the period from 10/01/2014 to 31/12/2018. Since the total evidence submitted confirms the existence of permanent housing for the partners, as well as their residence of more than 30 days during the year within the Kingdom. Taking into account Defendant's failure to submit substantive response to Plaintiff's arguments, the Department therefore concluded to accept Plaintiff's objection to imposition of a withholding tax on dividends of 5% for partners ... and With regard to Plaintiff's objection to the withholding tax of April 2014 for the partner ..., the Department found that it was a groundless statement that the plaintiff did not provide evidence of its validity



nor did it provide the supporting documents. According to the jurisprudence rule: “Onus of proof lies with the plaintiff”. Since Plaintiff failed did not provide evidence of the validity of its objection, the Department decided to dismiss the Plaintiff’s objection regarding the item of withholding tax of April 2014 for the partner

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept the case in form.

Second: Amend Defendant’s action regarding April 2014 withholding tax item by accepting the Plaintiff’s objection to a withholding tax on dividends by 5% to partners ... and ..., and dismiss Plaintiff’s objection to the item of withholding tax of April 2014 for the partner ...

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination Income
Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-
2592)

Issued in Case No. (W-
86417-2021)

Keywords:

Withholding Tax Assessment - Other Payments - Late Payment Fine.

Abstract

Plaintiff instituted this case moving to cancel ZATCA's decision on withholding tax assessment of 2016. On merits, the Plaintiff based its objection on four items: Item First: Other Payments Item: Contracting Company (Britain), since the Plaintiff objected to Defendant's procedure of subjecting the item amount to a withholding tax, while Defendant argued that it subjected the debit transaction shown in the financial statements Note No. 9 to a withholding tax of 15% as dealings with related parties. The Department found that the Plaintiff did not provide documents supporting its point of view that the amounts were an interest-free loan. Accordingly, the Department concluded to dismiss its objection to this item. Second item: Other Payments Item: Contracting Company. Plaintiff objected to Defendant's procedure of imposing a withholding tax on the debit transaction, while Defendant argued that it imposed a withholding tax on the debit transaction made on Contracting Company in accordance with the related parties' Note (9) in the financial statements. Having taken cognizance of replications, it was found that the parties have agreed that ... Company is considered to be within the Kingdom. Since Defendant indicated in its memorandum that it accessed its financial statements, and that it has a TIN (...), which indicates that the Company is inside KSA and is not subject to a withholding tax. Therefore, the Department decided to accept its objection to this item. Third item: Other Payments Item: Contracting Company (Jordan), Plaintiff objects to Defendant's action of imposing a withholding tax on the item amount, while Defendant argued that ZATCA imposed a withholding tax on expenses shown in general and administrative expenses, Note (15) in Taxpayer's financial statements, as this tax is imposed on actual expenses and not on the debit and credit transaction. In addition, Defendant indicated that the expense is added to the income statement, while the Plaintiff indicates that the expense was a debit balance from a settlement process in the current account of the head office. It was found that Plaintiff did not attach proof that the credit transaction is expenses pertaining to the Saudi branch, and that the debit transaction is a cost of services. Therefore, the Department concluded to dismiss its objection to this item. Fourth item: Late Payment Fines: Plaintiff objected to Defendant's action of imposing a late payment fine arising from tax dues issued pursuant to ZATCA's assessment, while Defendant argued for imposing the fine on tax differences not paid on the legal date. Since the late payment fine is calculated from the date of deadline for filing declaration to the due tax payment date arising under the application of the Law and amendments made by Defendant thereto. Since the dispute between the parties did not arise from a significant difference in the interpretation of the legal texts. Therefore, we consider validity of



ZATCA's action of imposing a late payment fine from the due date on items where the Plaintiff's objection was dismissed, in addition to cancelling the late payment fine on the item in which Defendant's decision was overturned, as the basis for imposing the tax was invalidated. Therefore, the Department ruled to: Dismiss Plaintiff's objection regarding other payments - Contracting Company (UK), accept Plaintiff's objection regarding other payments - Contracting Company, dismiss Plaintiff's objection regarding other payments - Contracting Company (Jordan), and amend Defendant's decision regarding the item (Late Payment Fine).

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 26/10/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) of 15/01/1425 AH as amended, and formed by Royal Order No. (13957) of 26/02/1444 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 15/12/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), Resident Permit No. in his capacity as a legal representative of Plaintiff/ Company branch, C.R No.: (...), Pursuant to its AOA, the Plaintiff filed an objection to ZATCA's withholding tax assessment of 2016. The Plaintiff's objection is limited to four items. Regarding the first item: Other Payments - Contracting Company (UK), Plaintiff objected to Defendant's procedure of subjecting the amount of SAR 548,040 to a withholding tax. Since Contracting Company (UK) is a company owned by the owners, a branch of Contracting Company. Transaction between the Company's branch in KSA and Britain in is credit transaction including finance operation (interest-free loan) carried out by Company (UK) to help the branch of Contracting Company in completing its work. As for the debit transaction, it is a transfer by the branch of ... Arab Contracting Company to Company (UK), in return for paying value of financing (interest-free loan) received previously. Since these transfers are not for any business transaction or service, but for payment of financing from a sister company, then they are not subject to a withholding tax. Regarding the Second Item: Other Payments - Contracting Company. Plaintiff objected to Defendant's procedure of imposing a withholding tax on the debit transaction. Since Contracting Company - is a Saudi resident company, registered with ZATCA under TIN No., no external transfers were made, and all transfers were within the Kingdom. Since all transfers were made to a resident Taxpayer registered in the Kingdom, then they are not subject to a withholding tax in accordance with Article 63 of the Implementing Regulations of the Income Tax Law. With regard to third item: Other Payments - Contracting Company (Jordan). Plaintiff objected to Defendant's procedure of imposing a withholding tax on the amount of SAR 451,960, since the branch of Arab Contracting Company is one of the branches of Contracting Company, which is based in the Hashemite Kingdom of Jordan. Transaction between the Company's branch in KSA and the head office is a credit transaction, which is value of expenses pertaining to the Saudi branch paid by the head office, and therefore those operations are considered current for the head office in return for financing operations. Debit transaction on the account of Contracting Company - Jordan is the value of costs of technical and consulting services provided by the Saudi branch to the head office, which we confirm that they are not bank transfers. Since all transactions are not business transactions or in exchange for the supply of services, but rather are current transactions for the head office, no withholding tax is



due in accordance with Article 63 of the Implementing Regulations of the Income Tax Law. As for the fourth item: Late Payment Fine: Plaintiff objects to Defendant's action of adding late payment fines of 1% of the outstanding tax. Its objection is due to the fact that basis of those above amounts is incorrect and should not be added to the net profit, rather, they should have been deducted according to the previous explanations and justifications, each item separately.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: Other Payments - Contracting Company (UK). It subjected the debit transaction shown in the financial statements Note No. (9) to a withholding tax of 15% as dealings with related parties. In the statement of claim, it noted that all the general ledger, journal entries and invoices attached by the Plaintiff proved after study the existence of a debit and credit transaction, and that the operations were technical services provided by a party outside the Kingdom (Britain). Consequently, Taxpayer's objection was dismissed, on the basis of Article 63 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. 1535 of 1425 AH. Regarding the Second Item: Other Payments - Contracting Company, it imposed a withholding tax on the debit transaction that took place on Contracting Company pursuant to related parties' Note No. (9) in the financial statements. Plaintiff has not yet submitted the supporting documents and invoices for the debit transaction in the amount of SAR 284,860 with Contracting Company (only bank transfers), and the amounts in transfers do not match the debit transaction. Therefore, Taxpayer's objection was dismissed. As for the third item: Other Payments - Contracting Company (Jordan). ZATCA imposed a withholding tax on the expenses shown in the general and administrative expenses, Note (15) in Taxpayer's financial statements, as this tax was imposed on actual expenses, not on debit and credit transactions. As for the fourth item: Late Payment Fine: it imposed a late payment fine on the outstanding and unpaid tax, since the tax was imposed by clearly stated provisions of the Tax Law and the Implementing Regulations in accordance with Article 77.A of the Income Tax Law, and Article 67.3 of the Implementing Regulations of the Income Tax Law. ZATCA's action was upheld by Appeal Decision No. (1774) of 1438 AH and Appeal Decision No. (1651) of 1438 AH, and was also upheld by the final judgment issued by the Administrative Court of Appeal in Riyadh in Case No. (3404/Q) of 1439 AH.

On Wednesday, 18/10/2022 AD, the Department held its session remotely to consider the Case. Mr., Iqama No. (...) appeared in his capacity as the legal representative of Plaintiff under the attached commercial register and articles of association. Defendant's representative appeared, national ID No (...), appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: dated: .../06/1442 AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation.

Grounds:

Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) (M/1) of dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) of 21/4/1441 AH, and the relevant Laws and regulations.

In form, the Plaintiff seeks by this Case to cancel ZATCA's decision regarding withholding tax assessment of 2016, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes



pursuant to Royal Order No. (26040) of 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of withholding tax assessment of 2016. The Plaintiff's objection is limited to four items as follows:

Regarding First Item: Other Payments - Contracting Company (UK): Plaintiff objected to Defendant's procedure of subjecting the item amount to a withholding tax, while Defendant argued that it had subjected the debit transaction shown in the financial statements Note No. 9 to a withholding tax of 15% as dealings with related parties. Paragraph (1) of Article (63) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1438 AH stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Any other payments 15%". Additionally, Article (57.3) of the Implementing Regulations of Income Tax Law states that: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the foregoing, since the dispute is over whether the amounts are an (interest-free loan) or services provided by a party outside the Kingdom (Britain), and having perused documents attached to the Case file, it is clear that the Plaintiff did not provide documents supporting its point of view that the amounts were an interest-free loan. Therefore, the Department concludes to dismiss its objection.

Regarding the Second Item: Other Payments - Contracting Company. Plaintiff objected to Defendant's procedure of imposing a withholding tax on the debit transaction, while Defendant argued that it imposed a withholding tax on the debit transaction made on Contracting Company pursuant to related parties' Note No. (9) in the financial statements. Paragraph (1) of Article (63) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1438 AH stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Any other payments 15%". Additionally, Article (57.3) of the Implementing Regulations of Income Tax Law states that: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". According to the foregoing, and having perused the Case file, it became clear that center of the dispute is the fact that transfers are within the Kingdom and are not subject to a withholding tax. Having taken cognizance of replications, it is evident that both parties agreed that ... Company is considered to be within the Kingdom. Since Defendant indicated in its memorandum that it accessed its financial statements, and that it has a TIN (...), which indicates that the Company is inside KSA and is not subject to a withholding tax. Therefore, the Department decided to accept its objection to this item.

Regarding the third item: Other Payments - Contracting Company (Jordan): Plaintiff objects to Defendant's action of imposing a withholding tax on the item amount, while



Defendant argued that ZATCA imposed a withholding tax on the expenses shown in general and administrative expenses, Note (15) of Taxpayer's financial statements, as this tax is on actual expenses, not on debit and credit transactions. Paragraph (1) of Article (63) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1438 AH stipulates: "A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Any other payments 15%". According to the foregoing, it is evident that focus of the dispute is on imposition of withholding tax, as Defendant indicated that the expense is added on the income statement, while Plaintiff indicated that the expense was a debit balance of a settlement in the current account of the head office. Having perused attached documents, it was found that the Plaintiff did not attach evidence that the credit transaction was expenses pertaining to the Saudi branch and that the debit transaction was a cost of services. Therefore, the Department concludes to dismiss its objection.

Regarding the fourth item: late Payment Fines: Plaintiff objected to Defendant's action of imposing a late payment fine arising from tax dues issued pursuant to ZATCA's assessment, while Defendant argued for imposing the fine on tax differences not paid on the legal date. Based on Article 77.A of Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on Article 68.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which 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 due tax as per the Department's assessment". Based on the above, and after reviewing case file and its included defenses and documents, since the late payment fine is calculated as of end of the deadline for submitting the return to the date of payment of due tax, in accordance with application of Law provisions and the adjustments made by the Defendant, and considering that the dispute between the parties is based on documentation rather than a significant difference in the interpretation of the legal texts. Therefore, we consider the validity of ZATCA's action of imposing the late payment fine from the due date on the items regarding which the Plaintiff's objection was dismissed, in addition to cancelling the late payment fine on item regarding which Defendant's decision was overturned, as the basis for imposing the tax was invalidated.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Dismiss Plaintiff's objection regarding other payments - Contracting Company Contracting Company (UK).

Second: Accept the Plaintiff's objection regarding other payments - Contracting Company.

Third: Dismiss Plaintiff's objection regarding other payments - Contracting Company Contracting Company (Jordan).

Fourth: Amend Defendant's decision on the item of (Late Payment Fine) in accordance with grounds of the decision.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within



thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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

(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Income Tax

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2599)

Issued in Case No. (W-78374-2021)

Keywords:

Withholding Tax - Dividends - Request for Corporate Financing - Loss Carryover - Settlement of Banking Liabilities - Late Payment Fine - Tax Obligation Imposed on Taxpayer - Financial Statements - Amendment of ZATCA's Action.

Abstract

Taxpayer requests cancellation of ZATCA's decision regarding withholding tax assessment for the years 2017 to 2019 AD. Taxpayer based its objection on two grounds, the first of which: Withholding tax on dividends for the years 2017 to 2019 AD, where Taxpayer objects to ZATCA's action of imposing withholding tax on dividends for the years 2017 to 2019 AD, amounting to SAR (93,767). Taxpayer pointed out that ZATCA had sent adjustment notices for the fiscal years 2017 to 2019 AD, requesting ... Company for Contracting, under the sent letters, to pay SAR (122,282) as the total withholding tax on dividends received, excluding the relevant fines and late payment fine. Company for Contracting seeks to contest ZATCA's assessment of withholding tax and the late payment fine imposed for the years 2017 to 2019 AD, arguing that the residency conditions apply to all the mentioned partners. Regarding the Second Item: Taxpayer objects to the imposition of late payment fine, arguing that the tax should not have been imposed in the first place. Accordingly, it requests the cancellation of such fines. - ZATCA responded that regarding the issue of withholding tax on dividends for the years 2017 to 2019 AD, it subjected the dividends for non-resident partners to tax, as recorded in the financial statements, since Taxpayer failed to file withholding tax returns. Accordingly, dividends for non-resident partners for the years 2017, 2018, and 2019 were taxed. Upon reviewing the objection, a meeting was held with Taxpayer on 21/09/2021 AD, during which Taxpayer stated that the company had not actually distributed profits to the partner. Instead, the entry was made based on the advice of the chartered accountant. Furthermore, the partner is a Saudi resident who meets the requirements for permanent residency, rather than a company to which profits can be transferred abroad. Taxpayer stated in an email sent on 27/09/2021 AD that the dividends for the fiscal years 2016/2017/2018/2019 AD were recorded in the financial statements on a notional basis to determine each partner's share, as outlined in the objection, following the legal auditor's advice. Taxpayer also submitted the partners' current account, which revealed a debit balance of SAR (9,025,974), as detailed below, representing amounts paid to the partners. However, no evidence was provided to prove the residency of the foreign partner. - It was established for the Department concerning the first item: As for the withholding tax on dividends for the years 2017 to 2019 AD, the dispute revolves around whether the dividends to partners are subject to withholding tax. Taxpayer's claim is based on the assertion that the partners are residents and meet the stipulated residency conditions. However, ZATCA dismissed



Taxpayer's objection on the grounds that it had failed to submit the required tax returns. Upon review of the documents submitted by each partner: It appears that Taxpayer submitted the residency card for Mr. ..., holder of Passport No. ..., and Mr. ..., holder of Passport No. ..., as well as the housing lease agreements for both of the aforementioned partners. As for partner ..., Taxpayer did not provide evidence of his residency in the Kingdom, nor did it submit proof of his stay for 30 days, or a housing lease agreement for him in the Kingdom. Regarding the Second Item: Late payment fine, since the late payment fine is calculated from the date the tax return was due until the date the outstanding tax was paid, as per law provisions and any subsequent amendments made by ZATCA and given that the dispute between both parties is documentary in nature and does not arise from any substantial difference in the interpretation of the regulatory provisions. - Therefore, the Department ruled to amend ZATCA's action regarding the withholding tax on dividends for the years 2017 to 2019 AD, as well as ZATCA's action in relation to the late payment fine.

Instruments:

- Articles (76/A) and (77/A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Articles (3), (63), (67/3), (68/1), and (71/2) of [the Implementing Regulations of Income Tax Law, issued by the Ministerial Decision No. \(1535\) dated 11/06/1425 AH](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 05/12/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of Income Tax Law issued by Royal Decree No.: (M/1) of 15/01/1425 AH as amended, and formed by Royal Order No. (13957) of 26/02/1444 AH, held its session via visual and audio conference to consider the case filed by Taxpayer/ ... against ZATCA. Since the case met all the legal requirements, it was filed with the General Secretariat of the Tax Committees on 20/10/2021 AD.

The facts of this Case are summed up as follows: Mr. (...), Resident Permit No. ..., in his capacity as Representative of the Plaintiff (... Co.) for Contracting, CR No. (...), pursuant to the company's articles of association, filed an objection against withholding tax assessment for the years 2017 to 2019 AD issued by ZATCA. Taxpayer's objection is focused on two points, the first of which concerns the withholding tax on dividends for the years 2017 to 2019 AD, where Taxpayer objects to ZATCA's action of imposing withholding tax on dividends for the years 2017 to 2019 AD, amounting to SAR (93,767). Taxpayer pointed out that ZATCA had sent adjustment notices for the fiscal years 2017 to 2019 AD, requesting ... Company for Contracting, under the sent letters, to pay SAR (122,282) as the total withholding tax on dividends received, excluding the relevant fines and late payment fine. for Contracting seeks to contest ZATCA's assessment of withholding tax and the late payment fine imposed for the years 2017 to 2019 AD. According to Article (3) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH and subsequent amendments, all of the mentioned partners meet the residency requirements based on the following data: First: Partner/ ... (Investor) 1, holder of a valid residency ID No. ... in Dammam, during the period 2017 to 2019 AD (attached). 2. Partner/ ... has permanent residence according to the lease agreement (attached). 3. Attached is a copy of the passport of partner/ ..., which includes entry and exit stamps to and from the Kingdom, proving residency of more than one month along with permanent residence as per law and regulations (attached). Second: Partner/ ... (Investor) 1, holder of a valid residency ID No. ... in Dammam, during



the period 2017 to 2019 AD (attached). 2. Partner/ ... has permanent residence according to the lease agreement (attached). 3. Attached is a copy of the passport of partner/ ..., which includes entry and exit stamps to and from the Kingdom, proving residency of more than one month along with permanent residence as per law and regulations (attached). Third: Partner/ ... (Investor), whereas partners convened a meeting in 2015 AD to request cash financing for the company to fund both working capital and carryover losses during that period, as well as to settle banking liabilities that amounted to SAR 4 million. Accordingly, Partner/ ..., Partner/ ..., and Partner/ ... decided to reject the carryover due to the lack of liquidity on their part. Some partners decided to forgo their entire shares, while others chose to relinquish only a portion of their share without compensation, in order to avoid any liabilities. We would like to draw your attention to the fact that the necessary legal amendments were delayed due to the expiration of Partner ...'s residency and his presence outside the Kingdom. A visit visa was obtained for him so that the company could amend the Articles of Association, as you may have noticed from the amendment date in late 2018. Based on the above data and the attached document copies, and in accordance with Article (3) of the Implementing Regulations of the Income Tax Law, ... Company for Contracting believes that the dividends to the partners are not subject to withholding tax, as they meet the residency conditions. The company is also prepared to provide any additional data or memoranda requested by the esteemed ZATCA. Regarding ZATCA's memorandum of reply, after meeting with the relevant department of GAZT, the employee did not request proof of residency or any other documents. Instead, they only asked for evidence of non-payment of tax. Had they requested such documents at the time, since the auditor was vague regarding their requirements as GAZT does with other companies regarding residency proof, such documents would have been submitted and the matter would not have reached the Tax Committees. Accordingly, Taxpayer requests cancellation of ZATCA's action. Regarding the Second Item: late payment fine, Taxpayer objects to ZATCA's action of imposing a late payment fine on the tax obligation imposed on Taxpayer based on the assessment. Taxpayer objects to the imposition of late payment fine, arguing that the tax should not have been imposed in the first place. Accordingly, it requests the cancellation of such fines.

Having presented the statement of claim to ZATCA, it responded with a memorandum, regarding the issue of withholding tax on dividends for the years 2017 to 2019 AD, ZATCA, during the assessment, subjected the dividends for non-resident partners to tax as indicated in the financial statements. Since Taxpayer failed to submit withholding tax returns, the dividends for the non-resident partners for the years 2017, 2018, and 2019 AD were taxed based on Article (63) of the Implementing of the Income Tax Law. When reviewing the objection, a meeting was held with Taxpayer on 21/09/2021 AD, during which Taxpayer stated that the company had not actually distributed profits to the partner. Instead, the entry was made based on the advice of the chartered accountant. Furthermore, the partner is a Saudi resident who meets the requirements for permanent residency, rather than a company to which profits can be transferred abroad. Taxpayer was requested to provide evidence proving that the profits were not distributed to the foreign partner. Taxpayer stated in an email sent on 27/09/2021 AD that the dividends for the fiscal years 2016/2017/2018/2019 AD were recorded in the financial statements on a notional basis to determine each partner's share, as outlined in the objection, following the legal auditor's advice. Taxpayer also submitted the partners' current account, which revealed a debit balance of SAR (9,025,974), as detailed below, representing amounts paid to the partners. However, no evidence was provided to prove the residency of the foreign partner. Based on the foregoing, Taxpayer's objection to this point was dismissed.

On Monday, 05/12/2022 AD, the Department held its session remotely to consider the case. Despite being duly notified of the case, no representative from Taxpayer's side



attended. However, the session was attended by ZATCA's representative ..., national ID No appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No. dated: Having reviewed the case file and determined that the Department has jurisdiction to adjudicate the matter pursuant to Article (20) of Rules of Tax Dispute and Violation Committee Procedures, the Department decided to adjourn the session for deliberation in preparation for issuing a final decision.

Grounds:



Having reviewed Zakat Law issued by Royal Decree No. (17/28/577), dated 14/03/1376 AH, its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH, as amended, Having reviewed the Income Tax Law issued by Royal Decree No. (M/1) (M/1) of dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) of 21/4/1441 AH, and the relevant Laws and regulations.

In form, since Plaintiff seeks by this Case to cancel ZATCA's decision regarding withholding tax assessment from 2017 to 2019, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) of 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed statutory period. Therefore, this Department found that the Case should be accepted in form.

As for the merits of case, the Department, after reviewing the documents and evidence contained in the case file, and considering the requests, defenses, and objections presented by the parties, has determined that the dispute centers on the issuance of the withholding tax assessments by ZATCA for the years 2017 to 2019 AD. Taxpayer's objections to the aforementioned two items are as follows:

Regarding First Item: the issue of withholding tax on dividends for the years 2017 to 2019 AD, Taxpayer objects to ZATCA's imposition of withholding tax on dividends for the years 2017 -2019 AD amounting to SAR (93,767) and requests cancellation of ZATCA's decision. On the other hand, ZATCA argued that, during the assessment, it subjected the dividends for non-resident partners to tax as indicated in the financial statements. Since Taxpayer failed to submit withholding tax returns, the dividends for the non-resident partners for the years 2017, 2018, and 2019 AD were taxed based on Article (63) of the Implementing of the Income Tax Law. Based on Article (3) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which states: "1. A natural person shall be deemed a resident in the Kingdom during a taxable year if he has a permanent place of abode in the Kingdom and is present in the Kingdom for a period of not less than thirty days, continuous or in aggregate, during the taxable year. A natural person shall also be deemed a resident in the Kingdom if he is present in the Kingdom for a period of not less than one hundred and eighty three days, continuous or in aggregate, in the taxable year even if he has no permanent place of abode in the Kingdom. 2. A permanent place of abode shall mean a residence owned by a natural person or leased by contract for a minimum of one year during the taxable year, or a residence provided for the natural person by any party during the taxable year for a period of not less than one year. 3. Nationality shall not determine the place of abode of a person. A natural or corporate person, notwithstanding its nationality, is not considered a resident in the Kingdom unless the residency conditions of the Law and of these Regulations apply." Based on the above and after reviewing the data submitted by both parties, it appears that the dispute revolves around whether the dividends to partners are subject to withholding tax. Taxpayer's claim is based on the assertion that the partners are residents and meet the stipulated residency conditions.



However, ZATCA dismissed Taxpayer's objection on the grounds that it had failed to submit the required tax returns. Upon review of the documents submitted by each partner: It appears that Taxpayer submitted the residency card for Mr. ..., holder of Passport No. ..., and Mr. ..., holder of Passport No. ..., as well as the housing lease agreements for both of the aforementioned partners. As for partner ..., Taxpayer did not provide evidence of his residency in the Kingdom, nor did it submit proof of his stay for 30 days, or a housing lease agreement for him in the Kingdom. On this basis, the Department satisfied to amend ZATCA's action by partially accepting Taxpayer's objection regarding Mr. ... and Mr. ..., while dismissing Taxpayer's objection concerning the dividends to Mr.

Regarding the Second Item: late payment fine, Taxpayer objects to ZATCA's action of imposing a late payment fine on the tax obligation imposed on Taxpayer based on the assessment. Article (77.A) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states as follows: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Based on Article 68.1 of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which 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: B. Delay in payment of the tax payable as per ZATCA's assessment" Article (67.3) of the Implementing Regulations of Income Tax Law states that: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". In light of the foregoing, and upon reviewing the case file and the defenses and documents included, and considering that the late payment fine is calculated from the date the tax return was due until the date the outstanding tax was paid, as per law provisions and any subsequent amendments made by ZATCA, and given that the dispute between both parties is documentary in nature and does not arise from any substantial difference in the interpretation of the regulatory provisions. Therefore, the Department concluded in the first point to amend ZATCA's action regarding the withholding tax on dividends for the years 2017 to 2019 AD, which necessarily entails an amendment to ZATCA's action regarding the late payment fine for the merits stated in the decision.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Amend ZATCA's action regarding the withholding tax on dividends for the years 2017 to 2019 AD for the merits stated in the decision.

