



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

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

Volume (3)



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from Decisions of Zakat and
Tax Appeal Committees**

Volume (3)



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



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Foreword



In the Name of Allah, Most Gracious, Most Merciful

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

It goes without saying that the efforts made by the courts and judicial commission, and the rulings and decisions delivered by them are in their entirety a priceless jurisprudential and judicial wealth, and a product that should be taken care of, and in the context of the commercial and industrial revolution that the Kingdom is going through under the Saudi Vision 2030, may zakat and tax controversies have arisen affecting many people. Therefore, and based on the social responsibility of the General Secretariat of the Zakat, Tax and Customs Committees, the Secretariat has sought to create a solid foundation and reference for the committee members, taxpayers and interested parties. That efforts included the publishing of these (Body of Principles Derived from Decisions of Zakat and Tax Appeal Committees - Volume (3)), 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.

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

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



Praise be to Allah almighty,

Based on the vision and values of the General Secretariat of the Zakat, Tax and Customs Committees, which has taken upon itself to excel in resolving zakat, tax and customs disputes, adopt innovative and effective approaches, enhance transparency and neutrality, develop cooperation between the parties of the zakat, tax and customs ecosystem, and play an effective role in raising the efficiency of legal consideration. This is with the aim of enabling the zakat, tax and customs committees to successfully resolve the disputes before them, and providing support and assistance to the committees at all stages by conducting studies and research, and also helping the taxpayers by clarifying the laws, decisions and judicial precedents, and updating the same periodically. This includes the publishing of this book “Body of Principles Derived from Decisions of Zakat and Tax Appeal Committees - Volume (3)”.

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

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

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

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

Secretary General
Abdullah bin Abdulrahman Al-Suhaibani



Work Methodology:

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

The principles in this book have been arranged according to the followings:

- Formal Principles.
- Zakat Principles.
- Tax principles.
 - Income Tax Principles.
 - Withholding Tax Principles.
 - Value Added and Excise Goods Principles.

A well-thought-out plan has been also developed to come up with an easy and accessible product, and accordingly, work was divided into several stages as follows:

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



Principles Related to Formal Aspect



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Decision No.: IR-2022-7
Case No.: Z-31890-2020

Principle No. 279

The legal period for making the zakat assessment is five years from the end of the end date specified for submitting the declaration, and the Zakat Payer's misapplication of law is no justification for making the assessment after five years from the end date of submitting the declaration.

Facts

The Department convened to consider the Appeal filed on .../... /.... corresponding to .../.../.... By ZATCA regarding the Decision No. (IZD-2020-222) delivered by the Third Department for Determination of Income Tax Violations and Disputes in Riyadh delivered in Case No. (Z-7754-2019) related to zakat assessment for the year 2014 filed by the Appellant against ZATCA. The Primary Department decided as follows:

1. Accept the Plaintiff's objection regarding the zakat assessment for the years 2011 and 2012.
2. Accept the Plaintiff's objection regarding the consumption differences.
3. Accept the Plaintiff's objection regarding the item of social insurance charged with excess.
4. Accept the Plaintiff's objection regarding the import differences.
5. Accept the Plaintiff's objection regarding a component of provisions.
6. Accept the Plaintiff's objection regarding the advance payments.
7. Accept the Plaintiff's objection regarding the financing rental obligations for the year 2011.
8. Accept the Plaintiff's objection regarding the project provisions.
9. Accept the Plaintiff's objection regarding the accounts payable.
10. Accept the Plaintiff's objection regarding the fixed assets.
11. End the dispute regarding the deferred financing interest.
12. End the dispute regarding the expenses of previous years.
13. End the dispute regarding the advance payments for the purchase of fixed assets.
14. Accept the Plaintiff's objection regarding loans against fixed assets for the year 2012.
15. End the dispute regarding rental obligations for the year 2013.

