



## UAE VAT – Supreme Court decision on Voluntary disclosure penalties

**UAE Federal Supreme Court recently released its judgement regarding applicability of late payment penalties to Voluntary disclosures.**

Federal Supreme court took a different view than the views taken by Tax dispute resolution Committee (TDRC) and lower courts (Federal court of appeals). TDRC and lower court had previously ruled in favour of the taxpayer.

Key points of the Supreme Court decision are as below:

1. Voluntary disclosure ("VD") is part of tax return filing and is considered as an amendment of original return and not a separate document. VD is considered as branch of original VAT return and is same like late submission of VAT return
2. So, if the VD results in additional tax to be paid to the Federal tax authority ("FTA") then penalties on this late payment of tax will be calculated from the date of original VAT return due date and not the date of filing of VD
3. Federal Supreme Court indicated in its decision that VD is a remedy of the mistake done by the taxpayer in its return and it prevents the tax payer from being exposed to any potential criminal claims for tax evasion

This decision confirms the view taken by FTA on applying penalties retrospectively.

This can in fact lead to potential late payment penalties up to 300% of the tax amount if the errors relate to prior tax periods.

It is likely that TDRC and Federal court of appeals will start following the judgement by the Federal Supreme Court.

### **Considerations for businesses:**

1. Since its clear that there will not be lenient positions taken in case penalties so its very important for businesses to ensure that the VAT returns are submitted error-free in the first instance so concerns can be minimised on the VD related penalties
2. Proper attention should be paid from documentation point of view as many errors could result due to lack of documents and might not support the position taken in the VAT return
3. Businesses should place emphasis on proper tax department within the organization or outsource to expert tax consultants/ tax agents because there could be severe financial implications for wrong filings considering stringent penalty provisions

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