Second: Amend Defendant's procedure regarding (Late Payment Fine) item according to decision grounds.

This decision was delivered in presence of the parties in accordance with Article 56 of the Law of Civil Procedure. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

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



(Judgment has become final by expiration of objection period under article 33.2 of Working Rules for the Zakat, Tax, and Customs Committees).



Withholding Tax

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2023-91441)

Issued in Case No. (W-91441-2022)

Keywords:

Withholding Tax - Late Payment Fine - Acceptance of Taxpayer's Objection.

Abstract

Taxpayer requests cancellation of ZATCA's decision regarding withholding tax assessment for 2014 AD. As for merits, Taxpayer's objection is limited to two points: Item First: As for withholding tax, Taxpayer objects to ZATCA's imposition of withholding tax and additional fines for 2014 AD amounting to SAR (14,144.33). In response, ZATCA defended the validity of its decision. The Department found that ZATCA's action was based on a statement submitted by Taxpayer, yet the statement was not provided in the case file for review. Furthermore, the data lacked specific details such as the service date and the relevant year. Instead, it was merely a table that did not specify the supplier's name, the nature of the service, ZATCA's classification of the service, or the tax rate. Consequently, the Department determined that ZATCA's counter-memorandum was merely a general assertion lacking any substantial evidence upon which a decision could be based. In contrast, Taxpayer provided invoices for due diligence studies conducted in 2014, payment receipts, and withholding tax returns, and allowed ZATCA to review such data. Moreover, ZATCA did not present any concrete evidence to prove the source of these amounts or to verify the accuracy of the data provided by Taxpayer. As the burden of proof in this case falls on ZATCA to substantiate its claims, the Department decided to accept Taxpayer's objection in this regard. Regarding the Second Item: Regarding late payment fine, Taxpayer objects to ZATCA's imposition of the late payment fine on the disputed tax item. ZATCA, however, argued that the late payment fine is imposed on the tax differences that were not settled on the due date and is calculated from the date the tax return was due until the date the outstanding tax was paid, as per law provisions and any subsequent amendments made by ZATCA and given that the dispute between both parties is documentary in nature and does not arise from any substantial difference in the interpretation of the regulatory provisions. Therefore, the Department ruled that the late payment fine on the disputed item, for which Taxpayer's objection was upheld, is waived due to the invalidity of the original tax imposition. Therefore, the Department ruled to accept Taxpayer's objection to the withholding tax and late payment fine items.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 10/01/2023 AD, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, established pursuant to Article (67) the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and



constituted pursuant to Royal Decree No. (13957) dated 26/02/1444 AH, held a remote hearing via video and audio conference to consider the aforementioned case. As the case has met the prescribed legal requirements, it was filed with the General Secretariat of the Tax Committees on 18/01/2022.

The facts of this case are summarized that Mr. ..., holder of National ID No. (...), acting as the attorney of Taxpayer/ ... Company, CR No. (...), under PoA No. (...), submitted an objection to the withholding tax assessment for 2014 AD issued by ZATCA. Taxpayer's objection is limited to two points, the first of which is related to withholding tax, where Taxpayer objects to ZATCA's imposition of withholding tax and additional fines for 2014 AD amounting to SAR (14,144.33). Taxpayer argues that the submitted data pertains to training courses conducted outside the Kingdom, which were previously accepted by ZATCA during an audit without imposing withholding tax. Taxpayer provided ZATCA with data and documents clarifying the nature of the transferred amounts, which relate to consultancy studies included in the transfer statement. Moreover, Taxpayer asserts that there were no transfers or documents that were not disclosed and declared to ZATCA during the referenced period. Nevertheless, additional amounts appeared in the assessment conducted by ZATCA. Regarding the Second Item: As for late payment fine, Taxpayer objects to ZATCA's imposition of late payment fine on the aforementioned disputed item and asserts that it submitted the tax returns within the stipulated due dates. Therefore, Taxpayer requests cancellation of any additional tax liability arising therefrom that is not subject to a late payment fine.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: ZATCA, regarding withholding tax, imposed withholding tax at rates of 5% and 15% on the amounts of foreign transfers listed in the account statement provided by Taxpayer, which are identified as payments for technical services, consulting services, and royalties, with the type of service determining the calculation method. A meeting was held, upon reviewing the objection, with Taxpayer on 18/12/2021 AD, during which Taxpayer was requested to provide a sample of the amounts subjected to withholding tax by ZATCA to verify the nature of the services provided. Specifically, Taxpayer was requested to submit the invoices issued by the service providers as well as the company's payment transfers for settling those invoices. Therefore, Taxpayer submitted a sample of the external transfers and invoices issued by the service providers. Upon review, it was determined that these documents pertained to training services provided to the company's employees and that such training was conducted entirely outside the Kingdom. Based on the statement prepared by ZATCA for calculating withholding taxes, it is clear that Taxpayer was previously requested to provide documentary evidence for these services, which was duly submitted. Accordingly, ZATCA did not impose withholding taxes on training services and accepted Taxpayer's payment of withholding taxes on technical and consulting services related to due diligence studies (technical and consulting services). However, withholding taxes were imposed on the remaining services listed in Taxpayer's statement under the description of "technical and consulting services" and "royalties," which were not subjected to withholding. Since Taxpayer failed to provide documentary evidence clarifying the nature of these services and the method of payment to the suppliers, Taxpayer's objection was dismissed pursuant to Article (68) of the Income Tax Law and Article (63) of its Implementing Regulations. Based on the foregoing, ZATCA requests that the esteemed committee rule in favor of dismissing the Case for the reasons stated above and uphold the actions of ZATCA being sued. Moreover, ZATCA reserves the right to submit additional responses and clarifications prior to the closure of the pleadings. Regarding the Second Item: The late payment fine was imposed on the tax differences that were not settled on the due date.



On Tuesday, 10/01/2023 AD, the Department convened its session remotely to consider the Case, where the representative of Taxpayer ..., holder of National ID No. (...), under PoA No. (...), ..., holder of ID No. (...), under PoA, and the representative of ZATCA, ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../10/1443 AH. The Department, upon reviewing ZATCA's memorandum dated 10/01/2023 AD, found that the amounts stated therein matched the invoices for services provided by Taxpayer in the case file. When both parties were asked if they wished to add anything further, they confirmed that they were satisfied with their previous submissions. Therefore, the Department decided to adjourn the session for deliberation in preparation for issuing a decision.

Grounds:

Having perused Zakat Law promulgated by Royal Order No. (17/28/577) of 14/03/1376 AH, as amended, and Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and 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,

In Form: Taxpayer instituted this case to cancel ZATCA's decision regarding the withholding tax assessment for the year 2014; and since this dispute is considered one of the tax 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 given that the Case was filed by an eligible party, and within the legally prescribed period, the case is to be accepted in form.

In Merits: The Department, after reviewing the documents contained in the case file, and considering the requests, defenses, and objections presented by both parties, has determined that the dispute centers on the issuance of the withholding tax assessments by ZATCA for 2014 AD. Taxpayer's objections to the aforementioned two items are as follows:

Regarding First Item: Withholding tax, where Taxpayer objects to ZATCA's imposition of withholding tax and additional fines for 2014 AD amounting to SAR (14,144.33). However, ZATCA maintains the validity of its decision to impose the withholding tax for the disputed period. Paragraph (1) of Article (63) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH states: "1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Royalties or proceeds (15%), technical or consulting services (5%), or any other payments (15%). Additionally, Article (57.3) of the Implementing Regulations of Income Tax Law states that: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". In addition, Paragraph (7) of Article (59) of the Implementing Regulations of the Income Tax Law states: "If the Department does not agree with the taxpayer's return, it shall notify the taxpayer of its modifications on the return, the reasons thereof, the amount of tax and subsequent penalties, and of the taxpayer's right to object and the due date specified for objection. The notice to the taxpayer shall be sent by registered mail or by any other means that proves the taxpayer's receipt of such notice." Based on the



foregoing, and upon reviewing the data submitted by both parties, as well as ZATCA's memorandum, it appears that ZATCA based its actions on a statement submitted by Taxpayer, yet the statement was not provided in the case file for review. Furthermore, the data lacked specific details such as the service date and the relevant year. Instead, it was merely a table that did not specify the supplier's name, the nature of the service, ZATCA's classification of the service, or the tax rate. Consequently, the Department determined that ZATCA's counter-memorandum was merely a general assertion lacking any substantial evidence upon which a decision could be based. In contrast, Taxpayer provided invoices for due diligence studies conducted in 2014, payment receipts, and withholding tax returns, and allowed ZATCA to review such data. Moreover, ZATCA did not present any concrete evidence to prove the source of these amounts or to verify the accuracy of the data provided by Taxpayer. As the burden of proof in this case falls on ZATCA to substantiate its claims, the Department decided to accept Taxpayer's objection in this regard.

Regarding the Second Item: Late payment fine, where Taxpayer objects to ZATCA's imposition of late payment fine on the aforementioned disputed item. ZATCA, however, argued that the late payment fine was imposed on the tax differences that were not settled on the due date. Based on Paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which 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 due tax as per the Department's assessment". In addition, Paragraph (3) of Article (67) of the Implementing Regulations of the Income Tax Law states: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". Based on the foregoing, and after reviewing the case file and the supporting arguments and documents, it is established that the late payment fine is calculated from the date the tax return was due until the date the outstanding tax was paid, as per law provisions and any subsequent amendments made by ZATCA and given that the dispute between both parties is documentary in nature and does not arise from any substantial difference in the interpretation of the regulatory provisions. Therefore, the Department ruled that the late payment fine on the disputed item, for which Taxpayer's objection was upheld, is waived due to the invalidity of the original tax imposition. For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept Taxpayer's objection regarding the withholding tax.

Second: Accept Taxpayer's objection regarding the late payment fine.

This decision was delivered in presence of both parties. The Department set a period of thirty (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax, and Customs Committees. Either party to the case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision will be final and enforceable if no objection is submitted.



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

(The Decision is deemed final and imperative by expiration of objection period under
Article (42) of Tax Dispute and Violation Committee Procedures).



Income Tax

Determination Committee

First Department for Determination Income
Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2023-
115074)

Issued in Case No. (W-
115074-2022)

Keywords:

Tax Assessment - Withholding Taxes - Discrepancies Between the Revised Return by ZATCA and Adjustment Notices– Late Payment Fine - Acceptance of Taxpayer's Objection.

Abstract

Taxpayer requests cancellation of ZATCA's decision regarding tax assessment for 2008 and 2010 AD. As for merits, Taxpayer's objection is limited to three points: Item First: Taxpayer, regarding withholding taxes for December 2020, objects to ZATCA's imposition of withholding taxes totaling SAR (887,734.25) on amounts transferred to suppliers (... Company and ... Company) for distribution and sales services in December 2020. However, ZATCA maintains the validity of its decision, arguing that such services are classified as "other services" under paragraph (A) of Article (68) of the Income Tax Law. Upon reviewing the data submitted by both parties, it is clear that the dispute centers around ZATCA's imposition of withholding tax at a rate of 15%, considering these as "other services". ZATCA argues that Taxpayer receives marketing services from ... and ... pursuant to contracts signed by Taxpayer. It is evident that, upon reviewing the distribution contract, the scope of work is limited to distribution and resale only, and does not include any marketing services. Furthermore, upon reviewing ZATCA's memorandum of reply, it is clear that it lacks supporting evidence and consists of unsupported statements that cannot be relied upon due to their inaccuracy and contradiction with the provisions of the law. Therefore, the Department satisfied to accept Taxpayer's objection to the withholding taxes for December 2020. Regarding the Second Item: Taxpayer, regarding the discrepancies between the revised return by ZATCA and adjustment notices for (2018-2020), objects to ZATCA's action concerning the said item amounting to SAR (2,251,20). ZATCA, however, defends the accuracy of its action, asserting that it matched the adjustment notices. The Department found that the dispute centers around a mathematical error in applying the amounts in the adjustment notices compared to those stated in the revised returns for withholding tax. It is evident that, upon reviewing the table attached to Taxpayer's statement, ZATCA erred in listing amounts that matched those in the adjustment notices after verifying the amounts listed in the adjustment notices attached to the case file. The discrepancies were found to be limited to the months of February, March, April, July, August, September, October, and November 2020, which correspond to the periods outlined in the item (First) above, where Taxpayer's objection was accepted and ZATCA's decision to impose tax on Taxpayer was annulled due to its inapplicability from the outset. Therefore, the Department concluded to accept Taxpayer's objection regarding the discrepancies between the revised return by ZATCA and adjustment notices for (2018-2020). As for the third item: Regarding late payment fine, Taxpayer objects to ZATCA's



imposition of the late payment fine on the disputed tax item. ZATCA, however, argued that the late payment fine is imposed on the tax differences that were not settled on the due date. Upon reviewing the case file, including the arguments and documents presented, and considering that the late payment fine is calculated from the date the tax return was due until the date the outstanding tax was paid, as per law provisions and any subsequent amendments made by ZATCA and given that the dispute between both parties is documentary in nature and does not arise from any substantial difference in the interpretation of the regulatory provisions. Therefore, the Department ruled that the late payment fine on the disputed items, for which Taxpayer's objection was upheld, is waived due to the invalidity of the original tax imposition. Therefore, the Department ruled to accept Taxpayer's appeal regarding the withholding taxes for December 2020, the discrepancies between the revised return by ZATCA and adjustment notices for (2018-2020), and late payment fine items.

Facts:



Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 12/02/2023 AD, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, established pursuant to Article (67) the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and constituted pursuant to Royal Decree No. (13957) dated 26/02/1444 AH, held a remote hearing via video and audio conference to consider the aforementioned case. As the case has met the prescribed legal requirements, it was filed with the General Secretariat of the Tax Committees on 11/04/2022 AD.

The facts of this case are summarized that Mr. ..., holder of National ID No. (...), acting as the attorney of Taxpayer/ ..., CR No. (...), under PoA No. (...), submitted an objection to the tax assessment for 2018 and 2020 AD issued by ZATCA. Taxpayer's objection is limited to three points, the first of which: Withholding Taxes for December 2020 AD: Taxpayer objects to ZATCA's imposition of withholding taxes totaling SAR (887,734.25) on amounts transferred to suppliers (... Company for distribution and sales services in December 2020). Taxpayer, in its statement of claim, pointed out that, according to the definition of withholding tax in the Implementing Regulations of the Income Tax Law, it is stipulated that ““Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount” Therefore, withholding tax should be levied on services provided by non-resident entities derived from income sources in the Kingdom, which does not apply in the case of the company. The company's activity involves importing goods from outside the Kingdom and distributing thereof within the Kingdom. Additionally, the nature of the business is based on contracts signed with several suppliers outside the Kingdom to import and distribute goods within the Kingdom. Referring to the contract executed with ... Company, the nature of the amounts transferred to the company and subsequently subjected to withholding tax by ZATCA is clearly outlined. Clause (7.4) of the contract stipulates that in the event of increase in prices, ... Company shall pay to ... Company; if there is a decrease, ... Company shall pay to ... Group as a price adjustment difference. A copy of the contract is attached in Annex (3). Consequently, there is no supply of goods or services within the Kingdom, and all amounts transferred to the foreign supplier represent mere price adjustments. Therefore, these amounts should not be subject to withholding tax as they fall outside the scope of taxation. Accordingly, Taxpayer requests the cancellation of ZATCA's action. Regarding the Second Item: Taxpayer, regarding the discrepancies between the revised return by ZATCA and adjustment notices for (2018-2020), objects to



ZATCA's action concerning the said item amounting to SAR (2,251,20), stating in its statement of claim that ZATCA amended the withholding tax return for March and April 2020 by SAR (3,109.25), despite the fact that the company had already declared for March 2020. Furthermore, no external transfer matching the same amount was made for April 2020. Upon the company's review of the revised returns by ZATCA and their comparison with the adjustment notices, discrepancies were identified, as shown in the table attached to the statement of objection. Consequently, Taxpayer requests the cancellation of ZATCA's action. As for the third item: Regarding late payment fine, Taxpayer objects to ZATCA's imposition of the late payment fine on the disputed tax items by stating in its statement of claim that the tax returns were submitted on the stipulated due dates and the late payment fines, which arose due to the tax differences, were caused by errors and differences in interpretation, rather than any intentional delay in tax payment on the due date. Therefore, Taxpayer requests the cancellation of any additional tax liability arising therefrom that is not subject to the late payment fine.

Having presented the statement of claim to Defendant, it responded as follows: Regarding the First Item: As for withholding taxes for 2020 AD, it became clear that, during the objection stage and upon reviewing the documents submitted by Taxpayer, the company's activities include the maintenance and operation of buildings, management of restaurants, hotels, rest houses, kitchens, and storage and refrigeration warehouses, as well as wholesale and retail trade in food products of all types—fresh, chilled, and canned—and the import and export of food, land transportation of goods, and customs clearance activities. It was also noted that the company underwent a customs inspection after discrepancies were observed between the customs, financial, and accounting records and the company's own records. Taxpayer was found to violate the full disclosure requirements, as it was revealed that there were payments and financial amounts transferred both abroad and domestically, which should have been added to the actual or due payments but were not declared to ZATCA, leading to discrepancies in value, resulting in the loss of part of the customs duties and taxes owed to the state treasury. Having reviewed the distribution agreement executed between ... Company and ... Company and ... Group, it was noted that both companies (...) (...) hold all intellectual property rights, as well as exclusive ownership of all information, materials, reports, research, statistics, and documents provided to the ..., with these being exclusively owned and not to be disclosed to any third party or used for purposes other than the distribution of products within the designated region. The product prices are determined as stipulated in the distribution agreement between ... Company, and (...) Group and between (...) and ... through models that outline the calculation of operating costs and the distribution of profits generated from sales operations at sales outlets. ... Company provides a monthly report on its sales, which determines whether the seller (...) and (...) are entitled to a share of the profit after achieving certain profit levels. Taxpayer stated that the amounts are adjusted by increasing or decreasing the cost of goods sold, and they are not included in the revenues. Therefore, there is no discrepancy when comparing the revenue between the financial statements and tax returns, implying that the revenue was not affected significantly. Since ... Company pays a portion of its profits to ... and ... for marketing and distributing its products at predetermined prices, and since the income earned by non-resident entities for providing such services is considered income derived from a source within the Kingdom, it is therefore subject to withholding tax. As the Income Tax Law and its implementing regulations do not specify withholding tax rates for amounts paid for marketing services, such services are classified and fall under the category of 'other services' as mentioned in Paragraph (A) of Article (68) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments and according to Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH and its



amendments. Paragraph (7) of the same Regulations state: "Other payments" means any payments from a source within the Kingdom to a non-resident for services other than those mentioned in Paragraph (1) of this Article". Accordingly, Taxpayer's objection regarding this item is dismissed. As for Taxpayer's allegations in its statement of claim are mere assertions that cannot be relied upon due to their inaccuracy and inconsistency with the applicable legal requirements outlined by ZATCA. Furthermore, Taxpayer's requests, in essence, contradict the proper procedure undertaken by ZATCA, thereby affirming the validity of ZATCA's action. Regarding the Second Item: ZATCA, regarding the discrepancies between the revised return by ZATCA and adjustment notices for (2018-2020), rejected Taxpayer's objection regarding the above item. ZATCA's action is substantiated by the reference to the adjusted assessment through the list of changes to the return, which aligns with the adjustment notices. As for Taxpayer's assertions in its statement of claim, they lack validity, further confirming ZATCA's decision to reject Taxpayer's objection. ZATCA affirms the legitimacy and compliance of its actions with the applicable regulations. As for the third item: As for the late payment fine, ZATCA imposed a late payment fine on the unpaid tax differences not settled by the due date in accordance with Paragraph (A) of Article (77) of the Income Tax Law and Paragraph (1/B) of the Implementing Regulations of the Income Tax Law. The fine is calculated starting from the due date for filing the return in accordance with the applicable legal provisions. On Sunday, 12/02/2023 AD, the Department convened its session remotely to consider the Case, where the representative of Taxpayer ..., holder of National ID No. (...), under PoA No. (...) and the representative of ZATCA, ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../10/1443 AH. When asked if either party wished to add anything further, both parties stated that they would rely on what has already been submitted. Therefore, the Department decided to adjourn the session for deliberation in preparation for issuing a decision.

Grounds:

Having perused Zakat Law promulgated by Royal Order No. (17/28/577) of 14/03/1376 AH, as amended, and Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and 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,

In Form: Taxpayer instituted this case to cancel ZATCA's decision regarding the tax assessment for 2018 and 2020 AD; and since this dispute is considered one of the tax 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 given that the Case was filed by an eligible party, and within the legally prescribed period, the case is to be accepted in form.

In Merits: The Department, after reviewing the documents contained in the case file, and considering the requests, defenses, and objections presented by both parties, has determined that the dispute centers on the issuance of the tax assessments by ZATCA for 2018 and 2020 AD. Taxpayer's objections to the aforementioned three items are as follows:

Regarding First Item: Taxpayer, regarding withholding taxes for December 2020, objects to ZATCA's imposition of withholding taxes totaling SAR (887,734.25) on amounts transferred to suppliers (... Company and ... Company) for distribution and sales services in December 2020. However, ZATCA maintains the validity of its decision, arguing that such services are classified as "other services" under paragraph (A) of Article



(68) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments and Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 and its amendments. Paragraph (7) of the same Regulations state: “Other payments” means any payments from a source within the Kingdom to a non-resident for services other than those mentioned in Paragraph (1) of this Article”. Accordingly, Taxpayer’s objection regarding this item is dismissed. As for Taxpayer’s allegations in its statement of claim are mere assertions that cannot be relied upon due to their inaccuracy and inconsistency with the applicable legal requirements outlined by ZATCA. Furthermore, Taxpayer’s requests, in essence, contradict the proper procedure undertaken by ZATCA, thereby affirming the validity of ZATCA’s action. Paragraph (A) of Article (68) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments states that: “A. Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: 6. Any other payments specified in the Regulations, provided that the tax rate does not exceed 15%”. Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH and its amendments states: “1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Any other payments at a rate of (15%). Paragraph (7) of the same Regulations state: “Other payments” means any payments from a source within the Kingdom to a non-resident for services other than those mentioned in Paragraph (1) of this Article”. In light of the above, and after reviewing the data provided by both parties, it was found that the dispute revolves around ZATCA’s imposition of a withholding tax at a rate of 15%, considering the payments as "other services". ZATCA argued that Taxpayer receives marketing services from ... and ... pursuant to contracts signed by Taxpayer. It is evident that, upon reviewing the distribution contract, the scope of work is limited to distribution and resale only, and does not include any marketing services. Furthermore, upon reviewing ZATCA’s memorandum of reply, it is clear that it lacks supporting evidence and consists of unsupported statements that cannot be relied upon due to their inaccuracy and contradiction with the provisions of the law. Therefore, the Department satisfied to accept Taxpayer’s objection to the withholding taxes for December 2020.

Regarding the Second Item: Taxpayer, regarding the discrepancies between the revised return by ZATCA and adjustment notices for (2018-2020), objects to ZATCA’s action concerning the said item amounting to SAR (2,251,20). ZATCA, however, defends the accuracy of its action, asserting that it matched the adjustment notices. In addition, Paragraph (9) of Article (59) of the Implementing Regulations of the Income Tax Law states: “The Department may correct mathematical and material errors within ten years from the end of the due date of filing the tax return of the taxable year, pursuant to the taxpayer’s request, or if the Department or audit agencies discover such errors. “A Mathematical and materiel error” shall mean an error resulting of a mathematical operation, such as addition, subtraction, multiplication and division, or from posting an erroneous number or similar errors”. Based on the foregoing and upon reviewing the data provided by both parties, it was determined that the dispute centers around a mathematical error in applying the amounts in the adjustment notices compared to those stated in the revised returns for withholding tax. It is evident that, upon reviewing the table attached to Taxpayer’s statement, ZATCA erred in listing amounts that matched those in the adjustment notices after verifying the amounts listed in the adjustment notices attached to the case file. The discrepancies were found to be limited to the months of February, March,



April, July, August, September, October, and November 2020, which correspond to the periods outlined in the item (First) above, where Taxpayer's objection was accepted and ZATCA's decision to impose tax on Taxpayer was annulled due to its inapplicability from the outset. Therefore, the Department concluded to accept Taxpayer's objection regarding the discrepancies between the revised return by ZATCA and adjustment notices for (2018-2020).

As for the third item: Late payment fine, where Taxpayer objects to ZATCA's imposition of late payment fine on the aforementioned disputed item. ZATCA, however, argued that the late payment fine was imposed on the tax differences that were not settled on the due date pursuant to Paragraph (A) of Article (77) of the Income Tax Law, which states: Based on Paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which 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 due tax as per the Department's assessment". In addition, Paragraph (3) of Article (67) of the Implementing Regulations of the Income Tax Law states: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". Based on the foregoing, and after reviewing the case file and the supporting arguments and documents, it is established that the late payment fine is calculated from the date the tax return was due until the date the outstanding tax was paid, as per law provisions and any subsequent amendments made by ZATCA and given that the dispute between both parties is documentary in nature and does not arise from any substantial difference in the interpretation of the regulatory provisions. Therefore, the Department ruled that the late payment fine on the disputed items, for which Taxpayer's objection was upheld, is waived due to the invalidity of the original tax imposition.

For those grounds and after deliberation, the Department unanimously decided as follows:

Decision

First: Accept Taxpayer's objection regarding withholding taxes for December 2020 AD.

Second: Accept Taxpayer's appeal regarding the discrepancies between the revised return by ZATCA and adjustment notices for (2018-2020).

Third: Accept Taxpayer's objection regarding the late payment fine.

This decision was delivered in presence of both parties. The Department set a period of thirty (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax, and Customs Committees. Either party to the case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision will be final and enforceable if no objection is submitted.

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

(The Decision is deemed final and imperative by expiration of objection period under Article (42) of Tax Dispute and Violation Committee Procedures).



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-280)
Issued in Case No. (W-1750-2018)

Keywords:

Appeal – Tax Assessment – Withholding Tax Differences – Late Payment Fine – No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance.