Dissatisfied with the decision, ZATCA filed a statement of appeal before the Department, the summary of which is as follows:

ZATCA objects to the primary decision's conclusion regarding item second "substantive part" claiming that with regard to the prescription, it is invalidated by ZATCA proving that the taxpayer's declaration is invalid, which in itself entitles ZATCA to adjust the declaration based on paragraph (8/c) of the Implementing Regulations for Zakat Collection issued in 1438 AH. The primary department also based its conclusion regarding all items on its conclusion regarding the items (import differences) and (contract differences), despite the fact that ZATCA's adjustment was made to 15 items. ZATCA also proved the validity of its adjustments to the items subject matter of appeal as stated in the adjusted assessment issued by ZATCA. As for the rest of items, the primary department delivered its decision for years that are different from the year in question, and it didn't discuss those items with ZATCA's representative during the hearing and rather stated one



ground for all items, namely “...accordingly, the department is satisfied of the validity of the Plaintiff’s declaration and hence accept the Plaintiff’s objection). The primary department didn’t name the documents not the evidence that it has based satisfaction of the Zakat Payer’s declaration upon nor did it clarify how it reached convictions of the Zakat Payer’s submissions, which deems its decision defective with poor reasoning based on the established principle that judicial rulings should be based on solid grounds rather than uncertain conclusions. ZATCA also maintained its defenses against the items in dispute as contained in the plea submitted to the department requesting that the primary decision is dismissed for the stated grounds.

Having opened the door for pleadings, the Department received a reply from the Zakat Payer on 22/05/1442 AH corresponding to 05/01/2021 AD, in which the Zakat Payer responded to ZATCA’s appeal, stating that with regard to the primary department’s failure to provide grounds for its conclusion, the department provided grounds for not accepting ZATCA’s adjustments to the two declarations because ZATCA had no right to do so after the expiry of the legal period specified as five years and due to the validity of the Zakat Payer’s declaration, which entitled the department to not proceed to the substantive part of case as it had ruled that the Zakat Payer’s declaration is acceptable with no need to adjustment. The Zakat Payer also claimed that ZATCA was not mindful that the department didn’t have to proceed to deciding upon the mentioned items due to its conviction that ZATCA had no right to make the adjustments, and it rather delivered its decision in view of the fact that ZATCA failed to provide documents supporting its claims. Accordingly, the Zakat Payer requested that ZATCA’s appeal be dismissed and that the primary decision be upheld for the stated grounds.

On Wednesday, 07/03/1443 AH, corresponding to 13/10/2021 AD, the Department decided to hold a 10-day e-hearing session. During that period, the Department received a number of documents from the ZAKAT payer that are substantively similar to the pleas he submitted previously.

On Thursday, 03/06/1443 AH, corresponding to 06/01/2022 AD, upon reviewing appeal notes and replies thereto, examining all papers and documents contained in Case file, the Department decided that the Case was ready for adjudication and delivery of a decision on its merits. Accordingly, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

The Department, having considered the dispute, and reviewed the case file, and having in mind that legal period for making the assessment is five years from the end date for submitting the declaration, and having reviewed the letters of adjustments made by ZATCA to the Zakat Payer’s declaration, found that ZATCA made the assessment on 15/11/2018, and since the end date for submitting the zakat declaration for the year 2011 is 30/04/2011 AD, it is established that the assessment was made after five years from the date set for submitting the Zakat Payer’s declaration. This conclusion however is not affected by ZATCA’s argument that it had the right to open assessments after the lapse of the legal period in cases on misapplication of law by the Zakat Payer, since the exception permitted by the legislator is limited to material and mathematical errors, which are related to mathematical processing of numbers, but as for the misapplication of law or changing the practice in applying the law, these are among the matters in which the legislator did not authorize ZATCA to make re-assessment of zakat payable by the Zakat Payers after passage of the five-year period; and Since the Zakat Payer’s declaration is acceptable unless invalidated by evidence to the contrary; and Since the specification of the five-year period from the end date for submitting zakat declarations by the Zakat Payer for collection



of zakat aimed at ensuring stability of transactions and not leaving the positions of Zakat Payers unsettled without setting a specific period, accordingly, this Department concludes to dismiss ZATCA's appeal and uphold the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam.

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

Decision

First: Accept in form the appeal filed by ZATCA against the Decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam No. (IZD-2020-222) issued in Case No (Z-7754-2019) in connection with tax assessment for the period (2012-2015).

Second: On Merits: Dismiss ZATCA's Appeal and confirm the decision delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the grounds and merits mentioned above.