Abstract

Taxpayer seeks the annulment of the decision issued by the Third Primary Zakat and Tax Objection Committee regarding the tax assessment for the years 2008 to 2011 AD, which obliges Taxpayer to pay the withholding tax differences for the years 2008 to 2011 AD. Taxpayer further requests the recalculation of the amounts due for the withholding taxes and any associated fines. Regarding late payment fine: Support Taxpayer's claim to be exempted from the late payment fine on the withholding tax differences resulting from ZATCA's application of a rate of 15% instead of 5% on amounts paid to related parties. Dismiss Taxpayer's objection to the imposition of the late payment fine on other withholding tax differences, based on the argument that these companies do not meet the criteria for related companies and are not subject to the 15% rate, as they do not fall under the control of 50% or more. The withholding tax is due at the time of payment, not merely when recorded in the books. - ZATCA responded that it determined the amounts paid for technical services to related and non-related companies through the analytical statement provided by the company during the field examination of the activity costs reported in the return and by comparing thereof to those recorded in the financial statements. ZATCA, regarding "Late Payment Fine Item", clarified that there is no disagreement regarding the items subject to the fine, and Taxpayer's lack of understanding of their obligations does not necessarily indicate a difference in viewpoints. Therefore, ZATCA maintains the validity and correctness of its actions. Appellate Department, regarding Taxpayer's appeal concerning "Salaries and Wages amounting to SAR (4,449,386) for 2010 AD, concluded that the salaries and wages paid by ... Company on behalf of Taxpayer did not constitute employee secondment services. Instead, these payments were made to employees directly employed by Taxpayer under employment contracts. Consequently, the Department upheld Taxpayer's position that withholding tax should not be imposed on these salaries and wages as they were recoverable expenses, and that the previously paid and withheld tax on these salaries and wages should be considered as advance tax payments that Taxpayer can use to offset future withholding tax liabilities As for Taxpayer's appeal, regarding (Late Payment Fine) item, the late payment fine is imposed at a rate of 1% of the unpaid tax for every 30 days of delay. Given that a taxpayer cannot be held liable for fines



unless they are aware of the relevant assessment, and considering the legal principle that: “No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance”, the Department concludes that ZATCA is not entitled to impose the late payment fine on the unpaid tax differences as of the due date for filing the return according to the tax assessment. Rather, the fine can only be imposed from the date Taxpayer is notified of the assessment, as Taxpayer cannot be held liable for fines unless they are aware of the relevant assessment. Therefore, the Department decided to modify the calculation of the late payment fine, stipulating that the fine should be calculated from the date the tax difference is due, following Taxpayer’s notification of the assessment, until the payment date. This Department, concerning Taxpayer's and ZATCA’s appeal on the remaining items in the case, determined that the Committee’s conclusion is correct and that the reasons provided in its decision are sufficient to uphold thereof. Since the Department did not observe any requirement for correction or further comment based on the evidence provided. The Department ruled to accept the appeal in form. As for merits: Accept Taxpayer’s appeal regarding “Salaries and Wages amounting to SAR (4,449,386) for 2010 AD” and (Late Payment Fine) items, amend the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh, and dismiss Taxpayer's and ZATCA’s appeal on the remaining items in the case.

Instruments:

- Articles (67/3) and (77/A/B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Article (15/2) of [Rules of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. \(26040\) dated 21/04/1441 AH](#)
- **Jurisprudence Rule:** “No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance”

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 28/09/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh, to consider the appeal presented on 29/10/2020 AD filed by/ ... Company and ZATCA against the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh No. (12) of 1436 AH, concerning tax assessment for the years 2008 to 2011 AD, in the case filed by Taxpayer against ZATCA. The Primary Committee's decision ruled as follows: First: In form: Accept Taxpayer’s objection in form for the merits stated in the decision.

Second: On Merits:

1. Recalculate the amounts due from Taxpayer for the withholding taxes, regarding the withholding tax differences for the years 2008 to 2011 AD, taking into account the following:
 - a. Taxpayer paid SAR (25,732,805) to date for the merits stated in the decision.
 - b. Apply the withholding tax to the full amounts subject to the relevant tax, based on the assumption that they have been paid, for the merits stated in the decision.
 - c. Dismiss Taxpayer’s objection to the 15% withholding tax on payments made to entities previously considered unrelated for the merits stated in the decision.



- d. Dismiss Taxpayer's objection to the withholding tax on travel expenses paid to multiple related non-resident entities for the merits stated in the decision.
 - e. Dismiss Taxpayer's objection to the withholding tax on payments made to non-resident suppliers for the merits stated in the decision.
 - f. Dismiss Taxpayer's objection to the withholding tax on payments made for airfare tickets purchased from non-resident entities for the merits stated in the decision.
 - g. Uphold Taxpayer's claim to exempt amounts paid for recruitment services from withholding tax for the merits stated in the decision.
 - h. Uphold Taxpayer's claim to apply a 5% withholding tax instead of 15% on technical, consulting, communication, and insurance services paid to an unrelated company for the merits stated in the decision.
 - i. Dismiss Taxpayer's objection to the withholding tax on amounts transferred to ... Company on behalf of its clients for the merits stated in the decision.
 - j. Uphold Taxpayer's determination of payments for technical services made to related companies, as described by ZATCA, totaling SAR (11,706,740) for 2011 AD; payments for technical services made to unrelated companies totaling SAR (5,063,081); and payments for consulting services made to ... Company totaling SAR (246,969) for the merits stated in the decision.
2. Regarding the late payment fine item:
- a. Support Taxpayer's claim to be exempted from the late payment fine on the withholding tax differences resulting from ZATCA's application of a rate of 15% instead of 5% on amounts paid to related parties for the merits stated in the decision.
 - b. Dismiss Taxpayer's objection to the imposition of late payment fine on other withholding tax differences for the merits stated in the decision.

Dissatisfied with that decision, both parties filed a statement of appeal summarized as follows:

Taxpayer's appeal against the Primary Committee's decision, regarding "Increasing the withholding tax rate from 5% to 15%" on payments made to ... companies on the grounds that they are considered related companies, lies in its claim that such companies do not meet the criteria for related companies and are not subject to the 15% rate, as they do not fall under the control of 50% or more. Furthermore, the services provided by the non-resident entities were not services provided to the company itself, but were directly provided to the company's clients according to the contracts executed between the company and its clients. Taxpayer, regarding "Imposition of the withholding tax from the date of expense recognition in the accounts rather than the actual payment date", contends that withholding tax is due upon payment and not merely upon recording in the books, contrary to ZATCA's position. Taxpayer, regarding "Request for correction of procedural errors identified in ZATCA's assessment, claims that the errors in ZATCA's assessment should be corrected. Taxpayer, concerning "Travel expenses paid to multiple non-resident entities", claims that the travel expenses consist of two components: 1. Hotel and accommodation expenses. 2. Airfare tickets. Taxpayer claims that this amount should not be taxed again under a separate item in the assessment since it is part of the amounts for technical services that were assessed by ZATCA. Taxpayer further argues that the source of income for hotel and accommodation expenses is questionable, as these amounts were initially paid by the employees of the non-resident companies, which, in turn, charged these expenses to the company. Additionally, Taxpayer asserts that hotel and accommodation expenses are not subject to withholding tax by law, as they do not represent a source of income. Taxpayer, regarding "Miscellaneous Expenses", claims that this item should be deducted from the tax base. Taxpayer, concerning "Transfers", claims that these amounts are royalties paid by ... Company to ... Company in KSA, which in turn transferred these



amounts to Taxpayer Company instead of ... Company. As for “Salaries and wages”, Taxpayer claims that the amounts paid for salaries and wages are reimbursed expenses paid by ... Company due to the lack of a human resources department in Taxpayer Company. Taxpayer, regarding “Miscellaneous Services”, claims that amounts were refunded to ... Company -Dubai for payments made by the company to resident entities on their behalf. Taxpayer contends that the 5% withholding tax levied on these reimbursements was erroneous, as the payments were made to resident entities for services rendered. No withholding tax should be applied to these services or expenses, as they were provided by resident entities according to the Income Tax Law. Taxpayer, regarding “Late Payment Fine”, claims that the fine should be applied from the date of ZATCA’s claim rather than the date of filing the return in accordance with Paragraph (2) of Article (68) of the Implementing Regulations of the Income Tax Law. Therefore, Taxpayer requests reversal of the Primary Committee’s decision in relation to 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’s appeal against the primary decision, regarding “Uphold Taxpayer’s determination of payments for technical services made to related companies, as described by ZATCA, totaling SAR (11,706,740) for 2011 AD; payments for technical services made to unrelated companies totaling SAR (5,063,081); and payments for consulting services made to ... Company totaling SAR (246,969)”, lies in its clarification that it determined the amounts paid for technical services to related and non-related companies through the analytical statement provided by the company during the field examination of the activity costs reported in the return and by comparing thereof to those recorded in the financial statements prepared on 20/02/1435 AH signed and stamped with the company's seal. ZATCA also reached this conclusion through the attachments provided with the return for 2011 AD, where the amounts were distributed with a total of SAR (17,045,752) reflected in the tax assessment in which the company was later involved. ZATCA, regarding “Late Payment Fine Item”, clarified that there is no disagreement regarding the items subject to the fine, and Taxpayer's lack of understanding of their obligations does not necessarily indicate a difference in viewpoints. Therefore, ZATCA maintains the validity and correctness of its actions and requests reversal of the Primary Committee’s decision in relation to the contested items for the aforementioned grounds.

In response to the statement of appeal, ZATCA submitted a memorandum reaffirming the correctness and validity of its action and requested to dismiss Taxpayer’s appeal and uphold the Primary Committee’s decision in relation to the contested items under Taxpayer’s appeal.

On Monday, 03/10/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held with the full attendance of its members via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. The Department, after reviewing the appeal submitted by both parties and after examining the case file, decided that the case was ready for determination and the issuance of a ruling on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Reasons:

Upon reviewing Case documents and statement of appeal submitted by Taxpayer and ZATCA, the Department found that conditions of appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions.



Therefore, the two Appeal requests were accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

As on Merits, Taxpayer's appeal, regarding "Salaries and wages amounting to SAR (4,449,386) for 2010 AD", is based on its objection to the Primary Committee's decision on this item, claiming that the amounts paid are reimbursed expenses paid by ... Company due to the lack of a human resources department in Taxpayer Company. On the other hand, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the Primary Committee's decision. The Department, upon reviewing the dispute and referring to the field examination report, determined that Taxpayer provided several supporting documents, including a sample of employee contracts and an analysis of their salaries. A review of the bank statements of ... Company confirmed that salaries were transferred to Taxpayer's employees and matched the employee contracts, as verified by the auditors. Therefore, it became evident that the salaries and wages paid by ... Company on behalf of Taxpayer did not constitute employee secondment services. Instead, these payments were made to employees directly employed by Taxpayer under employment contracts. Consequently, the Department upheld Taxpayer's position that withholding tax should not be imposed on these salaries and wages as they were recoverable expenses, and that the previously paid and withheld tax on these salaries and wages should be considered as advance tax payments that Taxpayer can use to offset future withholding tax liabilities. Consequently, the Department satisfies to accept Taxpayer's objection and reverse the decision delivered by the Third Primary Committee for Zakat and Tax in Riyadh.

Taxpayer's appeal, regarding (Late Payment Fine) item, is based on the objection to Primary Committee's decision on this item, claiming that the fine should be calculated from the date of ZATCA's assessment rather than the return filing date. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the Primary Committee's decision. Based on Paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment" and Paragraph (3) of Article (67) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". In light of the above, the late payment fine is imposed at a rate of 1% of the unpaid tax for every 30 days of delay. **Given that a taxpayer cannot be held liable for fines unless they are aware of the relevant assessment, and considering the legal principle that: "No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance", the Department concludes that ZATCA is not entitled to impose the late payment fine on the unpaid tax differences as of the due date for filing the return according to the tax assessment. Rather, the fine can only be imposed from the date Taxpayer is notified of the assessment, as Taxpayer cannot be held liable for fines unless they are aware of the relevant assessment. Therefore, the Department decided to modify the calculation of the late payment fine, stipulating that the fine should be calculated from the date the tax difference is due, following Taxpayer's notification of the assessment, until the payment date. Accordingly, the**



Department decided to accept Taxpayer's objection and amend the decision delivered by the Third Primary Committee for Zakat and Tax in Riyadh.

Regarding the appeals filed by Taxpayer and ZATCA on the remaining contested items, having carefully considered the appeal and reviewed the appeals filed by Taxpayer and ZATCA, the Department concluded that the outcome reached by the Third Primary Committee for Zakat and Tax in Riyadh was correct and the reasons provided by the Committee in its decision are sufficient to support that conclusion. Since the Department did not observe any requirement for correction or further comment. Therefore, the Department dismisses both appeals filed by Taxpayer and ZATCA and upholds the decision delivered by the Third Primary Committee for Zakat and Tax in Riyadh regarding the outcome of the remaining items in the case based on the reasons provided.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision:

First: Accept the appeals in form filed by Taxpayer/ ... Company, CR No. (...), TIN No. (...), and ZATCA against the decision of the Third Primary Zakat and Tax Objection Committee in Riyadh No. (12) of 1436 AH related to tax assessment for the years 2008 to 2011 AD.

Second: On Merits:

1. Accept Taxpayer's appeal concerning "Salaries and wages amounting to SAR (4,449,386) for 2010 AD" and reverse the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh in accordance with grounds and merits mentioned herein.
2. Accept Taxpayer's appeal concerning "Late Payment Fine" and amend the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh in accordance with grounds and merits mentioned herein.
3. Dismiss the appeals filed by Taxpayer and ZATCA concerning the remaining contested items and uphold the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

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

Keywords:

Appeal - Withholding Tax Differences - Salaries and Wages - Late Payment Fine - No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance -A taxpayer cannot be held liable for fines unless they are aware of the relevant assessment.

Abstract

Taxpayer (... Company for Software Services Ltd.) and ZATCA challenge against the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh No. (12) of 1436 AH, concerning tax assessment for the years 2008 to 2011 AD, in the case filed by Taxpayer against ZATCA. The Primary Committee's decision ruled as follows: Recalculate the amounts due from Taxpayer for the withholding taxes, regarding the withholding tax differences for the years 2008 to 2011 AD, taking into account the following: A. Taxpayer's payment of SAR (25,732,805) to date. B. Apply the withholding tax to the full amounts subject to the relevant tax, based on the assumption that they have been paid. C. Dismiss Taxpayer's objection to the 15% withholding tax on payments made to entities previously considered unrelated. D. Dismiss Taxpayer's objection to the withholding tax on travel expenses paid to multiple related non-resident entities. E. Dismiss Taxpayer's objection to the withholding tax on payments made to non-resident suppliers. F. Dismiss Taxpayer's objection to the withholding tax on payments made for airfare tickets purchased from non-resident entities. G. Uphold Taxpayer's claim to exempt amounts paid for recruitment services from withholding tax. H. Uphold Taxpayer's claim to apply a 5% withholding tax instead of 15% on technical, consulting, communication, and insurance services paid to an unrelated company. I. Dismiss Taxpayer's objection to the withholding tax on amounts transferred to ... Company on behalf of its clients. J. Uphold Taxpayer's determination of payments for technical services made to related companies, as described by ZATCA, totaling SAR (11,706,740) for 2011 AD; payments for technical services made to unrelated companies totaling SAR (5,063,081); and payments for consulting services made to ... Company totaling SAR (246,969) for the merits stated in the decision. 2. Regarding the late payment fine item: A. Support Taxpayer's claim to be exempted from the late payment fine on the withholding tax differences resulting from ZATCA's application of a rate of 15% instead of 5% on amounts paid to related parties. B. Dismiss Taxpayer's objection to the imposition of late payment fine on other withholding tax differences. The Department, regarding Taxpayer's appeal to "Salaries and wages amounting to SAR (4,449,386) for 2010 AD", determined that Taxpayer provided several supporting documents, including a sample of employee contracts and an analysis of their salaries. A review of the bank statements of ... Company confirmed that salaries were transferred to Taxpayer's employees and matched the



employee contracts, as verified by the auditors. Therefore, it became evident that the salaries and wages paid by ... Company on behalf of Taxpayer did not constitute employee secondment services. Instead, these payments were made to employees directly employed by Taxpayer under employment contracts. Consequently, the Department upheld Taxpayer's position that withholding tax should not be imposed on these salaries and wages as they were recoverable expenses, and that the previously paid and withheld tax on these salaries and wages should be considered as advance tax payments that Taxpayer can use to offset future withholding tax liabilities Taxpayer, regarding its appeal to "Late Payment Fine", claims that the fine should be calculated from the date of ZATCA's assessment rather than the date of filing the return. Given that the late payment fine is imposed at a rate of 1% of the unpaid tax for every 30 days of delay and considering that a taxpayer cannot be held liable for fines unless they are aware of the relevant assessment, the Department concluded that ZATCA is not entitled to impose the late payment fine on the unpaid tax differences as of the due date for filing the return according to the tax assessment. Rather, the fine can only be imposed from the date Taxpayer is notified of the assessment, as Taxpayer cannot be held liable for fines unless they are aware of the relevant assessment. Therefore, the Department decided to modify the calculation of the late payment fine, stipulating that the fine should be calculated from the date the tax difference is due, following Taxpayer's notification of the assessment, until the payment date. This Department, concerning Taxpayer's and ZATCA's appeal on the remaining items in the case, determined that the conclusion made by the Third Primary Committee for Zakat and Tax in Riyadh is correct and that the reasons provided in its decision are sufficient to uphold thereof. Since the Department did not observe any requirement for correction or further comment based on the evidence provided. Therefore, the Department ruled to accept Taxpayer's appeal regarding "Salaries and Wages amounting to SAR (4,449,386) for 2010 AD" and (Late Payment Fine) items, amend the Objection Committee's decision, dismiss Taxpayer's and ZATCA's appeal on the remaining contested items, and uphold the Objection Committee's decision.

Instruments:

- [Articles \(77.A and B\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- [Articles \(67.3\) and \(71.2\) of the Implementing Regulations of Income Tax Law issued by Ministerial Resolution No. \(1535\) dated 15/02/1442 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 28/09/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh, to consider the appeal presented on 29/10/2020 AD filed by/... Company in KSA and ZATCA against the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh No. (12) of 1436 AH, concerning tax assessment for the years 2008 to 2011 AD, in the case filed by Taxpayer against ZATCA. The Primary Committee's decision ruled as follows:

First: In form: Accept Taxpayer's objection in form for the merits stated in the decision.

Second: On Merits:

1. Recalculate the amounts due from Taxpayer for the withholding taxes, regarding the withholding tax differences for the years 2008 to 2011 AD, taking into account the following:
 - a. Taxpayer paid SAR (25,732,805) to date for the merits stated in the decision.



- b. Apply the withholding tax to the full amounts subject to the relevant tax, based on the assumption that they have been paid, for the merits stated in the decision.
 - c. Dismiss Taxpayer's objection to the 15% withholding tax on payments made to entities previously considered unrelated for the merits stated in the decision.
 - d. Dismiss Taxpayer's objection to the withholding tax on travel expenses paid to multiple related non-resident entities for the merits stated in the decision.
 - e. Dismiss Taxpayer's objection to the withholding tax on payments made to non-resident suppliers for the merits stated in the decision.
 - f. Dismiss Taxpayer's objection to the withholding tax on payments made for airfare tickets purchased from non-resident entities for the merits stated in the decision.
 - g. Uphold Taxpayer's claim to exempt amounts paid for recruitment services from withholding tax for the merits stated in the decision.
 - h. Uphold Taxpayer's claim to apply a 5% withholding tax instead of 15% on technical, consulting, communication, and insurance services paid to an unrelated company for the merits stated in the decision.
 - i. Dismiss Taxpayer's objection to the withholding tax on amounts transferred to ... Company on behalf of its clients for the merits stated in the decision.
 - j. Uphold Taxpayer's determination of payments for technical services made to related companies, as described by ZATCA, totaling SAR (11,706,740) for 2011 AD; payments for technical services made to unrelated companies totaling SAR (5,063,081); and payments for consulting services made to ... Company totaling SAR (246,969) for the merits stated in the decision.
2. Regarding the late payment fine item:
- a. Support Taxpayer's claim to be exempted from the late payment fine on the withholding tax differences resulting from ZATCA's application of a rate of 15% instead of 5% on amounts paid to related parties for the merits stated in the decision.
 - b. Dismiss Taxpayer's objection to the imposition of late payment fine on other withholding tax differences for the merits stated in the decision.

Dissatisfied with that decision, both parties filed a statement of appeal summarized as follows:

Taxpayer's appeal against the Primary Committee's decision, regarding "Increasing the withholding tax rate from 5% to 15%" on payments made to ... companies on the grounds that they are considered related companies, lies in its claim that such companies do not meet the criteria for related companies and are not subject to the 15% rate, as they do not fall under the control of 50% or more. Furthermore, the services provided by the non-resident entities were not services provided to the company itself, but were directly provided to the company's clients according to the contracts executed between the company and its clients. Taxpayer, regarding "Imposition of the withholding tax from the date of expense recognition in the accounts rather than the actual payment date", contends that withholding tax is due upon payment and not merely upon recording in the books, contrary to ZATCA's position. Taxpayer, regarding "Request for correction of procedural errors identified in ZATCA's assessment, claims that the errors in ZATCA's assessment should be corrected. Taxpayer, concerning "Travel expenses paid to multiple non-resident entities", claims that the travel expenses consist of two components: 1. Hotel and accommodation expenses. 2. Airfare tickets. Taxpayer claims that this amount should not be taxed again under a separate item in the assessment since it is part of the amounts for technical services that were assessed by ZATCA. Taxpayer further argues that the source of income for hotel and accommodation expenses is questionable, as these amounts were initially paid by the employees of the non-resident companies, which, in turn, charged these expenses to the company. Additionally, Taxpayer asserts that hotel and accommodation



expenses are not subject to withholding tax by law, as they do not represent a source of income. Taxpayer, regarding “Miscellaneous Expenses”, claims that this item should be deducted from the tax base. Taxpayer, concerning “Transfers”, claims that these amounts are royalties paid by ... Company in KSA, which in turn transferred these amounts to Taxpayer Company instead of ... Company. As for “Salaries and wages”, Taxpayer claims that the amounts paid for salaries and wages are reimbursed expenses paid by ... Company due to the lack of a human resources department in Taxpayer Company. Taxpayer, regarding “Miscellaneous Services”, claims that amounts were refunded to ... Company for payments made by the company to resident entities on their behalf. Taxpayer contends that the 5% withholding tax levied on these reimbursements was erroneous, as the payments were made to resident entities for services rendered. No withholding tax should be applied to these services or expenses, as they were provided by resident entities according to the Income Tax Law. Taxpayer, regarding “Late Payment Fine”, claims that the fine should be applied from the date of ZATCA’s claim rather than the date of filing the return in accordance with Paragraph (2) of Article (68) of the Implementing Regulations of the Income Tax Law. Therefore, Taxpayer requests reversal of the Primary Committee’s decision in relation to 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’s appeal against the primary decision, regarding “Uphold Taxpayer’s determination of payments for technical services made to related companies, as described by ZATCA, totaling SAR (11,706,740) for 2011 AD; payments for technical services made to unrelated companies totaling SAR (5,063,081); and payments for consulting services made to ... Company in Dubai totaling SAR (246,969)”, lies in its clarification that it determined the amounts paid for technical services to related and non-related companies through the analytical statement provided by the company during the field examination of the activity costs reported in the return and by comparing thereof to those recorded in the financial statements prepared on 20/02/1435 AH signed and stamped with the company’s seal. ZATCA also reached this conclusion through the attachments provided with the return for 2011 AD, where the amounts were distributed with a total of SAR (17,045,752) reflected in the tax assessment in which the company was later involved. ZATCA, regarding “Late Payment Fine Item”, clarified that there is no disagreement regarding the items subject to the fine, and Taxpayer’s lack of understanding of their obligations does not necessarily indicate a difference in viewpoints. Therefore, ZATCA maintains the validity and correctness of its actions and requests reversal of the Primary Committee’s decision in relation to the contested items for the aforementioned grounds.

In response to the statement of appeal, ZATCA submitted a memorandum reaffirming the correctness and validity of its action and requested to dismiss Taxpayer’s appeal and uphold the Primary Committee’s decision in relation to the contested items under Taxpayer’s appeal.

On Monday, 03/10/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held with the full attendance of its members via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. The Department, after reviewing the appeal submitted by both parties and after examining the case file, decided that the case was ready for determination and the issuance of a ruling on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Reasons:





Upon reviewing Case documents and statement of appeal submitted by Taxpayer and ZATCA, the Department found that conditions of appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the two Appeal requests were accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

As on Merits, Taxpayer's appeal, regarding "Salaries and wages amounting to SAR (4,449,386) for 2010 AD", is based on its objection to the Primary Committee's decision on this item, claiming that the amounts paid are reimbursed expenses paid by ... Company due to the lack of a human resources department in Taxpayer Company. On the other hand, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the Primary Committee's decision. The Department, upon reviewing the dispute and referring to the field examination report, determined that Taxpayer provided several supporting documents, including a sample of employee contracts and an analysis of their salaries. A review of the bank statements of ... Company confirmed that salaries were transferred to Taxpayer's employees and matched the employee contracts, as verified by the auditors. Therefore, it became evident that the salaries and wages paid by ... Company on behalf of Taxpayer did not constitute employee secondment services. Instead, these payments were made to employees directly employed by Taxpayer under employment contracts. Consequently, the Department upheld Taxpayer's position that withholding tax should not be imposed on these salaries and wages as they were recoverable expenses, and that the previously paid and withheld tax on these salaries and wages should be considered as advance tax payments that Taxpayer can use to offset future withholding tax liabilities. Consequently, the Department satisfies to accept Taxpayer's objection and reverse the decision delivered by the Third Primary Committee for Zakat and Tax in Riyadh.

Taxpayer's appeal, regarding (Late Payment Fine) item, is based on the objection to Primary Committee's decision on this item, claiming that the fine should be calculated from the date of ZATCA's assessment rather than the return filing date. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the Primary Committee's decision. Based on Paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which states that: "In addition to the fines stipulated in Article (76) of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Paragraph (3) of Article (67) of the Implementing Regulations of Income Tax Law issued by the Ministerial Decision No. (1535) dated 11/06/1425 AH states: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". Based on the foregoing, given that the late payment fine is imposed at a rate of 1% of the unpaid tax for every 30 days of delay and considering that a taxpayer cannot be held liable for fines unless they are aware of the relevant assessment, as well as the legal principle which states that "No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance", the Department concludes that ZATCA is not entitled to impose the late payment fine on the unpaid tax differences as of the due date for filing the return according to the tax assessment. Rather, the fine can only be imposed from the date Taxpayer is notified of the assessment, as Taxpayer cannot be held liable for fines unless they are aware of the relevant assessment. Therefore, the Department decided to modify the calculation



of the late payment fine, stipulating that the fine should be calculated from the date the tax difference is due, following Taxpayer's notification of the assessment, until the payment date. Accordingly, the Department decided to accept Taxpayer's objection and amend the decision delivered by the Third Primary Committee for Zakat and Tax in Riyadh.

Regarding the appeals filed by Taxpayer and ZATCA on the remaining contested items, Having carefully considered the appeal and reviewed the appeals filed by Taxpayer and ZATCA, the Department concluded that the outcome reached by the Third Primary Committee for Zakat and Tax in Riyadh was correct and the reasons provided by the Committee in its decision are sufficient to support that conclusion. Since the Department did not observe any requirement for correction or further comment Therefore, the Department dismisses both appeals filed by Taxpayer and ZATCA and upholds the decision delivered by the Third Primary Committee for Zakat and Tax in Riyadh regarding the outcome of the remaining items in the case based on the reasons provided.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision:

First: Accept the Appeal filed by Taxpayer/ (...) Company, CR No. (...), TIN No. (...), in form, as well as the appeal filed by ZATCA against the decision of the Third Primary Zakat and Tax Objection Committee in Riyadh No. (12) of 1436 AH related to tax assessment for the years 2008 to 2011 AD.

Second: On Merits:

1. Accept Taxpayer's appeal concerning "Salaries and wages amounting to SAR (4,449,386) for 2010 AD" and reverse the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh in accordance with grounds and merits mentioned herein.
2. Accept Taxpayer's appeal concerning "Late Payment Fine" and amend the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh in accordance with grounds and merits mentioned herein.
3. Dismiss the appeals filed by Taxpayer and ZATCA concerning the remaining contested items and uphold the decision delivered by the Third Primary Zakat and Tax Objection Committee in Riyadh in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-482)
Issued in Case No. (W-97922-2018)

Keywords:

Appeal - Tax Assessment - Additional Capital Gains - Late Payment Fine - Appeal Dismissal.

Abstract

Taxpayer requests cancellation of the primary decision issued in the case related to tax assessment for 2010 AD filed by Taxpayer against ZATCA, which ruled to dismiss Taxpayer's objection to the item of additional capital gains on the grounds of violating regulations, as well as the item of late payment fine on the grounds that the original tax was incorrectly imposed, rendering the imposition of the late payment fine invalid. Appellate Department found that the decision aligns with the valid reasons on which it was based and is sufficient to support its ruling, since the Department that issued such decision thoroughly examined the essence of the dispute and reached the conclusion stated in its ruling. Since the Department did not observe any requirement for correction or further comment based on the arguments provided. Therefore, the Department dismisses Taxpayer's appeal and upholds the appealed primary decision. Therefore, the Department ruled to accept Taxpayer's appeal in form and dismiss the same on merits.

Instruments:

- Article (9/A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Paragraph (M) of Article (9) and Paragraph (7/B) of Article (16) of [the Implementing Regulations of Income Tax Law, issued by the Ministerial Decision No. \(1535\) dated 11/06/1425 AH](#)
- Article (15/ 2) of [Tax Dispute and Violation Committee Procedures issued by Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 11/10/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh, to consider the appeal presented on 13/03/ 2022 AD filed by/ ... Company against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah No. (...) issued in Case No. (...) concerning the tax assessment for 2020 AD filed by Taxpayer against ZATCA, where the primary decision ruled as follows:



First: Dismiss the objection raised by Taxpayer regarding the additional capital gains.

Second: Dismiss the objection raised by Taxpayer regarding the late payment fine.

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

Taxpayer challenges the Objection Committee's appealed decision, claiming that, regarding (Additional Capital Gains), the Department violated the provisions of Article (9), Paragraph (A) of the Tax Law and Article (9), Paragraph (M) of the Implementing Regulations of the Income Tax Law. Taxpayer argues that capital gains are determined by the difference between the sale value, as stipulated in the exit agreement between the foreign partner selling their shares in the company and the purchasing partner, and the cost basis of the sold shares, as calculated in the statement of appeal. The Department allegedly violated the provisions of Paragraph (7/B) of Article (16) of the Implementing Regulations of the Income Tax Law, upon which it relied to support ZATCA's action, whereas it disregarded the basis to which this paragraph applies, as its provisions are only relevant in cases where the seller does not maintain statutory accounts. In this case, the foreign partner selling their shares does maintain statutory accounts, and a copy of the seller's financial statements, translated into Arabic, was submitted to the Determination Committee. Since the company submitted evidentiary documents confirming the actual sales value and supporting documentation and the seller fulfilled the regulatory requirements by notifying ZATCA and paying the due capital gains tax, the conclusion reached by the Primary Department is argued to be speculative, hypothetical, and in violation of the law and regulations. It is also claimed to conflict with the facts, as disregarding the share purchase agreement and the related documents is unjustified. Taxpayer, concerning "Late Payment Fine", claims that the original tax was incorrectly imposed, rendering the imposition of the late payment fine invalid. Based on the foregoing, Taxpayer requests reversal of the primary decision.

On Tuesday, 11/10/2022 AD, First Appellate Department for Income Tax Violations and Disputes convened via video conference in accordance with the procedures for remote video litigation based on Item (2) of Article (15) of the Rules of Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040) of 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Department decided to close the pleadings and reserve the Case for judgment.

Grounds:

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

As for Merits, having reviewed the appeal and since the Department may adopt the reasons for the appealed decision without any additions whenever it is deemed that these reasons sufficiently address the matter without the need for further elaboration, by supporting the same, the Department confirms that no objections raised against the decision warrant a more detailed response than what is already contained therein. Given that the appealed decision concerning the dispute over the contested items aligns with the sound reasons upon which it is based and these reasons are adequate to support the judgment, the Department that issued the decision thoroughly examined the reason for the dispute and reached the conclusion reflected in its ruling. Since the Department did not observe any requirement for correction or further comment based on the arguments presented. Therefore, the Department dismisses Taxpayer's appeal and upholds the



appealed primary decision delivered regarding the remaining contested items, based on its reasoning.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal filed by Taxpayer/ (...) Company, CR (.....), TIN (...), in form against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah No. (...) issued in Case No. (...) related to tax assessment for 2020 AD.

Second: On Merits:

Dismiss ZATCA's appeal and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2091)

Issued in Case No. (W-34376-2021)

Keywords:

Appeal – Withholding Tax on Dividends – Withholding Tax Form – Dividends Paid to the Non-Saudi Partner – Statutory Accounts Allowing for Payment Tracking – Late Payment Fines – Tax Difference Arising from Estimated Assessment – Acceptance of Taxpayer’s Appeal on Merits and Dismissal of the Primary Decision.

Abstract

Taxpayer requests consideration of the appeal submitted against the decision delivered by the First Department for Determination of Income Tax Violations and Disputes issued in the case related to withholding tax for 2010 AD, which ruled to accept Taxpayer’s case in form and dismissed Taxpayer’s objection to the withholding tax on dividends for 2010 AD. Taxpayer’s appeal argues that the Committee, in its reasoning, accepted Taxpayer’s position on the withholding tax assessments conducted by ZATCA for 2012 and 2014 AD and partially accepted the position for 2015 after reviewing the withholding tax form for February 2019. However, ZATCA should have applied withholding tax to dividends paid to the non-Saudi partner during 2019. Appellate Department determined that ZATCA’s assessment relied on an assumption unsupported by credible evidence proving the occurrence of the payment. Given that Taxpayer files its returns based on statutory accounts through which payment transactions can be traced, and since ZATCA based its assessment on Taxpayer’s accounts but did not provide evidence of an actual payment, the claim is unsubstantiated. Additionally, Appellate Department reviewed Taxpayer’s appeal but did not dispute Taxpayer’s clarification that the dividends pertain to the Saudi partner, while no payment has yet been made to the non-Saudi partner and found no evidence to contradict Taxpayer’s assertions. Regarding Taxpayer’s appeal concerning (Late Payment Fines), the crux of the appeal, according to the disputed item and given that the dispute is of a technical nature, no late payment fine should be imposed on the additional withholding tax. The Department ruled on this matter that imposing a fine for late payment of the tax difference cannot be held against Taxpayer unless they were aware of the actual estimated assessment, which was followed by submission of multiple returns based on statutory accounts without any objection raised by ZATCA within a reasonable time following the relevant submission. Since the basis for imposing the late payment fine is the existence of a tax difference resulting from the estimated assessment conducted by ZATCA, which differed from the amounts declared by Taxpayer in its returns prepared based on statutory accounts and upon which the tax was paid, the Department concluded that the due date for the tax difference arising from the estimated assessment is the date of that assessment, which was unknown to Taxpayer at the time of submitting their tax returns. Therefore, the Department ruled to accept Taxpayer’s appeal on merits and reverse the primary decision.



Instruments:

- Articles (77/A,B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/1/1425 AH](#)
- Articles (63/1) and (68/1/B) of [the Implementing Regulations of Income Tax Law, issued by the Ministerial Decision No. \(1535\) dated 11/06/1425 AH](#)

Facts:

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

On Tuesday, 15/11/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 13/01/2021 AD by/..., holder of Resident ID No. (...), in his capacity as the director of Taxpayer Company pursuant to its Articles of Association against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2020-226), issued in Case No. (W-10162-2019) related to withholding tax for 2010 AD filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

First: In form:

- Accept the case filed by Taxpayer/ ... Company Ltd, CR No. (...), in form.

Second: On Merits:

- Dismiss the objection filed by Plaintiff (... Company), Ltd, CR No. (...), regarding the withholding tax on dividends for 2010 AD.

As this decision was not accepted by Taxpayer (... Arabian Company Ltd.), it submitted a statement of appeal, summarized as follows:

Taxpayer challenges the appealed primary decision, claiming that, regarding (Withholding Tax on Dividends for 2010 AD), the Committee, in its reasoning, accepted Taxpayer's position regarding the withholding tax assessments conducted by ZATCA for 2012 and 2014 AD and partially accepted the position for 2015 AD after reviewing the withholding tax form for February 2019 AD, which included a declaration of dividends amounting to SAR (15,780,952) for the aforementioned years. However, Taxpayer argues that ZATCA should have applied withholding tax to dividends paid to the non-Saudi partner during 2019 based on dividends declared for the years 2010, 2011, and part of 2012 AD, instead of applying thereof for the years 2012, 2014, and part of 2015 AD. Taxpayer further claims that the non-Saudi partner's share of dividends, amounting to SAR (8,615,019) has not been paid yet. Therefore, the withholding tax should not be due on the declared but unpaid dividend amounts for the years under appeal. Regarding Taxpayer's appeal concerning (Late Payment Fines), the crux of the appeal, according to the disputed item and given that the dispute is of a technical nature, no late payment fine should be imposed on the additional withholding tax. Accordingly, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds.

On Tuesday, 15/11/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Department, having found no need for the presence of the parties involved in the appeal, decided to close the pleadings and reserve the Case for judgment.

Grounds:



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

On Merits: Taxpayer's appeal, regarding (Withholding Tax on Dividends for 2010 AD), lies in the fact that the Committee, in its reasoning, accepted Taxpayer's position on the withholding tax assessments conducted by ZATCA for 2012 and 2014 AD and partially accepted the position for 2015 after reviewing the withholding tax form for February 2019. However, ZATCA should have applied withholding tax to dividends paid to the non-Saudi partner during 2019. In addition, Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law states: "1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: - Dividends at a rate of 5% and based on the Appellate Committee's Decision No. (IR-2020-72) issued in Case No. (IW-2018-1776), which states: "However, upon reviewing the provisions of the Tax Law regarding the clear conditions and circumstances for determining whoever is obliged to remit the withholding tax on amounts paid to Taxpayer outside the Kingdom, it becomes evident that the duty to pay and remit that amount to ZATCA only arises upon the actual payment or its equivalent, such as settlements between the headquarters and the branch, offsets, or any other means that effectively settle the obligation for those amounts paid by the service applicant to the non-resident service provider. It has been established from the contested decision that the mere entitlement to that amount by the branch of the non-resident company to the headquarters of the non-resident company was based solely on it being recorded as an outstanding amount, without proving the actual payment for the services rendered or any equivalent payment transaction. Therefore, the withholding tax amounts demanded from Appellant have not fulfilled the conditions for payment to ZATCA for the years in dispute, as the occurrence of payment has not realized as previously described. Consequently, this upholds Appellant's position regarding ZATCA's lack of entitlement to collect the amounts related to those services recorded as payable by Appellant for the years in question" In conclusion, the legal provisions referenced above make it clear that the imposition of withholding tax on amounts paid to the non-Saudi partner is contingent upon the actual occurrence of payment or its equivalent, such as settlements, offsets, or any other method. The dispute lies in ZATCA's imposition of withholding tax on the non-Saudi partner's share of dividends as reflected in the statement of changes in partners' equity. Meanwhile, Taxpayer, in their appeal, stated that the total amount of dividends in dispute related to the non-Saudi partner's share is SAR (8,615,019), covering the period 2012 to 2015 AD, and that these amounts have not yet been paid. Upon reviewing the cash flow statements for the disputed years, it was noted that there are outstanding amounts due to one of the partners. Furthermore, the review of the paid dividends revealed that they did not exceed the Saudi partner's share of the declared dividends. Given that it is legally established that withholding tax is due upon the actual occurrence of payment, ZATCA's action is based on an assumption unsupported by credible evidence proving payment occurred and considering that Taxpayer submitted returns based on statutory accounts through which payment transactions can be traced, and ZATCA relied on Taxpayer's accounts for its assessment, it has not been demonstrated that payment occurred. Moreover, ZATCA reviewed Taxpayer's appeal and did not refute Taxpayer's claim that the dividends pertain to the Saudi partner, while no payment has yet been made to the non-Saudi partner. Additionally, ZATCA's argument that the mere appearance of dividends in the financial statements constitutes payment is not supported by explicit legal



provisions. Therefore, the Department concludes to accept Taxpayer's appeal and reverse the primary decision in this regard.

Regarding Taxpayer's appeal concerning (Late Payment Fines), the crux of the appeal, according to the disputed item and given that the dispute is of a technical nature, no late payment fine should be imposed on the additional withholding tax. Based on Paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (B) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Appellate Committee's Decision No. (IR-2020-15) for 2010 AD states: "Whereas, upon consideration of Taxpayer's and ZATCA's positions regarding the propriety of imposing this fine, the Department ruled on this matter that imposing a fine for late payment of the tax difference cannot be held against Taxpayer unless they were aware of the actual estimated assessment, which was followed by submission of multiple returns based on statutory accounts without any objection raised by ZATCA within a reasonable time following the relevant submission. Since the basis for imposing the late payment fine is the existence of a tax difference resulting from the estimated assessment conducted by ZATCA, which differed from the amounts declared by Taxpayer in their returns prepared based on statutory accounts and upon which the tax was paid, the Department concluded that the due date for the tax difference arising from the estimated assessment is the date of that assessment, which was unknown to Taxpayer at the time of submitting their tax returns in terms of the applicable tax rate or tax base in accordance with Article (1/68/b) of the Implementing Regulations of the Income Tax Law, which grants ZATCA the right to impose a late payment fine on paying the tax due pursuant to ZATCA's assessment. This approach is consistent with the relevant legal and regulatory principles, such as the legal principle stating that: "No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance" Accordingly, the outcome of the foregoing is that ZATCA does not have the right to impose a fine for failure to pay the tax difference due under the tax assessment as of the due date for filing the returns for the disputed years. Rather, it is entitled to impose such a fine from the date on which Taxpayer was notified of the estimated assessment. Based on the foregoing, the Department concluded to amend the method of calculating the late payment fine owed by Taxpayer as specified in the operative part hereof as follows: "Dismiss Taxpayer's appeal regarding Item (5) related to the late payment fine, uphold the appealed decision, and amend the calculation of the late payment fine from the date Taxpayer was notified of the estimated assessment until the date of payment" Based on the foregoing, the late payment fine is imposed at a rate of 1% of the unpaid tax for every 30 days of delay. Given that a taxpayer cannot be held liable for fines unless they are aware of the relevant assessment, and considering this approach is consistent with the relevant legal and regulatory principles, such as the legal principle stating that: "No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance". It is evident that, upon reviewing the appealed decision, the unpaid tax due results from the item "Withholding Tax on Dividends" and given the acceptance of Taxpayer's appeal and based on the legal principle: "If a matter ceases to exist, that which is incidental to it shall also cease to exist". Therefore, the Department ruled to accept Taxpayer's appeal and reverse the primary decision in this regard,

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:



Decision

First: Accept the appeal filed by Taxpayer/ (...) Arabian Company Ltd., CR No. (...), TIN No. (...), against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2020-226), issued in Case No. (W-10162-2019) related to tax assessment for 2010 AD.

Second: On Merits:

Accept Taxpayer's appeal in form and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax
Violations and Disputes in Riyadh

Decision No. (IR-2022-
2182)

Issued in Case No. (W-
50560-2021)

Keywords:

Appeal – Imposition of Withholding Tax – Capitalization and distribution of profits as bonus shares to non-resident shareholders – Late Payment Fine– Lack of mechanism for withholding on free shares – Absence of the cash payment principle required for imposing withholding tax – Bonus shares do not represent a cash distribution, either de facto or de jure.

Abstract

Taxpayer seeks the annulment of the primary decision issued in the case related to tax assessment for 2018 AD, which ruled to dismiss Taxpayer's objection related to the withholding tax item, and to amend ZATCA's decision regarding the late payment fine. Taxpayer objects to the capitalization of profits and distribution thereof as bonus shares to non-resident shareholders, arguing that, in their case and appeal, ZATCA's decision is not supported by any provisions in the tax laws and regulations. Taxpayer also argued that the Department had overextended its interpretation of the laws and regulations, pointing out the lack of a mechanism for withholding on free shares and the absence of the cash payment principle required to impose withholding tax. Appellate Department found that a prior decision had been issued in similar circumstances, in which the Appellate Committee annulled ZATCA's decision to impose withholding tax. The Committee reasoned that bonus shares do not constitute a cash distribution, either de facto or de jure, but rather represent an increase in capital by converting retained earnings into capital, which exempts them from withholding tax. Furthermore, the decision relied upon by ZATCA predates this ruling. The Department, to ensure consistency in the wording of rulings issued by the Committee in cases under review, to avoid contradictions in decisions concerning similar circumstances, and to prevent any resulting confusion among taxpayers and given that the late payment fine in question arises from ZATCA's action to impose withholding tax, concludes to annul ZATCA's imposition of the withholding tax. This decision is based on the two rules of jurisprudence that "A subordinate matter (right or obligation) shall be annulled if the principal matter (right or obligation) is annulled" and "If a matter ceases to exist, that which is incidental to it shall also cease to exist". Regarding ZATCA's appeal on the remaining contested items, it is evident that, regarding the remaining contested items, the appealed decision regarding the dispute over these items aligns with the valid reasons on which it was based and is sufficient to support its ruling, since the Department that issued such decision thoroughly examined the essence of the dispute and reached the conclusion stated in its ruling. Since the Department did not observe any requirement for correction or further comment based on the evidence provided. Therefore, the Department ruled to accept Taxpayer's appeal regarding the following items: (1) Imposition of withholding tax on the capitalization and distribution of



profits as bonus shares to non-resident shareholders and (2) Late Payment Fine. Dismiss ZATCA's appeal regarding the remaining contested items and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes.

Instruments:

- Article (15/ 2) of [Tax Dispute and Violation Committee Procedures issued by Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)
- The legal principle “No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance”
- The two Rules of Jurisprudence: “A subordinate matter (right or obligation) shall be annulled if the principal matter (right or obligation) is annulled” and “If a matter ceases to exist, that which is incidental to it shall also cease to exist”.

Facts:

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

On Tuesday, 06/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened to consider the appeal submitted on 10/05/2021 AD by/ ... Company, TIN No. (...), as well as the appeal filed on 18/05/2021 AD by ZATCA against the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2021-183), issued in Case No. (W-7492-2019) related to tax assessment for 2018 AD filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

1. Dismiss the objection filed by Taxpayer regarding the withholding tax.
2. Amend ZATCA's decision concerning the late payment fine.

Since this decision was not accepted by both parties, they submitted a statement of appeal, summarized as follows:

Regarding Taxpayer's appeal against the primary decision, the appeal specifically targets the item (Imposition of withholding tax on the capitalization and distribution of profits as bonus shares to non-resident shareholders), whereas Taxpayer objects to capitalization and distribution of profits as bonus shares to non-resident shareholders, arguing that ZATCA's decision lacks support by any provisions in the applicable tax laws or regulations. Furthermore, they contend that the Department that issued that appealed decision excessively interpreted the laws and regulations. Taxpayer also points to the absence of a mechanism for withholding tax on bonus shares and emphasizes the lack of the cash payment principle, which is a necessary condition for imposing withholding tax. Moreover, Taxpayer, regarding (Late Payment Fine), disagrees with the Committee's decision, citing the judicial principle that “No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance”. Accordingly, Taxpayer requests reversal of 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:

As for ZATCA's appeal against the primary decision, the appeal pertains to the item (Late Payment Fine), where ZATCA asserts the validity of its actions concerning the contested item, as confirmed by the Department's dismissal of Taxpayer's objection in relation to the withholding tax. Consequently, the late payment fine was imposed due to the Department's endorsement of ZATCA's position. Since the Department upheld the principal obligation owed by Taxpayer, the derivative obligation, represented by the late payment fine, is likewise justified. Accordingly, ZATCA insists on accuracy and



correctness of its procedures and requests reversal of the appealed primary decision for the aforementioned grounds.

On Monday, 06/12/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held with the full attendance of its members via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having reviewed the appeal and examined the Case file, the Department decided that the case was ready for determination and the issuance of a ruling on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds:

Upon reviewing Case documents and statement of appeal submitted by Taxpayer and ZATCA, the Department found that conditions of appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the two Appeal requests were accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

On Merits: Taxpayer's appeal, regarding (Imposition of withholding tax on the capitalization and distribution of profits as bonus shares to non-resident shareholders), focuses on the capitalization and distribution of profits as bonus shares to non-resident shareholders and that ZATCA's decision lacks support by any provisions in the applicable tax laws or regulations. Having reviewed the arguments submitted by both parties, and considering that the Appeal Committee previously issued Decision No. (IR-2021-72) in Case No. (ZIW-2018-1490), which involved similar facts to the present case, the Appeal Committee in its previous decision had annulled ZATCA's decision to impose withholding tax, justifying that bonus shares do not constitute a cash distribution, either de facto or de jure, but rather represent an increase in capital by converting retained earnings into capital, which exempts them from withholding tax. As for the decision relied upon by ZATCA, it was issued prior to Decision No. (IR-2021-72). The Department, in order to maintain consistency in rulings for cases reviewed by the Committee and to avoid contradictions in decisions on identical circumstances, which could lead to confusion among taxpayers, concludes to accept Taxpayer's appeal, reverse the primary decision, and cancel ZATCA's decision to impose the withholding tax in dispute.

Furthermore, regarding Taxpayer's appeal concerning (Late Payment Fine), is based on Taxpayer's disagreement with the Committee's decision, citing the judicial principle that "No one is legally obligated to perform an act unless it is possible, within their capacity, and clearly understood in a manner that compels compliance". Since the late payment fine in question stems from ZATCA's imposition of withholding tax and given that the decision to impose the withholding tax has been annulled and according to the two rules of Jurisprudence, which state "A subordinate matter (right or obligation) shall be annulled if the principal matter (right or obligation) is annulled" and "If a matter ceases to exist, that which is incidental to it shall also cease to exist", the Department concludes to annul ZATCA's decision to impose the withholding tax in dispute.

As for ZATCA's appeal in relation to remaining items in the case, and since there is no objection raised to the Department adopting the reasons for the appealed decision without any additions whenever it is deemed that these reasons sufficiently address the matter without the need for further elaboration, by supporting the same, the Department confirms that no objections raised against the decision warrant a more detailed response than what is already contained therein. Given that the appealed decision concerning the dispute over the contested items aligns with the sound reasons upon which it is based and these reasons are adequate to support the judgment, the Department that issued the



decision thoroughly examined the reason for the dispute and reached the conclusion reflected in its ruling. Since the Department did not observe any requirement for correction or further comment based on the arguments presented. Therefore, the Department dismisses Taxpayer's appeal and upholds the appealed primary decision delivered regarding the remaining contested items, based on its reasoning.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal in form filed by Taxpayer/... Company, CR No. (...), TIN No. (...), and ZATCA's appeal against the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2021-183), issued in Case No. (W-7492-2019), related to tax assessment for 2018 AD.

Second: On Merits:

1. Accept Taxpayer's appeal regarding (Imposition of withholding tax on the capitalization and distribution of profits as bonus shares to non-resident shareholders) item and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the reasons and justifications stated herein.
2. Accept Taxpayer's appeal regarding (Late Payment Fine) item and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the reasons and justifications stated herein.
3. Dismiss ZATCA's appeal regarding the remaining contested items and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with grounds and merits mentioned herein. This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2205)

Issued in Case No. (I-81658-2021)

Keywords:

Appeal - Manual Submission of the Case via Email - Technical Issue in the Case Filing System - Escalation to the Relevant Department

Abstract

Taxpayer requests annulment of the primary decision issued in the case concerning tax assessment for 2018 AD, which concluded as follows: Dismiss the appeal filed by Taxpayer against ZATCA in form due to expiry of the statutory period. Taxpayer contends that they manually submitted their appeal via email on 27/01/2020 AD within the statutory period as requested by the General Secretariat of Tax Committees on 26/01/2020 AD due to a technical issue in the case filing system. The submission of the case was confirmed by the Secretariat on 29/01/2020 AD. Accordingly, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds. The Department, upon review, has confirmed that Taxpayer escalated the case to the relevant department within the General Secretariat via email on 27/01/2020 AD. Therefore, the complaint was filed within the statutory period. Therefore, the Department ruled to accept Taxpayer's appeal in form and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes.

Instruments:

- [Article \(15/ 2\) of Tax Dispute and Violation Committee Procedures issued by Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

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

On Tuesday, 06/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 11/11/2021 AD by/..., holder of National ID No. (...), in his capacity as the legal representative of Taxpayer Company against the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-1298-2021), issued in Case No. (I-37133-2021) related to withholding tax for 2018 AD filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

Dismiss the case filed by Taxpayer/ ... Company, CR No. (...), against ZATCA in form due to expiry of the statutory period.

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



Taxpayer objects to the appealed primary decision, claiming that, regarding (Tax Assessment for 2018 AD), the case was manually submitted via email on 27/01/2020 AD within the statutory period as requested by the General Secretariat of Tax Committees on 26/01/2020 AD due to a technical issue in the case filing system. The submission of the case was confirmed by the Secretariat on 29/01/2020 AD. Accordingly, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds.

On Tuesday, 06/12/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Department, having found no need for the presence of the parties involved in the appeal, decided to close the pleadings and reserve the Case for judgment.

Grounds:

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

On Merits: Taxpayer's appeal, regarding (Tax Assessment for 2018 AD), lies in their assertion that the case was manually submitted via email on 27/01/2020 AD within the statutory period as requested by the General Secretariat of Tax Committees on 26/01/2020 AD due to a technical issue in the case filing system. The submission of the case was confirmed by the Secretariat on 29/01/2020 AD. Having reviewed the case file and its contents, as well as the appealed decision, it is evident that Taxpayer escalated the case to the relevant department within the General Secretariat via email on 27/01/2020 AD. Therefore, the complaint was filed within the statutory period. Therefore, the Department satisfies to accept Taxpayer's appeal, annul the primary decision, and remand the case for further consideration on its merits.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal in form filed by Taxpayer/ ... Company, CR No. (...), TIN No. (...), against the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2021-1298), issued in Case No. (I-37133-2021), related to tax assessment for 2018 AD.

Second: On Merits:

Accept Taxpayer's appeal on merits and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with grounds and merits mentioned herein. This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2221)

Issued in Case No. (IW-49609-2021)

Keywords:

Appeal - Estimated Assessment - Statutory Period (Obsolescence) - Late Payment Fine - Withholding tax on assumed unrealized dividends - Estimated Net profit calculation at 25% of total expenses - Estimation of taxable revenue based on branch's total expenses - Failure to submit required data in due time- Lack of credible evidence to prove incorrectness of the return with the intent of tax evasion.

Abstract

Taxpayer requests the annulment of the primary decision issued in the case related to the zakat and tax assessment for the years 2007 to 2016 AD, which dismissed Taxpayer's objection to ZATCA's decisions regarding the tax assessments under dispute. Taxpayer objects to the item (Statutory Period (Obsolescence) for the years 2007 to 2011 AD), arguing that the Committee relied on ZATCA's claim, which is false, that the branch did not submit the required data in due time. Moreover, Taxpayer contends that all the documents supporting their position were submitted. Taxpayer challenges the item (Estimated Assessment for the years 2007 to 2016 AD), arguing that the primary activity of the branch is business development, marketing, and other supporting services for the group of ... Companies. Furthermore, Taxpayer asserts that neither the headquarters nor the branch in the Kingdom carries out any service contracts within the Kingdom, as evidenced by the financial statements. In other words, Taxpayer maintains that they don't aim to profit or generate revenue from these services provided to the group companies. Taxpayer objects to the item (Estimation of taxable revenue based on branch's total expenses for the years 2007 to 2016 AD), arguing that they fundamentally disagree with application of the estimated assessment in lieu of relying on their statutory accounts for the years in question. Taxpayer further states that their financial statements were audited by a licensed chartered accountant in the Kingdom. Taxpayer, regarding (Estimated Net profit calculation at 25% of total expenses for the years 2007 to 2016 AD), argues that they fundamentally disagree with the estimated assessment in lieu of relying on their statutory accounts for the years in question and further states that the branch provided ZATCA with the financial statements and data as requested. As for (Withholding tax on assumed unrealized dividends for the years 2007 to 2016 AD), hinges on two primary issues, the first of which: The existence of profits to be distributed and the second: Realization of the event of payment for these dividends to the non-resident entity. Taxpayer's appeal, regarding (Late Payment Fine), is based on their objection to the relevant primary decision, arguing that the Determination Committee justified its decision by citing clear legal provisions and asserting that the nature of the dispute between the parties is a documentary in nature. The Appellate Department, concerning (Statutory Period (Obsolescence) for the years 2007 to 2011 AD) established the following: ZATCA carried out the tax assessment



after the expiration of the statutory period. Therefore, ZATCA's right to conduct tax assessments for those years is extinguished. Additionally, ZATCA failed to provide any credible evidence demonstrating that Taxpayer's return was incorrect with the intent of tax evasion. The Determination Committee's decision to dismiss Taxpayer's objection due to the failure to provide the signed contracts does not grant ZATCA the right to proceed with the tax assessment after the statutory period has passed, unless ZATCA can prove the existence of reasons justifying such an assessment. As such, ZATCA failed to provide evidence that the returns were incomplete or incorrect with the intent of tax evasion. Regarding Taxpayer's appeal against (Estimated Assessment for the years 2007 to 2016 AD): It has been established that Taxpayer previously submitted financial statements approved by chartered accountant for the years 2007 to 2016 AD. Regarding the period 2007 to 2011 AD, the first item of the decision upheld Taxpayer's position by confirming that the statutory period for ZATCA to conduct an assessment for those years had expired. Consequently, Taxpayer's return is deemed to be accepted and final. As for the period 2012 to 2016 AD, it is evident that ZATCA's action of estimated assessment was incorrect, as it disregarded the financial statements approved by a chartered accountant in the Kingdom for the mentioned years. Taxpayer's accounts for these years should not have been disregarded, as the failure to maintain proper records is the only circumstance that justifies the use of an estimated assessment. As for Taxpayer's appeal concerning (Estimation of taxable revenue based on branch's total expenses for the years 2007 to 2016 AD): Since this item is related to the aforementioned items, it follows the same legal ruling. With respect to the item (Estimated Net profit calculation at 25% of total expenses for the years 2007 to 2016 AD), since this item is related to the aforementioned items, it follows the same legal ruling. As for (Withholding tax on assumed unrealized dividends for the years 2007 to 2016 AD): Since this item is related to the aforementioned items, it follows the same legal ruling. Regarding (Late Payment Fine) item: The fine is annulled upon the extinguishment of the underlying obligation Concerning the remaining contested items: It is evident that the appealed decision regarding the dispute over the contested items aligns with the valid reasons on which it was based and is sufficient to support its ruling, since the Department that issued such decision thoroughly examined the essence of the dispute and reached the conclusion stated in its ruling. Since the Department did not observe any requirement for correction or further comment based on the evidence provided. Therefore, the Department ruled to accept Taxpayer's appeal regarding (Statutory Period (Obsolescence) for the years 2007 to 2016 AD), (Estimation of taxable revenue based on branch's total expenses for the years 2007 to 2016 AD), (Estimated Net profit calculation at 25% of total expenses for the years 2007 to 2016 AD) and (Withholding tax on assumed unrealized dividends for the years 2007 to 2016 AD), reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes, amend the decision delivered by the First Department for Determination of Income Tax Violations in Riyadh issued in relation to (Late Payment Fine) item, dismiss Taxpayer's appeal regarding the remaining contested items, and uphold the decision delivered by the First Department for Determination of Income Tax Violations.

Instruments:

- Articles (63/B,C), (65/A,B), (76/B), and (77/A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Articles (16/3/B), (59/8), and (68/1) of [the Implementing Regulations of Income Tax Law, issued by the Ministerial Decision No. \(1535\) dated 11/06/1425 AH](#)

Facts:





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

On Wednesday, 30/11/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 02/05/2021 AD by/branch of ... Company, CR No. (...), against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2021-169), issued in Case No. (IW-2018-6) related to zakat and tax assessment for the years 2007 to 2016 in the case filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

Dismiss the objection raised by Taxpayer/ branch of ... Company, TIN No. (...), against ZATCA's decision related to tax assessments in dispute.

Since the aforementioned decision was not accepted by Taxpayer (Branch of ... Company), it presented a statement of appeal to the Department, summarized as follows:

Taxpayer challenges the appealed primary decision, arguing that, regarding (Tax Assessment for the years ending 2007 to 2011 AD after expiry of the statutory period), the Committee relied on ZATCA's claim, which is false, that the branch did not submit the required data in due time. Moreover, Taxpayer contends that all the documents supporting their position were submitted. As for ZATCA's request to be provided with the contracts concluded between the headquarters and local entities to which the branch provides services, it was clarified to both ZATCA and Determination Committee that such contracts do not exist, as there is no relationship between the headquarters (outside the Kingdom) and clients in the Kingdom. The branch provides services to ... companies registered in the Kingdom that operate under contracts signed with their own clients and since the income generated from these activities is subject to tax and zakat as applicable. Therefore, Taxpayer finds it perplexing that ZATCA continues to insist on the existence of these contracts and has not taken into account the repeated clarifications on this matter. Additionally, Taxpayer asserts that the tax returns were submitted within the statutory period, the financial statements were provided upon ZATCA's request, and all inquiries raised by ZATCA during its review of the tax returns, which did not result in any discrepancies or missing documentation in any item or account, were addressed. Therefore, ZATCA has no justification to open the tax assessment after the lapse of the five-year period prescribed by law for tax assessments. Taxpayer contends that the legislator granted ZATCA a sufficient period for review and tax assessment within five years, a period deemed more than adequate to request any additional data deemed necessary to verify the accuracy of any item. Moreover, the legislator also granted ZATCA the right to carry out the tax assessment within ten years according to the provisions of Article (65/B) of the tax law, if Taxpayer had engaged in any actions for tax evasion, which has not occurred. It is illogical for the branch to have intended tax evasion and still submitted complete data in response to ZATCA's inquiries, which ZATCA relied upon in conducting the assessment. In other words, ZATCA did not base its assessment on new data that was not available to it during the five-year statutory period. Furthermore, the tax returns were prepared by the branch based on the financial statements, and no data was concealed from ZATCA. Since ZATCA carried out an estimated tax assessment based on the claim that the required data was not provided within the specified time, Taxpayer argues that ZATCA should have conducted an estimated assessment within the five-year period if it assumed that the available data was insufficient, rather than delaying the assessment and waiting for the expiration of the five-year period. Taxpayer, concerning (Conducting estimated assessment rather than relying on the branch's statutory accounts for the years 2007 to 2016 AD), claims that the primary activity of the branch is business development, marketing, and other supporting services for the group of ... Companies.



Therefore, it is clear that the headquarters established the branch in the Kingdom to provide support and assistance to the group of ... companies, which conduct activities generating income from sources within the Kingdom. Furthermore, Taxpayer asserts that neither the headquarters nor the branch in the Kingdom carries out any service contracts within the Kingdom, as evidenced by the financial statements. In other words, Taxpayer maintains that they don't aim to profit or generate revenue from these services provided to the group companies. Taxpayer asserts that the Committee relied on ZATCA's claim, which is false, that the branch did not submit the required data. Moreover, Taxpayer contends that all the documents supporting their position were submitted and affirms that the tax returns were filed on time, and the accounting books and records were accurately maintained, which were reviewed and audited by a licensed chartered accountant in the Kingdom. ZATCA stated that Taxpayer's financial statements serve as the primary basis for calculating the tax base, as indicated in its argument made before the Determination Committee. However, ZATCA also indicated that it has the right to make an estimated assessment if Taxpayer submits unreliable financial statements. Surprisingly, the Determination Committee upheld ZATCA's opinion, which raises the question of what basis ZATCA relied on to determine the reliability of Taxpayer's financial statements and the reason behind ZATCA's disregard of financial statements audited and approved by a licensed chartered accountant in the Kingdom. Regarding the Committee's viewpoint, which stated that since the declared revenues of the branch in the financial statements are insufficient to cover expenses, the branch has reported losses for all years, and therefore the financial statements cannot be relied upon as a basis for calculating the tax base, Taxpayer has been unable to find a legal basis for the Committee's conclusion. Does this mean that if a taxpayer incurs operating losses, the accuracy of their audited financial statements should be questioned, and an estimated assessment should be applied? There is no provision in the tax law or its implementing regulations that refers to this concept. As for the issue of (Estimation of taxable revenue based on branch's total expenses for the years 2007 to 2016 AD), Taxpayer fundamentally disagree with application of the estimated assessment in lieu of relying on their statutory accounts for the years in question. Taxpayer further states that their financial statements were audited by a licensed chartered accountant in the Kingdom, who reviewed and verified the accuracy of the accounting books and records, as well as the transactions made during the year, such as income, costs, assets, and liabilities. Taxpayer confirmed that the financial statements present a fair view based on the accounting standards adopted in the Kingdom and ensured that the transactions were based on an agreement between both parties, with prices determined on the arm's length principle. Moreover, Taxpayer, concerning (Partners' current accounts (material error), claims that the dispute with ZATCA is merely a material error. Taxpayer refers to the objection study report issued by GAZT, which explicitly accepted the company's viewpoint on this issue, while the contested amounts were not adjusted in the same report after ZATCA accepted Taxpayer's position. Taxpayer, regarding (Estimated Net profit calculation at 25% of total expenses for the years 2007 to 2016 AD), claims that they fundamentally disagree with application of the estimated assessment in lieu of relying on their statutory accounts for the years in question. As for the Committee's reference to a four-year delay in responding to ZATCA, Taxpayer stated that the branch had provided ZATCA with the financial statements and data requested by ZATCA. Concerning the issuance of financial statements at a later date: what is the legal basis that grants ZATCA the right to calculate Taxpayer's estimated net profits if the financial statements were issued at a later date, as long as those statements were audited by a licensed chartered accountant and submitted to ZATCA upon request? As for (Withholding tax on assumed unrealized dividends for the years 2007 to 2016 AD): Taxpayer asserts that all the facts, materials, and analyses presented in the reasoning of the decision delivered by the Determination



Committee are undisputed. However, the dispute lies in two points; the first of which: The existence of profits to be distributed and the second: Realization of the event of payment for these dividends to the non-resident entity. Taxpayer argues that the profits estimated by ZATCA in its assessment are merely assumed and unrealized profits that were never ultimately paid to the headquarters. Consequently, these estimated profits should not be subject to withholding tax. Furthermore, the branch objects in principle to ZATCA's approach of estimating and assessing profits and discarding their accounts. The condition for withholding tax liability is the actual transfer of financial payments from the branch to its headquarters, which, according to the branch's accounts, was not witnessed. Taxpayer also notes that ZATCA's practice with resident companies maintaining statutory accounts, which include foreign ownership, when disallowing expenses, is to subject those expenses to income tax without imposing additional withholding tax on such profits due to the absence of actual transfer of the disallowed expenses, which were added to the foreign partner's profits in the company. Accordingly, the branch requests that ZATCA apply the same treatment and refrain from assuming dividends from the branch to the headquarters. Taxpayer further argues that ZATCA's act of discarding the branch's accounts and assuming the distribution of these estimated profits after deducting tax is solely ZATCA's own procedure, which was neither acknowledged by the branch in its returns nor reflected in its accounts or responses to ZATCA's inquiries, reinforcing the absence of actual payments and, therefore, the lack of withholding tax liability. Moreover, even assuming, contrary to the facts, that the branch had paid dividends to its headquarters in the Netherlands, such dividends would in no event be subject to withholding tax under the terms of the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and the Kingdom of the Netherlands. As for (Withholding tax on amounts paid to non-resident entities for the years 2012, 2013, and 2015): Taxpayer claims that the services upon which ZATCA based its assessment were performed entirely outside the Kingdom and do not constitute a source of income subject to taxation within the Kingdom. Regarding (Late Payment Fine) item: Taxpayer claims that the Determination Committee justified its decision by stating that the dispute is governed by clear legal provisions and that the nature of the dispute between both parties is documentation-based. However, Taxpayer asserts that these justifications are unfounded and cannot be applied to ZATCA's assessment, since the dispute is purely technical, particularly given that the branch submitted all the supporting documents requested by ZATCA. Taxpayer questions how an estimated assessment conducted by ZATCA on a taxpayer maintaining statutory accounts can be described as based on clear legal provisions. It is evident, according to Taxpayer, that there is a significant and clear difference in viewpoints, as outlined in the contested items. The main reason for ZATCA's imposition of additional tax amounts stems from its calculation of estimated profits based on its own perspective. Thus, Taxpayer asserts that ZATCA resorted to estimation and adopted an approach inconsistent with legal requirements. Accordingly, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds.

On Wednesday, 30/11/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Appellate Department determined that the presence of the parties was unnecessary and accordingly closed the pleadings and reserved the Case for judgment.

Grounds:





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

On Merits: Taxpayer's appeal, regarding (Statutory Period (Obsolescence) for the years 2007 to 2011 AD), is based on its argument that the Committee based its decision on ZATCA's claim, which is false, that the branch did not submit the required data in due time. Moreover, Taxpayer contends that all the documents supporting their position were submitted. Paragraph (A) of Article (65) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states: "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". Paragraph (B) of Article (65) of the Income Tax Law states: "The Department may make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year if a taxpayer does not file its tax declaration, or it is found that the declaration is incomplete or incorrect with the intent of tax evasion". Furthermore, Paragraph (8) of Article (59) of the Implementing Regulations of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH states: "Without prejudice to Paragraph (b) of Article (65) of the Law, the return shall be considered accepted by the Department after five years from the end of the due date of filing the return without the taxpayer receiving any notice in this regard from the Department". In light of the above, and given that the core dispute relates to the expiration of the statutory period for assessments, it is clear from the referenced legal provisions that ZATCA's right to conduct or amend tax assessments expires after five (5) years from the final date specified for filing the tax return. It has been established that ZATCA conducted the tax assessments for the disputed years on 17/02/2018 AD, while the statutory period ended on 30/04/2013 for 2007, 29/04/2014 for 2008, 30/04/2015 for 2009, 30/04/2016 for 2010, and 30/04/2017 for 2011. Accordingly, it is evident that ZATCA conducted the assessments after the expiration of the statutory period, and its right to perform these tax assessments for the said years has therefore lapsed in accordance with the aforementioned legal provisions. ZATCA's claim that it has the right to conduct tax assessments within ten (10) years from the end of the deadline for submitting the tax return, based on paragraph (B) of Article (65) of the Income Tax Law, does not hold unconditionally. This right cannot be applied indiscriminately, as it is limited to cases where it is proven that the tax return is incomplete or incorrect with the intent of tax evasion. It is evident, upon reviewing the case file, that ZATCA failed to provide any substantial evidence indicating that Taxpayer's return was incorrect with the intent of tax evasion. Furthermore, the Determination Committee's decision to dismiss Taxpayer's objection due to the non-submission of signed contracts does not grant ZATCA the right to assess Taxpayer after the expiration of the statutory period, unless ZATCA provides evidence justifying its right to conduct the assessment, as previously mentioned. Therefore, since ZATCA did not provide evidence that the returns were incomplete or incorrect with the intent of tax evasion, and considering that the five-year statutory period from the final date for filing the return expired, it is concluded that ZATCA does not have the right to conduct these assessments. Consequently, the Department satisfies to accept Taxpayer's appeal and reverse the primary decision issued in this regard.

Taxpayer's appeal, regarding (Estimated Assessment for the years 2007 to 2016 AD), lies in its objection to the primary decision issued in this regard. Taxpayer claims that the main activity of the branch is business development, marketing, and other supporting services for ... group of companies. Furthermore, Taxpayer asserts that neither the headquarters



nor its branch in the Kingdom execute any service contracts within the Kingdom, as indicated in the financial statements. In other words, the branch does not aim to make a profit or generate revenue from the services provided to the group companies. Taxpayer references paragraph (B) of Article (63) of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which relates to anti-tax avoidance measures, and stipulates the following: “The Department may make a tax assessment due on the taxpayer using the estimated tax method according to facts and circumstances pertaining to the taxpayer if the 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”. Moreover, Paragraph (3/B) of Article (16) of the Implementing Regulations of the Income Tax Law states: “In order to enforce taxpayers’ compliance with statutory requirements and curtail tax evasion, the Department may use tax assessment based on the taxpayer’s relevant facts and circumstances, in the following cases: b. The taxpayer's failure to keep accurate books and records that truly reflect its transactions in the Kingdom”. In conclusion, since the tax base is calculated based on Taxpayer's return as specified in the submitted returns, Taxpayer is obligated to provide supporting evidence for those returns. The financial statements serve as the primary supporting document for the tax base calculation. Financial statements must be complete in terms of preparation, measurement, presentation, and disclosure, and must rely on financial events substantiated by supporting documentation in order to be valid and used as the basis for tax base calculation. According to the aforementioned legal provisions, ZATCA’s right to make an estimated assessment is subject to conditions and cases where, if met, Taxpayer’s accounts may be disregarded as the basis for calculating the tax base, and an estimated assessment may be made. These conditions include the stipulations in Article (63) of the Income Tax Law, which address cases such as failure of the taxpayer to submit their tax return within the prescribed deadline, failure to maintain precise accounts and records, or failure to adhere to the required format and method for maintaining records, or the inability of the taxpayer to substantiate the accuracy of the information in the return. Additionally, Paragraph (3) of Article (16) of the Implementing Regulations of the Income Tax Law specifies the cases in which ZATCA is entitled to make an estimated assessment, such as failure to maintain accounting books and records. Upon reviewing the case file, it is evident that Taxpayer had previously submitted the financial statements, audited by a licensed accountant, for the years 2007 to 2016 AD. As for the years 2007 to 2011 AD, the decision in the first item thereof upheld Taxpayer’s claim that the statutory period for ZATCA to make an assessment for those years had expired. Therefore, Taxpayer’s return is considered acceptable and final. As for the years 2012 to 2016 AD, it is clear that ZATCA’s action of making an estimated assessment and discarding the audited financial statements audited by a licensed accountant in the Kingdom for the aforementioned years is not valid. Taxpayer’s accounts for those years cannot be discarded, as it is the failure to maintain books that justifies an estimated assessment. Therefore, the Department satisfies to accept Taxpayer’s appeal and reverse the primary decision in this regard.

Taxpayer, concerning (Estimation of taxable revenue based on branch’s total expenses for the years 2007 to 2016 AD), objects to the primary decision issued in this regard, arguing that they fundamentally disagree with application of the estimated assessment in lieu of relying on their statutory accounts for the years in question. Taxpayer further states that their financial statements were audited by a licensed chartered accountant in the Kingdom. Paragraph (B) of Article (63) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, which relates to anti-tax avoidance measures, stipulates the following: “The Department may make a tax assessment due on the taxpayer using the estimated tax method according to facts and circumstances pertaining to the taxpayer if



the 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”. Moreover, Paragraph (C) of Article (63) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, which relates to anti-tax avoidance measures, stipulates the following: “The Department may reallocate revenues and expenses in transactions among related parties or parties under the same body, so as to reflect the returns that would have resulted if the parties were independent and unrelated”. Based on the foregoing, and considering that the disputed item is linked to the previous items accepted in favor of Taxpayer, and given the cancellation of ZATCA’s action and the reliance on the audited financial statements by the chartered accountant, it is necessary to assess Taxpayer based on their approved financial statements for the years 2012 to 2016 AD. Therefore, since this item is related to the items above, it follows the same ruling. Accordingly, the Department satisfies to accept the appeal and assessment for the years 2012 to 2016 AD based on Taxpayer’s financial statements. As for the period 2007 to 2011 AD, based on the conclusion reached in the first item due to the expiration of the statutory period for ZATCA to carry out the assessment for those years, the Department concludes to accept Taxpayer’s appeal and reverse the primary decision delivered in this regard.

Taxpayer, concerning (Estimated Net profit calculation at 25% of total expenses for the years 2007 to 2016 AD), objects to the primary decision issued in this regard, arguing that they fundamentally disagree with application of the estimated assessment in lieu of relying on their statutory accounts for the years in question. As for the Committee’s reference to a four-year delay in responding to ZATCA, Taxpayer stated that the branch had provided ZATCA with the financial statements and data requested by ZATCA. Moreover, Paragraph (C) of Article (63) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, which relates to anti-tax avoidance measures, stipulates the following: “The Department may reallocate revenues and expenses in transactions among related parties or parties under the same body, so as to reflect the returns that would have resulted if the parties were independent and unrelated”. Based on the foregoing, and considering that the disputed item is linked to the previous items accepted in favor of Taxpayer, and given the cancellation of ZATCA’s action and the reliance on the audited financial statements by the chartered accountant, it is necessary to assess Taxpayer based on their approved financial statements for the years 2012 to 2016 AD. Therefore, since this item is related to the items above, it follows the same ruling. Accordingly, the Department satisfies to accept the appeal and assessment for the years 2012 to 2016 AD based on Taxpayer’s financial statements. As for the period 2007 to 2011 AD, based on the conclusion reached in the first item due to the expiration of the statutory period for ZATCA to carry out the assessment for those years, the Department concludes to accept Taxpayer’s appeal and reverse the primary decision delivered in this regard.

Taxpayer’s appeal, regarding (Withholding tax on assumed unrealized dividends for the years 2007 to 2016 AD), centers on their objection to the primary decision delivered in this regard, arguing that all the facts, materials, and analyses presented in the reasoning of the decision delivered by the Determination Committee are undisputed. However, the dispute lies in two points; the first of which: The existence of profits to be distributed and the second: Realization of the event of payment for these dividends to the non-resident entity. Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law states: “1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: ... Dividends at a rate of (5%)”. Based on the foregoing, it is clear from the regulatory provisions that the withholding tax is linked to the payment process and similar transactions such as account settlements and offsets. Since ZATCA’s imposition of withholding tax on estimated dividends resulted from an estimated assessment of Taxpayer



and given that the disputed item is linked to the previous items accepted in favor of Taxpayer. Therefore, as this item is connected to the aforementioned items, it takes the same ruling. As for the years 2007 to 2011 AD, the decision in the first item thereof upheld Taxpayer's request to accept their tax returns and refrain from applying the estimated assessment method for the aforementioned years, the Department concludes to accept Taxpayer's request to refrain from applying withholding tax on estimated profits for the relevant years. As for the withholding tax imposed at a rate of 5% on estimated profits for the years 2012 to 2016 AD, where the decision in the second item upheld Taxpayer's request to refrain from discarding their accounts and applying estimated assessment for the relevant years, the Department satisfies to accept Taxpayer's appeal and reverse the primary decision in this regard.

Taxpayer's appeal, regarding (Late Payment Fine), centers on their objection to the primary decision delivered in this regard, arguing that the Determination Committee justified its decision by citing clear legal provisions and asserting that the nature of the dispute between both parties is a documentary in nature. Paragraph (A) of Article (77) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH states: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH 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 due tax as per the Department's assessment". On the basis of the foregoing, it is clear from the regulatory provisions that a late payment fine is imposed on the taxpayer due to the delay in settling the tax owed. Taxpayer's position is that no late payment fine should be imposed on the taxes assessed by ZATCA as a result of the estimated assessment for the years 2007 to 2016 AD, nor on the withholding tax. Therefore, regarding the late payment fine for income tax and withholding tax on assumed and unrealized dividends calculated based on the assessment for the years 2007 to 2011 AD, since the decision in the first item concluded that ZATCA was not entitled to conduct an assessment for those years, the fine is void due to the extinguishment of the principal tax. As for the late payment fine for income tax and withholding tax on assumed and unrealized dividends calculated based on the assessment for the years 2012 to 2016 AD, since the decision in the second item upheld Taxpayer's request to refrain from discarding their accounts for the relevant years and the decision in the fifth item upheld Taxpayer's request to refrain from applying withhold tax on the estimated profits for the relevant years, the fine is void due to the extinguishment of the principal tax. Regarding the late payment fine imposed for withholding tax on payments made to non-resident entities, the Department satisfies to dismiss Taxpayer's appeal, applying imposition of the late payment fine from the date Taxpayer became aware of the final decision.

Regarding the remaining contested items, and since there is no objection raised to the Department adopting the reasons for the appealed decision without any additions whenever it is deemed that these reasons sufficiently address the matter without the need for further elaboration, by supporting the same, the Department confirms that no objections raised against the decision warrant a more detailed response than what is already contained therein. Given that the appealed decision concerning the dispute over the contested items aligns with the sound reasons upon which it is based and these reasons are adequate to support the judgment, the Department that issued the decision thoroughly examined the reason for the dispute and reached the conclusion reflected in its ruling. Since the Department did not observe any requirement for correction or further comment



based on the arguments presented. Therefore, the Department dismisses Taxpayer's appeal and upholds the appealed primary decision delivered regarding the remaining contested items, based on its reasoning.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal in form filed by Taxpayer/ Branch of ... Company, CR No. (...), TIN No. (...), against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR -2021-169), issued in Case No. (IW-2018-6), related to zakat and tax assessment for the years 2007 to 2016 AD.

Second: On Merits:

1. Accept the appeal filed by Taxpayer regarding (Statutory Period (Obsolescence) for the years 2007 to 2011 AD) and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with grounds and merits mentioned herein.
2. Accept the appeal filed by Taxpayer regarding (Estimated Assessment for the years 2007 to 2016 AD) and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with grounds and merits mentioned herein.
3. Accept the appeal filed by Taxpayer regarding (Estimation of taxable revenue based on branch's total expenses for the years 2007 to 2016 AD) and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with grounds and merits mentioned herein.
4. Accept the appeal filed by Taxpayer regarding (Estimated Net profit calculation at 25% of total expenses for the years 2007 to 2016 AD) and reverse the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with grounds and merits mentioned herein.
5. Accept the appeal filed by Taxpayer regarding (Withholding tax on assumed unrealized dividends for the years 2007 to 2016 AD) and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with grounds and merits mentioned herein.
6. Amend the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh regarding (Late Payment Fine, in accordance with grounds and merits mentioned herein
7. Dismiss Taxpayer's appeal regarding the remaining contested items and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2273)

Issued in Case No. (W-81585-2021)

Keywords:

Appeal - Obsolescence on Tax Assessment - ZATCA's calculation of capital gains - Late Payment Fine - Lack of credible evidence to prove incorrectness of the return with the intent of tax evasion - Amendments resulting from errors in the application of instructions and procedures.

Abstract

Taxpayer requests cancellation of the primary decision issued related to 2013 tax assessment, which ruled to dismiss Taxpayer's objection regarding the obsolescence on tax assessment for 2013 AD, accept Taxpayer's appeal concerning ZATCA's calculation of capital gains, and accept Taxpayer's appeal regarding the late payment fine. Taxpayer argues for the annulment of the appealed decision, requesting the acceptance of their objection to the cancellation of the tax assessment, as it was issued after the obsolescence had expired. The Appellate Department, regarding the first item, found that the Department's reliance on the obsolescence was misplaced and constituted an incorrect framing of a dispute that was not in contention between both parties. The dispute concerned the tax assessment on capital gains tax and ZATCA failed to provide evidence proving that Taxpayer's return was incorrect with the intent of tax evasion. Regarding ZATCA's appeal in relation to the remaining contested items, it is evident that the decision aligns with the valid reasons on which it was based and is sufficient to support its ruling, since the Department that issued such decision thoroughly examined the essence of the dispute and reached the conclusion stated in its ruling. Since the Department did not observe any requirement for correction or further comment based on the arguments provided. Therefore, the Department ruled to: Accept Taxpayer's appeal regarding (Obsolescence on Tax Assessment for 2013 AD), dismiss ZATCA's appeal regarding the remaining contested items, and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes.

Instruments:

- Article (65/A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Article (59/10) of [the Implementing Regulations of Income Tax Law, issued by Minister of Finance's Decision No. \(1535\) dated 11/06/1425 AH](#)

Facts:

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



On Monday, 12/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 10/11/2021 AD by/ ..., holder of National ID No. (...), in his capacity as the attorney of Taxpayer, as well as the appeal filed on 14/11/2021 AD by ZATCA against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2021-1287), issued in Case No. (W-2020-11378) related to tax assessment for 2013 AD filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

First: Dismiss the objection raised by Taxpayer/... Company, CR No. (...), regarding the plea of obsolescence for the 2013 tax assessment.

Second: Accept the objection raised by Taxpayer/ ... Co., CR No. (...), regarding ZATCA's calculation of capital gains.

Third: Accept the objection raised by Taxpayer/ ... Co., CR No. (...), regarding the late payment fine.

Since this decision was not accepted by both parties, they submitted a statement of appeal, summarized as follows:

Regarding Taxpayer's appeal against the primary decision, the appeal centers on (Obsolescence on Tax Assessment for 2013 AD) item, whereas Taxpayer claims the annulment of the appealed decision and requests a ruling to accept their objection canceling the tax assessment on the grounds that it was conducted after obsolescence period had expired. Taxpayer asserts that the Capital Gains Tax return for 2013 was submitted to ZATCA and the amount due was paid as per the return on 05/12/2013 AD. However, ZATCA issued its assessment on 28/10/2019 AD, thereby violating the provisions of Paragraph (A) of Article (65) of the Income Tax Law and Paragraph (10) of Article (59) of its implementing regulations. Additionally, the Department's rationale, supporting its decision, considered the capital gains tax assessment as equivalent to a withholding tax assessment and concluded that the obsolescence does not apply to withholding tax, which contradicts the reality; as the subject of the objection does not concern a withholding tax assessment but rather a capital gains tax assessment. Accordingly, Taxpayer requests reversal of the primary decision on the appealed 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:

As for ZATCA's appeal against the primary decision, the appeal is based on (Capital Gains Tax) and (Late Payment Fine), whereas ZATCA asserts the validity and soundness of its procedures. Therefore, ZATCA requests reversal of the primary decision on the appealed items for the aforementioned grounds.

In response to the statement of appeal, ZATCA submitted a memorandum reaffirming the correctness and validity of its action and requested to dismiss Taxpayer's appeal and uphold the Primary Committee's decision in relation to the contested items under Taxpayer's appeal.

On Monday, 12/12/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held with the full attendance of its members via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. The Department, after reviewing the appeal submitted by both parties and examining the case file, decided that the case was ready for determination and the issuance of a ruling on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds:





Upon reviewing Case documents and statement of appeal submitted by Taxpayer and ZATCA, the Department found that conditions of appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the two Appeal requests were accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

On Merits: Taxpayer's appeal, regarding (Obsolescence on Tax Assessment for 2013 AD), is based on the fact that the capital gains tax return for 2013 was submitted to ZATCA and the amount due was paid as per the return on 05/12/2013 AD. However, ZATCA issued its assessment on 28/10/2019 AD, thereby violating the provisions of Paragraph (A) of Article (65) of the Income Tax Law and Paragraph (10) of Article (59) of its implementing regulations. It is evident that, upon reviewing the case file and its attachments, and considering the content of the appealed decision, the Department's reasoning regarding the obsolescence was unfounded and constituted a mischaracterization of a dispute that was not a point of contention between both parties, as the dispute concerns the capital gains tax assessment. In its memorandum of reply submitted to the Department, ZATCA did not argue that the obsolescence does not apply to the Capital Gains Tax. Instead, ZATCA contended that the assessment was issued within ten years from the end of the deadline for submitting the tax return, asserting that the return contained inaccurate information. Thus, the Department's decision is subject to annulment as it adjudicated a non-existent dispute and mischaracterized the matter. Based on the foregoing, and given that the core dispute concerns the obsolescence on the capital gains tax, and considering that the basis of the statutory period for issuing a tax assessment is five years from the end of the deadline for submitting the tax return, and ZATCA is entitled to issue an assessment or reopen a previous assessment within ten years concerning the tax in the event of the emergence of incorrect data or information, incomplete tax returns of Taxpayer, or the emergence of a document proving Taxpayer's evasion of the due tax, and as ZATCA failed to provide the inaccuracy of the return with the intent of tax evasion, and this is not affected by what ZATCA raised regarding the existence of incorrect information in the submitted return, given that the amendments are subject to Taxpayer's objection, and it has not been proven that their cause was with the intent of evasion, as the amendments resulted from an error in the application of instructions and procedures or due to a technical difference in viewpoints in calculating the capital gains tax, which leads the Department to accept Taxpayer's appeal, reverse the primary decision, nullify the assessment procedure issued by ZATCA for 2013 AD, and adopt Taxpayer's position regarding the disputed item.

As for ZATCA's appeal in relation to remaining items in the case, and since there is no objection raised to the Department adopting the reasons for the appealed decision without any additions whenever it is deemed that these reasons sufficiently address the matter without the need for further elaboration, by supporting the same, the Department confirms that no objections raised against the decision warrant a more detailed response than what is already contained therein. Given that the appealed decision concerning the dispute over the contested items aligns with the sound reasons upon which it is based and these reasons are adequate to support the judgment, the Department that issued the decision thoroughly examined the reason for the dispute and reached the conclusion reflected in its ruling. Since the Department did not observe any requirement for correction or further comment based on the arguments presented. Therefore, the Department dismisses ZATCA's appeal and upholds the appealed primary decision delivered regarding the remaining contested items, based on its reasoning.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:



Decision

First: Accept the appeal in form filed by Taxpayer/... Company, CR No. (...), TIN No. (...), and ZATCA's appeal against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2021-1287), issued in Case No. (W-2020-11378), related to tax assessment for 2013 AD.

Second: On Merits:

1. Accept the appeal filed by Taxpayer regarding (Obsolescence on Tax Assessment for 2013 AD) and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah in accordance with grounds and merits mentioned herein.
2. Dismiss the appeal filed by ZATCA regarding the remaining contested items and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2274)

Issued in Case No. (W-81280-2021)

Keywords:

Appeal - Capital Gains Tax - Late Payment Fine - Adjustment of the shares' base cost to include retained earnings - Documentary dispute not resulting in a significant difference in the interpretation of statutory provisions - Related matters follow the same legal ruling.

Abstract

Taxpayer requests annulment of the primary decision issued in the case concerning tax assessment for 2018 AD, which ruled as follows: Dismiss Taxpayer's objection regarding the capital gains tax item and the late payment fine. Taxpayer's appeal concerns their objection to ZATCA's action, which consists of calculating the capital gains tax on undistributed profits and considering thereof as part of the book value. Taxpayer argued that the base cost, for the purpose of determining the capital gains tax, should be adjusted to include retained earnings, statutory reserves, and any other reserves recorded in the financial statements at the date of completing the transaction ("Exit"). The Department determined, with regard to the first item: It is evident that, upon reviewing ZATCA's calculation, ZATCA, when determining the book value of the shares, added the dividends payable to the nominal value of the share. In contrast, Taxpayer's calculation adjusted the base cost of the shares to include retained earnings, statutory reserves, and any other reserves recorded in the financial statements at the date of completing the transaction ("Exit"). ZATCA's action of adding undistributed profits is incorrect, as it is considered a liability on the company and does not affect the company's equity. Therefore, Taxpayer's calculation is considered an acceptable and equitable procedure. Regarding Taxpayer's appeal concerning the item (Late Payment Fine) and given that the nature of the dispute between both parties is documentary in the disputed items and has not resulted in a significant difference in the interpretation of statutory provisions, and considering that the tax due date is the date Taxpayer becomes aware of the tax liability or the date on which they are presumed to have knowledge thereof. Therefore, Taxpayer is presumed to have knowledge of the tax due from the date it became due. Accordingly, the Department decided that the imposition of fines on the items for which the appeal was dismissed is valid as of the statutory tax due date and that the fines for the items where the Department accepted Taxpayer's appeal are to be canceled, as the fine is void if the principal obligation is extinguished. Therefore, the Department ruled to: accept Taxpayer's appeal.

Instruments:

- Articles (9/A,D) and (77/A,B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)



- Articles (16/7/B), (67/3), and (68/1/B) of [the Implementing Regulations of Income Tax Law, issued by the Minister of Finance's Decision No. \(1535\) dated 11/06/1425 AH](#)

Facts:

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

On Tuesday, 20/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh, to consider the appeal presented on 08/11/2021 AD filed by/ ... Company Ltd., CR No. (...), TIN No. (...), against the First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-1280) issued in Case No. (W-14119-2020), concerning the tax assessment for 2018 AD, filed by Taxpayer against ZATCA. The primary decision included the following rulings: First: Dismiss the objection filed by Plaintiff (... Company), Ltd., CR No. (...), regarding the capital gains tax.

Second: Dismiss the objection filed by Plaintiff (... Company), Ltd., CR No. (...), regarding the late payment fine.

As this decision was not accepted by Taxpayer (... Arabian Company Ltd.), Ltd.), it submitted a statement of appeal, summarized as follows:

Taxpayer objects to the Objection Committee's appealed decision, claiming that, regarding (Capital Gains Tax), the calculation of the base cost for determining the capital gains tax should include adjustments to the base cost of shares to account for retained earnings, statutory reserves, and any other reserves recorded in the financial statements at the date of completing the transaction ("Exit"), rather than the method assumed by ZATCA and upheld by the Determination Committee, which considered undistributed profits as part of the book value of the equity for foreign partners when calculating the base cost for the purpose of calculating capital gains. Taxpayer asserts that the capital gains tax was calculated correctly by calculating the base cost along with the proportionate share of retained earnings and statutory reserves. Moreover, Taxpayer, concerning (Late Payment Fine), claims that the difference arose from a difference in viewpoints and emphasized that they have the right to object, as no final decision has been issued yet.

On Tuesday, 20/12/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Appellate Department determined that the presence of the parties was unnecessary and accordingly closed the pleadings and reserved the Case for judgment.

Grounds:

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

On Merits: Taxpayer's appeal regarding (Capital Gains Tax) concerns their objection to ZATCA's action, which consists of calculating the capital gains tax on undistributed profits and considering thereof as part of the book value. Taxpayer argued that the base cost, for the purpose of determining the capital gains tax, should be adjusted to include retained earnings, statutory reserves, and any other reserves recorded in the financial statements at



the date of completing the transaction (“Exit”), rather than the method assumed by ZATCA. Paragraph (7/B) of Article (16) of the Implementing Regulations of Income Tax Law issued by Minister of Finance’s Decision No. (1535) dated 11/06/1425 AH states: “If the asset sold is an interest in a capital company, the sale value shall be determined on the basis of the contractual value, the market value or the book value of this interest in the company's books, whichever is higher. The sale value is compared with the cost base to determine the capital gain”. Paragraphs (A) and (D) of Article (9) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which pertain to the gains or losses resulting from the disposal of assets, include the following: “- The gain or loss resulting from the disposal of an asset is the difference between the compensation received for the asset and its cost base. D. The cost base of an asset purchased, produced, manufactured, or constructed by a taxpayer itself is the amount paid or incurred by the taxpayer in cash or in kind in the process of acquiring the asset”. Paragraphs (A) and (B) of Article (38) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states: “- The cost base of a partner's share in a partnership shall be determined by the amount the partner pays against his share plus the cost base of properties he contributed to the company. B. The cost base increases by the amount of a partner’s share in a partnership’s income (along with his exempt income) included in the partner's gross income”. In light of the above, it is established that the dispute revolves around the calculation of capital gains resulting from the exit of the foreign partner. It is evident that, upon reviewing ZATCA’s calculation, ZATCA, when determining the book value of the shares, added the dividends payable to the nominal value of the share. In contrast, Taxpayer’s calculation adjusted the base cost of the shares to include retained earnings, statutory reserves, and any other reserves recorded in the financial statements at the date of completing the transaction (“Exit”). ZATCA’s action of adding undistributed profits is incorrect, as it is considered a liability on the company and does not affect the company's equity. Therefore, Taxpayer's calculation is considered an acceptable and equitable procedure. Accordingly, the Department satisfies to accept Taxpayer’s appeal and reverse the primary decision.

Taxpayer’s appeal, concerning (Late Payment Fine), lies in their objection to ZATCA's imposition of the late payment fine. Paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states: “In addition to the fines stipulated in Article 76 of this Law and in paragraph (B) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. Paragraph (3) of Article (67) of the Implementing Regulations of Income Tax Law stipulates: “Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment”. Paragraph (1/B) of Article (68) of the same regulations state: “In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: (b) Delay in payment of due tax as per the Department’s assessment”. With reference to Decision No. (IR-2021-6) delivered by the Appeal Committee in Case No. (ZIW-2018-1657), which states: “It is established that the fine is due from the tax due date until the date of payment, and given that the nature of the dispute between both parties is documentary in the disputed items and has not resulted in a significant difference in the interpretation of statutory provisions, and considering that the tax due date is the date Taxpayer becomes aware of the tax liability or the date on which they are presumed to have knowledge thereof. Therefore, Taxpayer is presumed to have knowledge of the tax



due from the date it became due. Accordingly, the Department decided that the imposition of fines on the items for which the appeal was dismissed is valid as of the statutory tax due date and that the fines for the items where the Department accepted Taxpayer's appeal are to be canceled, as the fine is void if the principal obligation is extinguished." Based on the foregoing, and since the late payment fine is imposed at a rate of one percent (1%) of the unpaid tax for every thirty days of delay, and given that the decision in the disputed item concluded with the acceptance of Taxpayer's appeal, the Department considers the imposition of the late payment fine to be invalid due to the extinguishment of the principal obligation and according to the legal principle stating "Related matters follow the same legal ruling". Therefore, the Department concludes to accept Taxpayer's appeal and reverse the primary decision.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal filed by Taxpayer/... Company Ltd., CR No. (...), TIN No. (...), against the decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah No. (IZJ-2021-1280), issued in Case No. (W-14119-2020) related to tax assessment for 2018 AD.

Second: On Merits:

Accept the appeal in form and reverse the primary decision, in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2278)

Issued in Case No. (W-79713-2021)

Keywords:

Appeal - Withholding Tax Assessment - Non-Imposition of withholding tax on payments made to local entities - Department's lack of jurisdiction to settle the dispute - Acceptance of the appeal both in form and on merits.

Abstract

Taxpayer seeks to annul ZATCA's decision related to the withholding tax assessment for December 2017 in the case filed by Taxpayer against ZATCA, whereas the primary decision accepted the case in form but dismissed the same on merits. Taxpayer based their objection on the fact that the expense in question was paid to (... Company -KSA), was an accrued expense, or was paid to local companies, all of which are not subject to tax. The Department, regarding (Withholding Tax Assessment for December 2017 AD), established that the dispute, according to the statement of objected presented before the Primary Department and statement of appeal, lies in the non-imposition of withholding tax on expenses paid to local entities. Since the appealed decision addressed a dispute that was not contested by both parties, this results in the department's lack of jurisdiction to settle the dispute. Therefore, the Department ruled to accept the appeal in form and on merits and reverse the decision delivered by the Second Department for Determination of Income Tax Violations and Disputes - This decision is deemed final and enforceable.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 11/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 27/10/2021 AD by/ ... Company, TIN No. (...), against the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISR-2021-908), issued in Case No. (W-2020-14289), related to withholding tax assessment for December 2017, filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

Accept Plaintiff's (... Company, C.R. No. (...), Case filed against Defendant (ZATCA) in form and dismiss the same on merits.

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

Taxpayer objects to the appealed primary decision, claiming that, regarding (Withholding Tax Assessment for December 2017 AD), upon analyzing the expense in question, it is found to be expenses paid to (... Company - KSA), accrued expenses, or expenses paid to local companies, all of which are not subject to tax. A small portion of the mentioned



amounts was paid to foreign companies, to which withholding tax was applied. Therefore, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds.

On Sunday, 11/12/2022 AD, First Appellate Department for Income Tax Violations and Disputes convened its session with the full attendance of its members via video conference in accordance with the procedures for remote video litigation based on Item (2) of Article (15) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. The Department, having reviewed the appeal presented by parties to the case and examined the contents of the case file, determined that the case is ready for determination and issuance of a decision on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds:

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

On Merits: As for Taxpayer's appeal on (Withholding Tax Assessment for December 2017 AD), upon reviewing the appeal request, the appealed decision, and the case file along with its supporting documents, it was found that the dispute, according to the statement of objection presented before the Primary Department and statement of appeal, lies in the non-imposition of withholding tax on expenses paid to local entities. Since the appealed decision addressed a dispute that was not contested by both parties, this results in the department's lack of jurisdiction to settle the dispute. Therefore, it is necessary to annul the primary decision and return the case to the Primary Department for reconsideration of the substance of the dispute for December 2017 on the issue of whether the tax was rightfully imposed.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal in form filed by Taxpayer/ ... Company, CR No. (...), TIN No. (...), against the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISR-2021-908) issued in Case No. (W-2020-14289), related to withholding tax assessment for December 2017 AD.

Second: On Merits:

Accept Taxpayer's appeal and reverse the decision delivered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2280)

Issued in Case No. (W-79692-2021)

Keywords:

Appeal - Withholding Tax Assessment - Department's lack of jurisdiction to settle the dispute - Acceptance of the appeal both in form and on merits.

Abstract

Taxpayer seeks the annulment of ZATCA's decision regarding the withholding tax assessment for July 2015 AD, which ruled to accept the case filed by Taxpayer in form and dismiss the same on merits. Taxpayer based their objection on the fact that they are unaware of ZATCA's conclusion of the paid amount. The Department, regarding (Withholding Tax Assessment for July 2015 AD), They lack jurisdiction to settle the dispute. Therefore, the Department ruled to Accept the appeal in form and on merits and reverse the primary decision. - This decision is deemed final and enforceable.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 11/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 27/10/2021 AD by/ ... Company, TIN No. (...), against the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISR-2021-910), issued in Case No. (W-2020-14358), related to withholding tax assessment for July 2015, filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

Accept Plaintiff's (...) Company, C.R. No. (...), Case filed against Defendant (ZATCA) in form and dismiss the same on merits.

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

Taxpayer objects to the appealed primary decision, claiming that, concerning (Withholding Tax Assessment for July 2015 AD), they are unaware of ZATCA's conclusion of the paid amount, thereby violating Paragraph (C) of Article (62) and Paragraph (7) of Article (59) of the Income Tax Law and Paragraph (2) of Article (60) of the relevant Implementing Regulations, as these provisions require ZATCA to clarify the amendments and their reasons. Therefore, Taxpayer requests that the amendment letter be declared null and void for failure to comply with the regulatory requirements, that the imposed late payment fine canceled, and that the primary decision regarding the appealed item be reversed based on the aforementioned grounds.

On Sunday, 11/12/2022 AD, First Appellate Department for Income Tax Violations and Disputes convened its session with the full attendance of its members via video conference



in accordance with the procedures for remote video litigation based on Item (2) of Article (15) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. The Department, having reviewed the appeal presented by parties to the case and examined the contents of the case file, determined that the case is ready for determination and issuance of a decision on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds:

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

Taxpayer's appeal, concerning (Withholding Tax Assessment for July 2015 AD), is based on their lack of knowledge regarding ZATCA's conclusion of the paid amount. Upon reviewing the appeal request, the appealed decision, and the case file along with its supporting documents, and since the appealed decision addressed a dispute that was not contested by both parties, this results in the department's lack of jurisdiction to settle the dispute. Therefore, it is necessary to annul the primary decision and return the case to the Primary Department for reconsideration of the substance of the dispute for July 2015 on the issue of whether the tax was rightfully imposed.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal in form filed by Taxpayer/ ... Company, CR No. (...), TIN No. (...), against the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISR-2021-910) issued in Case No. (W-2020-14358) related to withholding tax assessment for July 2015 AD.

Second: On Merits:

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

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2307)

Issued in Case No. (W-70661-2021)

Keywords:

Appeal - Payments made to employees in KSA - Payments made to recruiters outside KSA - Withholding tax on payments made for support services to related non-resident parties - Late Payment Fine - If a matter ceases to exist, that which is incidental to it shall also cease to exist - Withholding tax on other miscellaneous payments - Submission of employee contracts and a sample of the bank statement.

Abstract

Taxpayer requests consideration of the primary decision issued in the case concerning tax assessment for the years 2015 to 2018 AD, which ruled as follows: Dismiss Taxpayer's objection to ZATCA's decision regarding the tax assessment in dispute. Appellate Department, concerning (Withholding tax on payments made for support services to related non-resident parties) established the following: Taxpayer failed to submit the documents and invoices that would elucidate the nature, details, and manner of provision of the services. Regarding Taxpayer's appeal in relation to (Payments made to employees in KSA) item: Given that the dispute hinges on documentary evidence regarding this item and upon examination of the case file, it appears that Taxpayer attached employment contracts, a sample bank statement detailing the salaries transferred to employees, as well as an analytical report listing employee names and the amounts paid. Furthermore, Taxpayer provided evidence that the disputed amounts represent salaries paid to employees working in the Kingdom Regarding Taxpayer's appeal in relation to (Payments made to recruiters outside KSA) item: Upon examination, it was found that Taxpayer attached a sample of agreements signed with recruiters, which revealed that the recruitment services provided included candidate selection and interview processes to facilitate job offers. Such services do not fall under the definition of technical or consulting services but rather under other payments subject to withholding tax if the service is performed within the Kingdom. As for Taxpayer's appeal in relation to (Withholding tax on other miscellaneous payments): While Taxpayer contends that the aforementioned services should not be subject to withholding tax, they failed to provide any documentation to support their position regarding the impropriety of ZATCA's decision to impose withholding tax on the disputed services. Furthermore, Taxpayer did not present any grounds that would necessitate a requirement for correction or further comment on the outcome of the appealed decision. As for Taxpayer's appeal in relation to (Withholding tax on other miscellaneous payments): Considering that late payment fines are a consequence of the underlying items, given the established judicial principle that states "If a matter ceases to exist, that which is incidental to it shall also cease to exist", and since Taxpayer's appeal regarding certain items related to the imposition of late payment fines was accepted. Therefore, the Department ruled to: accept Taxpayer's appeal regarding (Payments made



to employees in KSA) and (Late Payment Fine) items, dismiss Taxpayer's appeal regarding the remaining contested items, and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes.

Instruments:

- Articles (68/A), (76), and (77/A,B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Articles (63/1,3) and (68/1) of [the Implementing Regulations of Income Tax Law, issued by Minister of Finance's Decision No. \(1535\) dated 11/06/1425 AH](#)

Facts:

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

On Sunday, 11/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 14/09/2021 AD filed by/... Company against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2021-1004) issued in Case No. (W-2020-27903), related to tax assessment for the years 2015 to 2018, filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

In form: Accept the case filed by Taxpayer/ ... Company, CR No. (...), in form.

On Merits:

Dismiss the objection raised by Taxpayer against ZATCA's decision regarding the tax assessment subject to the dispute.

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

Taxpayer challenges the Objection Committee's appealed decision, claiming that, concerning (Withholding tax on payments made for support services to related non-resident parties), ZATCA imposed a withholding tax at a rate of 15% on payments for support services to related non-resident parties, which was upheld by the Primary Department due to Taxpayer's failure to provide documentation detailing the nature of the services provided. However, Taxpayer contends that the benefits available under the Double Taxation Agreement with the United Kingdom were not considered. According to Article 7 of that Agreement, profits attributable to a project belonging to a contracting state shall be taxable only in that state. If the project commences, profit tax shall be imposed. However, failing that, the withholding tax rate should be 0% instead of 15%. Taxpayer further states that the services are provided by ... Company (a related non-resident entity) and include, but are not limited to, business development, marketing, communications, sales, accounting, finance, planning, IT, human resources, and other services. These services are primarily provided by the non-resident company's employees from outside the Kingdom, with on-site visits only when necessary. Therefore, Taxpayer requests that these expenses be exempt from withholding tax. Regarding (Payments made to employees in KSA) item: Taxpayer claims that ZATCA imposed a 15% withholding tax on payments made for work visa fees for December 2018. Taxpayer further asserts that work visa fees are related to employee salaries, housing allowances, and other benefits. Additionally, these employees have employment contracts with (... Company), reflecting the nature of their job roles and other regulatory requirements. These employees work on work visas instead of residency permits, and their contracts are classified as employment contracts with a direct relationship between the employee and ... Company. The salaries and benefits of these employees are not subject to withholding tax and are similar to contracts used for Saudi employees and are treated as those with residency permits. These



contracts are issued in accordance with the Saudi Labor Law, and the individuals involved are considered employees rather than consultants. Regarding (Payments made to recruiters outside KSA) item: Taxpayer claims that these services are not of a technical nature and therefore are not subject to withholding tax if provided entirely outside the Kingdom. Additionally, Taxpayer asserts that the recruitment services were performed entirely outside the Kingdom, and thus do not constitute Saudi-sourced income and are not subject to withholding tax. Regarding (Withholding tax on other miscellaneous payments) item: Taxpayer claims that ZATCA applied withholding tax to the item without providing a rationale or justification for doing so. As for (Late Payment Fines) item: Taxpayer claims that ZATCA rejected the late payment fines on the disputed items. Therefore, Taxpayer requests that the appealed primary decision be reversed for the aforementioned grounds. On Sunday, 11/12/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held via video conferencing in accordance with remote litigation procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Appellate Department determined that the presence of the parties was unnecessary and accordingly closed the pleadings and reserved the Case for judgment.

Grounds:

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

On Merits: Taxpayer's appeal, regarding (Withholding tax on payments made for support services to related non-resident parties), concerns ZATCA's imposition of a 15% withholding tax on the disputed item. Moreover, Taxpayer requests application of the Double Taxation Agreement. Paragraph (A) of Article (68) of the Income Tax Law states: "Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: payments for services to the head-office or an affiliated company... (15%)". As the dispute regarding this item is documentary in nature, upon reviewing the case file, it appears that Taxpayer attached the tax residency certificate, the forms certified by the tax authorities in the United Kingdom, the support services agreement, and an analytical statement of the amounts subject to withholding tax. Having reviewed the services agreement concluded with ... Company -UK), it became clear that the non-resident entity may utilize the resources of other subsidiaries or third parties when providing services. As Taxpayer failed to submit the documents and invoices that would elucidate the nature, details, and manner of provision of the services, the Department concludes to dismiss Taxpayer's appeal and uphold the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Payments made to employees in KSA), lies in their objection to the primary decision delivered in this regard, claiming that ZATCA imposed withholding tax on work visa fees, arguing that such fees are related to salaries, housing allowances, and other employee benefits. Article 68 (A) of the Income Tax Law stipulates: "Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: 6. Any other payments specified in the Regulations, provided that the tax rate does not exceed 15%." Given that the dispute hinges on documentary evidence



regarding this item and upon examination of the case file, it appears that Taxpayer attached employment contracts, a sample bank statement detailing the salaries transferred to employees, as well as an analytical report listing employee names and the amounts paid. Since Taxpayer provided evidence that the disputed amounts represent salaries paid to employees working in the Kingdom, consequently these amounts are not subject to withholding tax. Accordingly, the Department satisfies to accept Taxpayer's appeal and reverse the primary decision delivered in this regard.

Taxpayer's appeal, concerning (Payments made to recruiters outside KSA), lies in their objection to the primary decision delivered in this regard, claiming that these services are not of a technical nature and therefore are not subject to withholding tax if provided entirely outside the Kingdom. In addition, Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law states: "1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: -technical or consulting services ... At %5". Paragraph (3) of Article (63) of the Implementing Regulations of Income Tax Law issued by Minister of Finance's Decision No. (1535) dated 11/06/1425 AH states: "Technical and consulting services" means: technical, technological and scientific services of any kind, including studies and research in different fields, surveying work of scientific, geological and industrial nature, consulting or supervisory services, or any type of engineering services including relevant designs". The dispute revolves around the imposition of a 5% withholding tax on payments made to recruiters, which are classified as technical and consulting services. Taxpayer, however, contends that these services are not of a technical nature and therefore are not subject to withholding tax if provided entirely outside the Kingdom. Upon examination, it was found that Taxpayer attached a sample of agreements signed with recruiters, which revealed that the recruitment services provided included candidate selection and interview processes to facilitate job offers. Such services do not fall under the definition of technical or consulting services as outlined in Paragraph (3) of Article (63) of the Implementing Regulations of the Income Tax Law, but rather under other payments subject to withholding tax if the service is performed within the Kingdom. Accordingly, the Department satisfies to dismiss Taxpayer's appeal and uphold the primary decision in this regard.

Regarding Taxpayer's appeal in relation to (Withholding tax on other miscellaneous payments): Taxpayer's appeal is based on their objection to the primary decision delivered in this regard, claiming that ZATCA rejected the withholding tax without providing a clear explanation. Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law states: "1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: -Royalties or proceeds; payments for services to the head-office or an affiliated company: 15% -Rent; technical or consulting services; air tickets, air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums: 5%." While Taxpayer contends that the aforementioned services should not be subject to withholding tax, they failed to provide any documentation to support their position regarding the impropriety of ZATCA's decision to impose withholding tax on the disputed services. Furthermore, Taxpayer did not present any grounds that would necessitate a requirement for correction or further comment on the outcome of the appealed decision. Accordingly, the Department satisfies to dismiss Taxpayer's appeal and uphold the appealed primary decision.

Regarding Taxpayer's appeal in relation to (Withholding tax on other miscellaneous payments): Taxpayer's appeal concerns the objection to the primary decision delivered in this regard, arguing that ZATCA imposed late payment fines on the disputed items. paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1)



dated 15/01/1425 AH states: “In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment”. Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH 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 due tax as per the Department’s assessment”. Considering that late payment fines are a consequence of the underlying items, given the established judicial principle that states “If a matter ceases to exist, that which is incidental to it shall also cease to exist”, and since Taxpayer’s appeal regarding certain items related to the imposition of late payment fines was accepted, it is decided that the late payment fine for the items in respect of which Taxpayer’s appeal was accepted is nullified due to the extinguishment of the principal tax. Conversely, the late payment fine for the items in respect of which Taxpayer’s appeal was dismissed remains valid from their statutory due date.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal in form filed by Taxpayer/... Company, CR No. (...), TIN No. (...), against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR -2021-1004), issued in Case No. (W-2020-27903), related to tax assessment for the years 2015 to 2018 AD.

Second: On Merits:

1. Accept Taxpayer’s appeal regarding (Payments made to employees in KSA) and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in accordance with grounds and merits mentioned herein.
2. Accept Taxpayer’s appeal regarding (Late Payment Fine) and amend the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in accordance with grounds and merits mentioned herein.
3. Dismiss Taxpayer’s appeal regarding the remaining contested items and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2526)

Issued in Case No. (IW-58406-2020)

Keywords:

Appeal - Tax Assessment - Use of a higher percentage than cost plus profit margin - Imposition of estimated profits - Imposition of withholding tax on net income at a rate of 5% - Late payment fine - Related matters follow the same legal ruling - Acceptance of Taxpayer's appeal.

Abstract

Taxpayer requests the annulment of the primary decision issued in the case related to the tax assessment and withholding tax for 2016 and 2017 AD filed by Taxpayer against ZATCA, which ruled to accept the case filed against GAZT in form but dismissed the same on merits. Taxpayer claims that, regarding (Use of a higher percentage than cost plus profit margin for 2016 and 2017 AD), ZATCA's handling of assuming lump-sum taxable revenues and imposing estimated profits is entirely incorrect, as the branch submitted its tax return based on audited financial statements. Moreover, Taxpayer, regarding (Imposition of withholding tax on net income at a rate of 5% for 2016 and 2017 AD), asserts that no dividends were witnessed in 2016 and 2017. Appellate Department, concerning (Use of a higher percentage than cost plus profit margin for 2016 and 2017), found that Taxpayer was not requested by the Department or ZATCA to provide a transfer pricing study for the years in question, though Taxpayer did present thereof to this Department, revealing that ZATCA's estimated assessment procedure was incorrect, as none of the conditions stipulated in Article (63) of the Tax Law and Article (16) of the relevant Implementing Regulations were met. It is evident that, regarding Taxpayer's appeal against (Imposition of withholding tax on net income at a rate of 5% for 2016 and 2017 AD), ZATCA's reliance on subjecting the net profit to withholding tax solely based on its transfer to retained earnings is unfounded, as such transfer does not constitute a payment or settlement between the headquarters and the branch. Additionally, Taxpayer asserts that ZATCA failed to provide evidence of any actual payment or settlement. Regarding Taxpayer's appeal against (Late Payment Fine), the decision on the disputed items concluded by accepting Taxpayer's appeal, thereby rendering invalidity of the imposition of late payment fine due to the extinguishment of the principal obligation. Therefore, the Department ruled to accept Taxpayer's appeal and reverse the decision delivered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh in accordance with grounds and merits mentioned herein.

Instruments:



- Articles (63/B) and (77/A) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Articles (16/3,4) and (63/1,8) [the Implementing Regulations of Income Tax Law, issued by the Ministerial Decision No. \(1535\) dated 11/06/1425 AH](#)

Facts:



On Tuesday, 13/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh, to consider the appeal presented on 08/07/2021 AD filed by/branch of ... Company, CR No. (...), TIN No. (...), against the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISR-2021-255), issued in case No. (IW-2019-3640), regarding tax assessment and withholding tax for 2016 and 2017 AD, filed by Taxpayer against ZATCA. The primary decision stated the following:

Accept the case filed by Taxpayer/ branch of ... Company, CR No. (...), against ZATCA in form and dismiss the same on merits.

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

Taxpayer challenges the appealed primary decision, arguing that, regarding (Use of a higher percentage than cost plus profit margin), ZATCA's handling of assuming lump-sum taxable revenues and imposing estimated profits is entirely incorrect, as the branch submitted its tax return based on audited financial statements and that ZATCA issued its assessment for the years 2004 to 2014 AD without rejecting the books and accounting records. The cost plus profit margin between the branch and the headquarters was not disputed, and the branch consistently charges the headquarters and subsidiary (10%) and another subsidiary (15%) on cost plus profit margin. Taxpayer further points out that the Department noted in its decision that the branch did not maintain the local file and the benchmarking analysis for 2016 and 2017, even though the Department and ZATCA never previously requested a copy of transfer pricing studies. Despite this, the branch prepared transfer pricing studies, even though transfer pricing guidelines came into effect on February 15, 2019, applicable for the year ending 31/12/2018, and thereafter. The transfer pricing study shows that the cost-plus profit margin arrangement between the branch, headquarters, and subsidiaries aligns with the branch's benchmarking study. Taxpayer, concerning (Imposition of withholding tax on net income at a rate of 5% for 2016 and 2017 AD), asserts that no dividends were witnessed in 2016 and 2017. Additionally, the Income Tax Law and its Implementing Regulations do not include provisions for withholding tax on hypothetical dividends. Therefore, imposing tax on hypothetical figures is unjustified and inconsistent with the law. Taxpayer also notes that in 2018 and 2019, the branch transferred cash to its headquarters and settled withholding tax at a rate of 5% in accordance with the law, demonstrating that the branch settled the appropriate tax upon the actual transfer, but in 2016 and 2017, no withholding tax was settled due to the absence of transfers to the headquarters. Moreover, Taxpayer, regarding (Late Payment Fine) contends that the regulations stipulate that a late payment fine is imposed under Article 77(a) of the Income Tax Law and Article 68 of its Implementing Regulations in the event of a delay in the payment of tax once it becomes final, whether after Taxpayer accepts the assessment or the objection procedures are completed. Therefore, the late payment fine shall be imposed from the date on which the obligation becomes final according to law. Accordingly, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds.

On Tuesday, 13/12/2022 AD, The First Appellate Department for Income Tax Violations and Disputes was held via video conferencing in accordance with remote litigation



procedures, based on Item (2) of Article (15) of Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Department, having found no need for the presence of the parties involved in the appeal, decided to close the pleadings and reserve the Case for judgment.

Grounds:



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

On Merits: Taxpayer claims that, regarding (Use of a higher percentage than cost plus profit margin for 2016 and 2017 AD), ZATCA's handling of assuming lump-sum taxable revenues and imposing estimated profits is entirely incorrect, as the branch submitted its tax return based on audited financial statements. Pursuant to Paragraph (B) of Article (63) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, in reference to the Appeal Committee's Decision No. (IR-2020-75) issued in Case No. (I-2018-1904), and based on the above, the tax base is calculated based on the tax return submitted by Taxpayer, who is required to provide supporting documentation for these returns. Financial statements serve as the primary support for calculating the tax base. For these statements to be accepted and used as the basis for calculating the tax base, they must be complete in terms of preparation, measurement, presentation, and disclosure, and must be based on financial events supported by documentary evidence. Upon reviewing the case file, it is evident that the Determination Committee's decision was based on Taxpayer's failure to provide a transfer pricing study, related documents, the local file for the branch, and the benchmarking analysis. The Committee noted that the agreements between Taxpayer, the headquarters, and its subsidiaries were related-party agreements and were not applied as if they were between independent parties. Regarding the transfer pricing study, taxpayers in the Kingdom were not required to maintain a local file, as the transfer pricing guidelines were not in effect before 2018 and only became applicable from 15/02/2019. Moreover, there is no evidence that Taxpayer was requested by the Department or ZATCA to submit a transfer pricing study for the years in dispute. However, Taxpayer subsequently submitted such a study to this Department. Upon reviewing the study and the ratios therein, it is evident that the branch's arrangement of cost plus profit margin with its headquarters and subsidiaries exceeds both the lower and upper quartiles, while the applied rate falls within the 10% to 15% range. The summary of the study is as follows:

- The average minimum is (-6.06%).
- The lower quartile average is (1.36%).
- The upper quartile average is (8.03%).
- The average maximum is (13.75%).

Regarding Appellate Department's observation that the agreements were not applied as if they were between independent parties, the Appellate Department's decision did not specify the document on which this conclusion was based. Concerning ZATCA's action of imposing an estimated profit of 40% based on Article (16), Paragraph (4), ZATCA's right to make an estimated assessment is limited to the conditions and cases that must be met for such an assessment to be made, rather than relying on the Taxpayer's accounts as the basis for calculating the tax base as outlined in Article (63) of the afore-mentioned Law. Furthermore, Paragraph (3) of Article (16) of the implementing Regulations of the Income Tax Law specifies the conditions under which ZATCA can make an estimated assessment.



Since it was established that Taxpayer maintains statutory accounts and provided audited financial statements, there is no justification for ZATCA to apply an estimated assessment to Taxpayer. Additionally, ZATCA did not contest the accuracy of Taxpayer's accounts. Given that the statutory provisions require the existence of evidence and facts that justify ZATCA's refusal to accept Taxpayer's returns and resort to estimated assessment, revealing that ZATCA's estimated assessment procedure was incorrect, as none of the conditions stipulated in Article (63) of the Tax Law and Article (16) of the relevant Implementing Regulations were met. Therefore, the Department satisfies to accept Taxpayer's appeal and reverse the primary decision.

Taxpayer, concerning (Imposition of withholding tax on net income at a rate of 5% for 2016 and 2017 AD), asserts that no dividends were witnessed in 2016 and 2017. Additionally, the Income Tax Law and its Implementing Regulations do not include provisions for withholding tax on hypothetical dividends. Therefore, imposing tax on hypothetical figures is unjustified and inconsistent with the law. Based on Article (63), Paragraph (1) of the Implementing Regulations of the Income Tax Law, and pursuant to Paragraph (8) of Article (63) of the same regulations, and as inferred from the foregoing, it is evident that withholding tax on amounts paid to non-resident entities is imposed upon the occurrence of actual payment or its equivalent, such as settlements, offsets, or any other means. The dispute lies in ZATCA's imposition of withholding tax at a rate of 5% on net income, based on the branch's action of transferring the net income into the headquarters' account. It is clear that, upon reviewing the case file, including Taxpayer's arguments and documents, Taxpayer submitted audited financial statements for 2016 and 2017 AD. An examination of the statement of changes in the headquarters' account reveals that the net income for the year is transferred to the retained earnings account. There is no indication of dividends to the headquarters or any settlement of retained earnings against balances due from the headquarters or affiliates listed under current assets in the balance sheet. Accordingly, ZATCA's decision to subject the net profit to withholding tax merely because it was transferred to retained earnings is unfounded, as this does not constitute a payment or settlement between the headquarters and the branch. Moreover, Taxpayer submitted a withholding tax form for December 2018 and July 2019, which demonstrates that the branch settled the appropriate tax upon the actual transfer in subsequent years beyond the disputed years. Consequently, given ZATCA's failure to provide evidence of payment or settlement and based on Appellate Committee's Decision No. (IR-2020-72), the Department satisfies to accept Taxpayer's appeal and reverse the primary decision.

Taxpayer's appeal, regarding (Late Payment Fine), is based on the premise that the late payment fine shall be imposed from the date on which the obligation becomes final under the regulations. Pursuant to Paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, based on Appellate Committee's Decision No. (IR-2021-6) issued in Case No. (ZIW-2018-1607), given the foregoing, and considering that the late payment fine shall be imposed at a rate of one percent (1%) of the unpaid tax for every thirty (30) days of delay, and since the decision in the appealed items concluded by accepting Taxpayer's appeal, it is evident that the imposition of the late payment fine is invalid due to the extinguishment of the principal obligation. Therefore, the Department concludes to accept Taxpayer's appeal and reverse the primary decision according to the legal principle stating "Related matters follow the same legal ruling".

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision



First: Accept the appeal filed by Taxpayer, branch of Company, CR (.....), TIN (....), in form. against the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISR-2021-255) issued in Case No. (IW-2019-3640) related to tax assessment and withholding tax for 2016 and 2017.

Second: On Merits:

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

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2022-2551)

Issued in Case No. (W-74567-2021)

Keywords:

Appeal - Withholding Tax Assessment - Filing the objection within the prescribed statutory period - Acceptance of Taxpayer's appeal and reversal of the primary decision.

Abstract

Taxpayer requests review of the primary decision issued in the case concerning the assessment of withholding tax for 2018 AD filed by Taxpayer against ZATCA, which ruled to dismiss the case in relation to Taxpayer's appeal against (Withholding Tax for 2018 AD) on the grounds that the objection was not filed within the prescribed statutory period. Taxpayer's appeal is based on the assertion that they submitted their objection to ZATCA on 27/02/2020 with supporting evidence provided. Appellate Department established that the withholding tax assessment for 2018 was issued on 30/12/2019 and Taxpayer filed their objection to the decision on 27/02/2020, as evidenced by the objection receipt notice attached to the statement of appeal. Accordingly, it has been confirmed that Taxpayer filed their objection within the prescribed statutory period. Therefore, the Department ruled to accept Taxpayer's appeal and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in accordance with grounds and merits mentioned herein.

Instruments:

- Articles (3) and (15/2) of [Tax Dispute and Violation Committee Procedures issued by Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 19/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh, to consider the appeal presented on 07/10/2021 AD filed by ..., National ID No. (...), in his capacity as the legal representative of Taxpayer, as per the minutes of the Board of Directors' meeting, against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2021-1265) issued in Case No. (W-15939-2020), regarding tax assessment for 2018 AD, filed by Taxpayer against ZATCA. The primary decision stated the following:

Dismiss the case filed by Taxpayer/ ... Company Ltd.), TIN No. (...), against ZATCA due to failure of Taxpayer to file their objection to ZATCA's decision, which is the subject of the dispute, within the statutory period.



As this decision was not satisfied by Taxpayer (... Company Ltd.), Ltd.), it submitted a statement of appeal, summarized as follows:

Taxpayer challenges the appealed primary decision, arguing that, concerning (Withholding Tax for 2018 AD), they filed their objection to ZATCA on 27/02/2020 AD with supporting evidence provided. Therefore, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds.

On Monday, 19/12/2022 AD, First Appellate Department for Income Tax Violations and Disputes convened via video conference in accordance with the procedures for remote video litigation based on Item (2) of Article (15) of the Rules of Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040) of 21/04/1441 AH. Having reviewed the appeal and examined the Case file, and upon due deliberation, the Appellate Department determined that the presence of the parties was unnecessary and accordingly closed the pleadings and reserved the Case for judgment.

Grounds:

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

On Merits: Taxpayer's appeal, concerning (Withholding Tax for 2018 AD), is based on Taxpayer's assertion that they filed their objection to ZATCA on 27/02/2020 AD with supporting evidence provided. It has been established, upon reviewing the Case file, its contents, and the appealed decision, that the assessment decision for 2018 AD issued on 30/12/2019 AD and Taxpayer filed their objection to such decision on 27/02/2020 AD, as evidenced by the objection receipt notice attached to the statement of appeal. Accordingly, it has been confirmed that Taxpayer filed their objection within the prescribed statutory period pursuant to Article (3) of Tax Dispute and Violation Committee Procedures, which state: "GAZI's decisions shall be final and unappealable before any other agency in the following cases: 1. If a taxpayer does not object to the decision within 60 days from the date of notification thereof". Accordingly, the Department satisfies to accept the appeal, annul the primary decision, and remand the case for further consideration on its merits.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal filed by Taxpayer/... Company Ltd.), CR No. (...), TIN No. (...), in form against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2021-1265) issued in Case No. (W-15939-2020) related to withholding tax assessment for 2018 AD.

Second: On Merits:

Accept Taxpayer's appeal and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2023-50854)

Issued in Case No. (W-50854-2021)

Keywords:

Appeal - Tax Assessment - Imposition of withholding tax on salaries of employees residing under a business visit visa - Underwater inspection, repair, and maintenance services using divers, equipment, and vessels - Late Payment Fines - Genuine difference in viewpoints- Submission of employment contracts and invitation letters with a (90)-day residence period for contracted divers - Taxpayer providing evidence supporting their view - Invalidity of the tax basis.

Abstract

Taxpayer requests a review of the primary decision issued in the case related to tax assessment for 2017 AD filed by Taxpayer against ZATCA, which ruled to dismiss Taxpayer's objection regarding the imposition of withholding tax on salaries of employees residing under a business visit visa. Taxpayer's appeal challenges this decision, arguing that they entered into agreements with ... -KSA to provide underwater inspection, repair, and maintenance services using divers, equipment, and vessels. Accordingly, Taxpayer recorded these expenses as salaries in their accounting records. Taxpayer requests amendment of ZATCA's decision regarding the late payment fines. taxpayer's appeal lies in their objection to the primary decision issued in this regard, seeking the abolishment of such fines due to a genuine difference in viewpoints. Appellate Department, regarding Taxpayer's appeal against (Imposition of withholding tax on salaries of employees residing under a business visit visa), established that the core of the dispute is documentary in nature, as Taxpayer's objection was dismissed at the resolution stage due to the failure to provide the documents proving compliance with the conditions outlined in the criteria set by ZATCA, particularly regarding the verification of the employment relationship. However, upon reviewing the documents submitted by Taxpayer, it is evident that they provided employment contracts, invitation letters with a (90)-day residence period for contracted divers, as well as evidence of work monitoring, daily work schedules, payroll slips proving the wages, and bank statements confirming the disbursement of salaries at specific intervals. Given the temporary nature of the divers' work for maintenance purposes, as per the contracts signed with ... Company, Taxpayer provided list detailing the duration of the divers' stay. Therefore, Taxpayer provided sufficient evidence supporting their viewpoint. Regarding Taxpayer's appeal concerning (Late Payment Fines) and since Taxpayer's appeal regarding (Imposition of withholding tax on salaries of resident employees) was accepted, the Department concludes that the late payment fines are invalid due to invalidity of the tax basis. Regarding ZATCA's appeal in relation to the remaining contested items, it is evident that the decision aligns with the valid reasons on which it was based and is sufficient to support its ruling, since the Department that issued such decision thoroughly examined the essence of the dispute and reached the conclusion



stated in its ruling. Since the Department did not observe any requirement for correction or further comment based on the arguments provided. Therefore, the Department ruled to Accept Taxpayer's appeal and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam in accordance with grounds and merits mentioned herein. Dismiss ZATCA's appeal regarding the remaining contested items and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes.

Instruments:

- Articles (68/A) and (77/A,B) of [Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Articles (63/1), (76/3), and (71/2) of [the Implementing Regulations of Income Tax Law, issued by Minister of Finance's Decision No. \(1535\) dated 11/06/1425 AH](#)
- Circular No. (8922/9/1438) dated 07/02/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 28/12/2022 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 17/05/2021 AD by/ ..., holder of National ID No. (...), in his capacity as the attorney of Taxpayer, under PoA No. (...), as well as the appeal filed on 18/05/2021 AD by ZATCA against the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2021-182) issued in Case No. (W-8269-2019) related to tax assessment for 2017 AD filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

- 1- Dismiss the objection raised by Taxpayer regarding the imposition of withholding tax on salaries of employees residing under a business visit visa.
- 2- Amend ZATCA's decision concerning the late payment fines.

Since this decision was not accepted by both parties, they submitted a statement of appeal, summarized as follows:

Regarding Taxpayer's appeal against the primary decision, the appeal centers on (Imposition of withholding tax on salaries of employees residing under a business visit visa), whereas Taxpayer argues that they signed agreements with ... -KSA to provide underwater inspection, repair, and maintenance services using divers, equipment, and vessels. Taxpayer asserts that providing such services requires the following: (A) Divers to perform underwater inspection, repair, and maintenance services; (B) vessels and equipment to support all underwater inspection, repair, and maintenance activities. Taxpayer, to perform underwater inspection, repair, and maintenance services, entered into temporary employment contracts with skilled foreign workers (divers/sailors). Due to the global nature of the work, sailors (divers) are permitted to obtain work visas and seafarer books along with employment details to carry out maritime activities. Based on the nature of their work, these individuals do not receive permanent visas for work in any specific country, as they hold a special status due to the nature of their job. Sailors are employed for short periods of time due to the harsh and hazardous working conditions aboard ships. Consequently, employment contracts are signed with Taxpayer, which in turn records these contracts as salary expenses in their accounting records. Moreover, Taxpayer asserts that they provided all necessary documentation to demonstrate that the payments made to the divers meet the criteria outlined in the circular relied upon by the Determination Committee. Taxpayer, regarding (Late Payment Fines), requests



abolishment of such fines due to a genuine difference in viewpoints. Accordingly, Taxpayer requests reversal of the primary decision concerning the appealed items for the reasons outlined above.

As the decision was not satisfied by ZATCA, it filed its appeal against the contested decision, as detailed in the following statement of appeal:

Regarding ZATCA's appeal against the primary decision, the appeal lies in (Late Payment Fines), whereas ZATCA contends that the late payment fine should be calculated from the date the tax became due until the date of actual payment. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests reversal of the primary decision concerning the appealed items for the aforementioned grounds.

In response to the statement of appeal, ZATCA submitted a memorandum insisting on the accuracy and correctness of its procedures and requested to dismiss Taxpayer's appeal and uphold the primary decision in relation to the contested items under Taxpayer's appeal. On Wednesday, 28/12/2022 AD, First Appellate Department for Income Tax Violations and Disputes convened its session with the full attendance of its members via video conference in accordance with the procedures for remote video litigation based on Item (2) of Article (15) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. The Department, having reviewed the appeal presented by parties to the case and examined the contents of the case file, determined that the case is ready for determination and issuance of a decision on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds:

Upon reviewing Case documents and statement of appeal submitted by Taxpayer and ZATCA, the Department found that conditions of appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the two Appeal requests were accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

On Merits: Taxpayer's appeal, concerning (Imposition of withholding tax on salaries of employees residing under a business visit visa), lies in their objection to the primary decision issued in this regard, arguing that they entered into agreements with ... -KSA to provide underwater inspection, repair, and maintenance services using divers, equipment, and vessels. Accordingly, Taxpayer recorded these expenses as salaries in their accounting records. Paragraph (A) of Article (68) of the Income Tax Law states: "Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: The price was determined based on the nature of the work and services, including technical services priced at a rate of (5%), and royalties or proceeds at a rate of (15%). Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law, issued by Minister of Finance's Decision No. (1535) dated 11/06/1425 AH (prior to amendment) states: "1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: -Management Fees (20%); -Royalties or proceeds; payments for services to the head-office or an affiliated company (15%); -Rent; technical or consulting services; air tickets, air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums (5%); any other payments (15%)." Subject to the above, it is evident that Taxpayer rented the vessel along with its crew from ... Company, which is a non-resident entity. Subsequently, Taxpayer sponsored independent employees, separate from the aforementioned vessel leasing entity, under temporary short-term contracts on



business visit visas to carry out their operations within the Kingdom. Upon reviewing the case file, it becomes evident that the core of the dispute is documentary in nature, as Taxpayer's objection was dismissed at the resolution stage due to the failure to provide the documents proving compliance with the conditions outlined in the criteria set by ZATCA, particularly regarding the verification of the employment relationship under ZATCA's Circular No. (8922/9/1438) dated 07/02/1438 AH. However, upon reviewing the documents submitted by Taxpayer, it is evident that they provided employment contracts, invitation letters with a (90)-day residence period for contracted divers, as well as evidence of work monitoring, daily work schedules, payroll slips proving the wages, and bank statements confirming the disbursement of salaries at specific intervals. Given the temporary nature of the divers' work for maintenance purposes, as per the contracts signed with ... Company, Taxpayer provided list detailing the duration of the divers' stay. Therefore, Taxpayer provided sufficient evidence supporting their viewpoint. Therefore, the Department satisfies to accept Taxpayer's appeal regarding the non-imposition of withholding tax on the salaries and wages of the divers.

Taxpayer's appeal, concerning (Late Payment Fines), is based on their objection to the primary decision issued in this regard, requesting abolishment of such fines due to a genuine difference in viewpoints. Paragraph (A) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment". Paragraph (1) of Article (68) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH states: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: Delay in payment of due tax as per the Department's assessment". In addition, Paragraph (3) of Article (67) of the Implementing Regulations of the Income Tax Law states: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". Based on the foregoing, upon reviewing the case file and its contents, including the arguments and documents, and considering that the late payment fine should be calculated from the date the tax became due until the date of actual payment, arising from the application of the provisions of the law and the amendments made by ZATCA, and since Taxpayer's appeal, regarding (Imposition of withholding tax on salaries of resident employees) was accepted. Therefore, the Department concludes that the late payment fines are invalid due to invalidity of the tax basis.

Regarding ZATCA's appeal on the remaining contested items, and since there is no objection raised to the Department adopting the reasons for the appealed decision without any additions whenever it is deemed that these reasons sufficiently address the matter without the need for further elaboration, by supporting the same, the Department confirms that no objections raised against the decision warrant a more detailed response than what is already contained therein. Given that the appealed decision concerning the dispute over the contested items aligns with the sound reasons upon which it is based and these reasons are adequate to support the judgment, the Department that issued the decision thoroughly examined the reason for the dispute and reached the conclusion reflected in its ruling. Since the Department did not observe any requirement for correction or further comment based on the arguments presented. Therefore, the Department



dismisses ZATCA's appeal and upholds the appealed primary decision delivered regarding the remaining contested items, based on its reasoning.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal in form filed by Taxpayer/... Company, CR No. (...), TIN No. (...), and ZATCA's appeal against the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2021-182) issued in Case No. (W-8269-2019), related to tax assessment for 2017 AD.

Second: On Merits:

- Accept Taxpayer's appeal and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam in accordance with grounds and merits mentioned herein.
- Dismiss ZATCA's appeal regarding the remaining contested items and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2023-72270)

Issued in Case No. (W-72270-2021)

Keywords:

Appeal - Withholding Tax - Late Payment Fine - Services provided by third parties - The burden of proof of correctness of information in the Taxpayer's return rests with Taxpayer - Taxpayer (Resident) is the third party liable and responsible for withholding tax from amounts paid to non-residents.

Abstract

Taxpayer requests annulment of the primary decision issued in the case concerning the withholding tax for 2019 AD for the months of (March, June, July, August, September, October, November, December) filed by Taxpayer against ZATCA, which ruled to annul ZATCA's decision regarding the withholding tax for March 2019 and the months from June to December 2019 AD. Annul ZATCA's decision concerning the late payment fine. ZATCA's appeal lies in its request to annul the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam. Appellate Department established that Taxpayer failed to withhold tax on payments made to third-party service providers, citing an exemption from all taxes and fees based on the service provider's memorandum of association and articles of association. However, ZATCA clarified that withholding tax was not imposed on Taxpayer's funds in this case, but rather on the non-resident service provider. Therefore, there is no conflict with the memorandum of association or the agreement (attached). Taxpayer is the third party liable and responsible for withholding tax from amounts paid to non-residents. Therefore, the Department ruled to accept Taxpayer's appeal and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam in accordance with grounds and merits mentioned herein.

Instruments:

- Article (68) of [the Income Tax Law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Articles (1/2) (57/3), and (63/1) of [the Implementing Regulations of Income Tax Law, issued by Minister of Finance's Decision No. \(1535\) dated 11/06/1425 AH](#)

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 15/02/2023 AD, the First Appellate Department for Income Tax Violations and Disputes, formed by Royal Decree No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to consider the appeal submitted on 25/09/2021 AD filed by ZATCA against the decision of the First Department for Determination of



Income Tax Violations and Disputes in Dammam No. (IZD-2021-969) issued in Case No. (W-21822-2020), related to withholding tax for 2019 AD for the months (March, June, July, August, September, October, November, December), filed by Taxpayer against ZATCA, where the primary decision ruled as follows:

- 1- Annul ZATCA's decision regarding the withholding tax for March 2019 and the months from June to December 2019 AD.
- 2- Annul ZATCA's decision concerning the late payment fine.

Since the aforementioned decision was not accepted by ZATCA, it presented a statement of appeal to the Department, summarized as follows:

ZATCA challenges the appealed primary decision, specifically regarding (Withholding tax for March 2019 and the months from June to December 2019 AD - Late Payment Fine), whereas ZATCA requests annulment of the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam. Therefore, ZATCA requests reversal of the primary decision regarding the contested items for the aforementioned grounds.

On Wednesday, 15/02/2023 AD, First Appellate Department for Income Tax Violations and Disputes convened its session with the full attendance of its members via video conference in accordance with the procedures for remote video litigation based on Item (2) of Article (15) of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. Having reviewed the appeal presented by parties to the case and examined the contents of the case file, the Department, having found no need for the presence of the parties involved in the appeal, determined that the case is ready for determination and issuance of a decision on its merits. 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 ZATCA, the Department found that conditions of appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations, and decisions. Therefore, the Appeal request was accepted in form for being submitted by a person with legal capacity and within the statutory prescribed period.

On Merits: As for ZATCA's appeal regarding the item (Withholding Tax for March 2019 and from June to December 2019 - Late Payment Fine), ZATCA requests that the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam be overturned. Article 1.2 of the Implementing Regulations of Income Tax Law stipulates that: "A non-resident person with no permanent establishment in the Kingdom who gains income derived from sources within the Kingdom shall be subject to taxation as follows: (a) If the income is of the type set out under Article (68) of the Law, it shall be subject to withholding tax in accordance with rules specified under said Article". Also, Article 63.1 of the Implementing Regulations of Income Tax Law issued by the Minister of Finance's Decision No. (1535) dated 11/06/1425 AH related to tax deduction, which stipulated before being amended by Ministerial Decision No. (1776) dated 18/05/1435 AH: "(1) A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: Rent; technical or consulting services; air tickets, air or maritime freight; international telecommunication services; dividends; loan charges; insurance or reinsurance premiums (rate 5%). Article 57.3 of the same Regulations related to declarations provided as follows: "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". Based on the above, and since it was found that the Taxpayer did not withhold the tax for the amounts paid for services outsourced from external parties under the pretext that they are exempt from all types of taxes and fees, according to its articles of association and bylaws approved by Royal Decree No. (M/21) dated 08/05/1422 AH, and which are basically based on the Grid Interconnection Agreement of GCC states. ZATCA argues that it imposed the tax on non-resident service providers and not on the Taxpayer. Having taken cognizance of Article 10.3 of the Articles of Association of GCC Interconnection Authority, the Department found that the agreement exempted the company's assets (its shares, properties, assets, technical equipment) from all types of taxes, and since the withholding tax is deducted from the funds of a non-resident company that were derived from providing services within the Kingdom, rather than from the Company's assets (its shares, properties, assets), then there is no conflict between the Articles of Association and the Agreement (attached). Rather, the tax is imposed on the party providing the service (the non-resident), while the Taxpayer (the resident person) is considered the third party responsible for withholding the tax from the amount he paid to the non-resident. Accordingly, the Department concludes to accept ZATCA's appeal and cancel the decision of the primary department.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept in from the appeal file by ZATCA, against the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam, No. (969-2021-(IZD), issued in case No. (2020-21822-W) related to the withholding tax for the year 2019 AD, for the months of (March - June - July - August - September - October - November - December).

Second: On Merits:

Accept Taxpayer's appeal and reverse the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam in accordance with grounds and merits mentioned herein.

This decision is considered final in accordance with Articles 47 and 48 of Tax Dispute and Violation Committee Procedures

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2023-72921)

Issued in Case No. (W-72921-2021)

Keywords:

Appeal - Withholding Tax - Late Payment Fine for Non-Payment of the Tax Difference - Technical Dispute Regarding Items Giving rise to the Fine.

Abstract

The Appellant requested to cancel the decision of the primary department in relation to the tax assessment for the year 2004 AD, where the primary department ruled to dismiss the Plaintiff's objection to the Defendant's decision related to the withholding tax in question. The Taxpayer also challenges the primary department's decision regarding this item, claiming that the late payment fine is calculated from the date on which the assessment becomes final due to a technical dispute regarding the items subject to the fine. The Appellate Department established that the tax is calculated from the due date of the tax difference resulting from notifying the Taxpayer of the assessment to the date of payment. Accordingly, it was concluded that ZATCA is not entitled to impose a late payment fine for failure to pay the tax difference resulting from the tax assessment as from the date of submitting the declaration. Rather, it has the right to impose this penalty from the date of notifying the Taxpayer of its assessment, as the Taxpayer cannot be held accountable for this penalty except after he becomes aware of the assessment. Thus, the late payment fine should be adjusted accordingly. As for the Taxpayer's appeal regarding the remaining items, it was established that the appealed decision was found to be sound and based on valid grounds, where the primary committee has duly examined the dispute until it reached its conclusion as stated in the operative part, and this Department found nothing with the appealed decision that deserves its further examination or validation in light of the arguments presented thereto. Therefore, the Department ruled to: Modify the decision of the First Department for Determination of Income Tax Violations and Disputes regarding the item (Late Payment Fine) and dismiss the Taxpayer's appeal regarding the remaining items.

Instruments:

- [Articles \(77.A and B\) of Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- [Articles \(67.3\) and \(71.2\) of the Implementing Regulations of Income Tax Law, issued by Minister of Finance Decision No. \(1535\) dated 11/06/1425 AH.](#)

Facts:

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



On Thursday 12/01/2023, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to hear the appeal filed on 29/09/2021 by Mr....., National ID No., against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, No. (1052-2021- IFR) issued in Case No. (2020-2761-W) related to the tax assessment for the year 2004, in the case filed by the Appellant against ZATCA, in which the primary department ruled as follows:

Dismiss the objection filed by Plaintiff (... Company), Company for Managing Private Projects, TIN No.against the decision of the Defendant ZATCA related to the withholding tax subject to the case.

Dissatisfied with this decision, the Taxpayer filed a statement of appeal to the Department, in which it requested that its appeal be accepted, and the primary decision be overturned.

On Thursday, 12/01/2023 AD, the First Appellate Department for Income Tax Violations and Disputes convened via video conference in accordance with the remote litigation procedures stipulated in Article 15.2 of the Tax Dispute and Violation Committee Procedures issued by Royal Decree No. 26040 dated 21/04/1441AH Having reviewed the appeal and examined the Case file, and upon due deliberation, the Appellate Department determined that the presence of the parties was unnecessary and accordingly closed the pleadings and reserved the Case for judgment.

Grounds:

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

On Merits: As for the Taxpayer's appeal regarding the item (late payment fine), the Taxpayer objects to the primary decision regarding this item, claiming that the calculation of the late payment fine starts from the date on which the assessment becomes final due to a technical dispute regarding the items subject matter of the fine. Article 77(a) of the Income Tax Law issued by Royal Decree No. (M/1) of 15/01/1425 AH 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." Moreover, Article 67.3 of the Implementing Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) of 11/06/1425 AH also stipulates that: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment." Based on the above, it is concluded that the fine imposed on the Taxpayer should be calculated from the date he becomes aware of the assessment, which is consistent with the rules established in this regard including that "An obligation can only be imposed if it is possible and doable for the obligated person, and is known to him in a way that compels him to comply". This means that ZATCA may not impose a late payment fine for failure to pay the difference in tax according to the tax assessment as of the date of submitting the declaration, but rather from the date of notifying the Taxpayer of the fine. Hence, the Taxpayer cannot be held accountable for this fine unless he is aware of the assessment. Therefore, the date for



imposing the late payment fine should be adjusted. Accordingly, this Department rules to modify the primary decision regarding this item.

As for the Taxpayer's appeal regarding the other items subject matter of this case, the Department, having reviewed 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. Therefore, this Department rules to uphold the primary decision regarding the remaining items based on the grounds stated therein.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal filed by Taxpayer/... Company, C.R., TIN No., against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, numbered (1052-2021-IFR) issued in case number (2020-2761-W) related to the tax assessment for the year 2004 AD.

Second: On Merits:

- 1- Modify the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh regarding the item (Late Payment Fine) as per the grounds stated therein.
- 2- Dismiss Taxpayer's appeal regarding the remaining contested items and uphold the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with grounds and merits mentioned herein.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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



Appeal

Appeal Committee

First Appellate Department for Income Tax Violations and Disputes in Riyadh

Decision No. (IR-2023-75094)

Issued in Case No. (ZW-75094-2021)

Keywords:

Appeal - Calculating Withholding Tax on Reinsurance Premiums at a Rate of (5%) - Late Payment Fine - Fines Due to Different Views in Applying the Law - Party that Transferred the Amounts to the Non-resident Bears Withholding Tax.

Abstract

The Appellant appeals the primary department decision delivered in the case concerning withholding tax assessment for December 2018, which ruled as follows: Modify the Defendant's decision to impose the withholding tax on reinsurance premiums at a rate of (5%) on the amount SAR 195,057,978.96 according to the grounds of the decision and modify the Defendant's decision regarding the late payment fine. The Taxpayer claims that the Law stipulates that the party responsible for delivering the withholding tax is the party that transferred the amount to the non-resident person in exchange for services subject to withholding tax, and the late payment fine should not have been imposed as they arose due to difference in viewpoints in the application of the Law. The Department has established regarding the item (Assessment of Withholding Tax for December 2018 and Resulting Fine) that: The Taxpayer submitted several letters issued by reinsurance companies proving that the withholding tax was paid in full on the disputed amounts. Since the party that transferred the amounts to the non-resident bears the withholding tax as per the Law; and since it was the reinsurance companies which transferred those amounts to the non-resident company, they are considered responsible for paying the tax. Regarding ZATCA's appeal on the remaining items, the appealed decision was found to be sound and based on valid grounds, where the primary committee has duly examined the dispute until it reached its conclusion as stated in the operative part, and this Department found nothing with the appealed decision that deserves its further examination or validation in light of the arguments presented thereto. Therefore, the Department ruled to: Accept the Taxpayer's appeal and overturn the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, cancel ZATCA's procedure for the period in dispute, and dismiss ZATCA's appeal regarding the remaining items subject to the case.

Instruments:

- [Article \(15/ 2\) of Tax Dispute and Violation Committee Procedures issued by Royal Decree No. \(26040\) dated 21/04/1441 AH.](#)

Facts:

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



On Tuesday 03/01/2023, the First Appellate Department for Income Tax Violations and Disputes, formed pursuant to Royal Order No. (13957) dated 26/02/1444 AH, convened at its headquarters in Riyadh to hear the appeal filed on 11/10/2021, by, National ID No., in his capacity as the attorney for the Appellant company pursuant to PoA No., and ZATCA, against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, No. (1116-2021-IZJ), issued in Case No. (13213-2020-ZW) related to the assessment of the withholding tax for the month of December 2018, in the case filed by the Appellant against ZATCA. The primary decision ruled as follows:

First: Modify the Defendant's procedure for calculating the withholding tax on reinsurance premiums at a rate of (5%) on the amount SAR 195,057,978.96 according to the grounds stated in the decision.

Second: Modify the Defendant's procedure regarding the late payment fine as per the conclusions reached in the decision.

Since this decision was not accepted by both parties, they submitted a statement of appeal, summarized as follows:

The Taxpayer challenges the primary department's decision regarding the item (Assessment of Withholding Tax for December 2018), claiming that the Law stipulates that the party responsible for paying the withholding tax is the party that transferred the amount to the non-resident person in exchange for services subject to withholding tax. The Taxpayer also states that the Company has submitted evidence of transferring the entire amount in dispute to the local authorities. As for the item (Late Payment Fine), the Taxpayer argues that the imposition of late payment fine is invalid as the fine arose due to different views in the application of the Law, submitting that the fine should be calculated from the date of issuance of the final decision, and accordingly, the Taxpayer requests that the primary department's decision regarding the items subject to the appeal be overturned for the grounds mentioned above.

As the decision was not accepted by ZATCA, it filed its appeal against the contested decision, as detailed in the following statement of appeal:

As for ZATCA's appeal regarding the item (Assessment of Withholding Tax for December 2018), ZATCA challenges the primary decision claiming that it has based its assessment on the agreement concluded between the Taxpayer and Reinsurance Company in Switzerland. It was found that Article (5) of the agreement states that the withholding tax in the Kingdom of Saudi Arabia is borne and paid by the reinsurer (the Taxpayer). It was also found that there is no responsibility on the broker named in the contract, which is contrary to what was stated in the Taxpayer's objection. Moreover, the Plaintiff did not provide evidence that the local reinsurance company transferred those amounts on behalf of the insurance company. As for the item (Unpaid Late Payment Fine), ZATCA maintains the validity of its procedure. Accordingly, ZATCA requested that the primary department's decision regarding the appealed items be overturned for the grounds stated.

Upon submitting the statement of appeal to ZATCA, it responded with a memorandum whereby it maintained the validity and soundness of its procedure, requesting that the Taxpayer's appeal be dismissed, and the decision of the Primary Committee be upheld regarding the items subject to the Taxpayer's appeal.

On Tuesday, 03/01/2023 AD, the First Appellate Department for Income Tax Violations and Disputes held its session with the full attendance of its members via video conference in accordance with the remote video litigation procedures set forth in Article 15.2 of the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH. The Department, after reviewing the appeal submitted by both parties and examining the case file, decided that the case was ready for determination



and the issuance of a ruling on its merits. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds:

Having reviewed the case papers and the statement of appeal submitted by the Taxpayer and ZATCA, the Department found that the conditions for considering the appeal were met in form according to the relevant laws and regulations, and hence the two appeals are acceptable in form being filed by persons with standing and within the period prescribed by law.

On Merits: As for the Taxpayer's appeal regarding the item (Assessment of Withholding Tax for December 2018 and the Related Fine), since the Taxpayer claimed that the Law stipulates that the party responsible for delivering the withholding tax is the party that transferred the amount to the non-resident person in exchange for services subject to withholding tax. The Department, having reviewed the case file and the documents it contained, as well as the appealed decision, established that the Taxpayer, the insurance company, pays the tax amount to the local reinsurance company, which in turn transfers the tax to ZATCA. This is consistent with Article (7) of the agreement signed between the Plaintiff withCompany, and since ZATCA did not provide proof that it has verified that the reinsurance companies paid the withholding tax on the amounts paid to non-resident companies to avoid double taxation, and since the Taxpayer submitted several letters of the reinsurance companies proving that they paid the withholding tax in full on the disputed amounts, and since the law stipulates that the party that transfers the amounts to the non-resident bears the withholding tax, and given that the reinsurance companies transferred those amounts to the non-resident company, they are therefore considered responsible for paying the tax amount. Accordingly, this Department concludes to accept the Taxpayer's appeal and overturn the decision of the primary department and cancel ZATCA's procedure and the fines resulting from the withholding tax for the period in dispute.

Regarding ZATCA's appeal on the remaining contested items, 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. Therefore, this Department rules to dismiss ZATCA's appeal and uphold the primary decision regarding the remaining items based on the grounds stated therein.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept in form the appeal filed by the Taxpayercompany, C.R., TIN No., and the appeal submitted by ZATCA, against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, No. (1116-2021-IZJ) issued in case No. (13213-2020-ZW) related to the assessment of the withholding tax for the month of December 2018.

Second: On Merits:



- 1- Accept the Taxpayer's appeal and overturn the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, and canceling ZATCA's procedure for the period in dispute for the grounds stated in this decision.
- 2- Dismiss ZATCA's appeal regarding the remaining items of the case and uphold the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh for the grounds stated in this decision.

This decision is deemed final pursuant to Articles (47) and (48) of Tax Disputes and Violations Committee Procedures.

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

Successfully Completed, Thanks to Allah