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

Similar Decisions
First Appellate Department for Income Tax
Violations and Disputes
IR-2022-22



Principle No. 280

Failure to duly notify Zakat Payer of the date of hearing deems the case unready for determination and requires that the case is remanded.

Facts

The Department convened to consider the Appeal filed on .../.../... corresponding to .../.../... by, holder of Iqama ID No., in his capacity as the owner of Appellant Establishment, against the First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-295) rendered in Case No. (Z-8862-2019) related to tax assessment for 2014 filed by Appellant against ZATCA. The Primary Department decided as follows:

Dismiss the objection of the PlaintiffEstablishment, TIN No.....to ZATCA's decision in relation to the zakat assessment subject to the case.

Dissatisfied with the decision, the Zakat Payer filed a statement of appeal, which is summarized as follows:

The Zakat Payer objects to the primary decision claiming that the primary decision which ruled to dismiss his case has been delivered in his absence due to non-submission of contracts in issue, which is not true. The Zakat Payer clarified that due to the large size of those contracts, he contacted the Secretariat, which requested that the contracts be sent via e-mail, and the contracts were sent in three batches and an acknowledgment of receipt mail was received and copies of the contracts were attached. Accordingly, the Zakat Payer requested that the primary decision be overturned for the grounds stated above.

Having opened the door for pleadings, the Department received a reply from the ZATCA on 06/07/1442 AH corresponding to 17/02/2021 AD, in which it responded to the Zakat Payer's appeal, stating that it confirms its point of view presented before the primary department, and that the Zakat Payer did not provide ZATCA with valid contracts for all years. Neither did the Zakat Payer submit the same to ZATCA during the examination and objection stage, nor did he submit it to the department that issued the decision under appeal, which indicates his inability to prove his claims. Moreover, in issuance of its decision in dispute, ZATCA relied on the information and documents submitted to it, in accordance with Articles 20 and 22.3 of the Implementing Regulations for Zakat Collection and it requested that no further documents that had not been submitted during the inspection and objection stage be accepted. Accordingly, ZATCA maintained the validity and soundness of its procedure and requested that the Zakat Payer's appeal be dismissed and the decision of the primary department be upheld for the grounds stated.

On Tuesday 29/06/1443 AH corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing session. However, that period passed without receiving any additional submissions from the two parties to the appeal.

On Thursday 25/10/1443 AH corresponding to 26/05/2022 AD, the Department, having considered the submissions related to the appeal and the replies thereto and having examined the



case papers and documents, established that the case is ripe for adjudication and delivering a decision, and accordingly decided to close the pleading and set the case for adjudication.

Grounds



Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

As on merits, where the Zakat Payer argued that he was unable to attend the hearing before the primary department for not receiving the link of that session, while ZATCA moved to dismiss the Zakat payer's appeal and uphold the primary decision. The Department, having considered the dispute and reviewed the primary decision, found that the Zakat Payer had not attended the hearing, and since the Zakat Payer argued that he was not notified of the date of the hearing before the primary Department, and since the primary decision didn't prove that the Zakat Payer was given ample time and allowed to submit his defenses against ZATCA's claims, therefore, this Department determines that this case was not ready for adjudication in absence of the Zakat Payer or the Zakat Payer having submitted a written objection against ZATCA defense raised before the primary department. Accordingly, this Department concludes to reverse the primary decision and remand the case to the primary department for re-consideration after validating that the Zakat Payer has been duly served a notice.

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

Decision

First: Accept in form the appeal submitted by the Zakat Payer..... establishment, C.R. No....., TIN No..... against the Decision No. (IFR-2020-295) of the First Department for Determination of Income Tax Violations and Disputes in Riyadh delivered in case number (Z-8862-2019), related to the Zakat assessment for the year 1439 AH.

Second: On Merits: Overturn the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh and remand the Case for reconsideration according to grounds and reasons stated herein.

Similar Decisions

First Appellate Department for Income Tax
Violations and Disputes

IR-2022-65

IR-2022-50



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-2

Case No.: Z-41505-2021

Principle No. 281

- Non reasoning of ZATCA's assessment deems the assessment defective in form, and it thus loses the status of a valid administrative decision.

Facts

The Department convened to consider the appeal filed on /.../..., corresponding to /.../... by, National ID No. in his capacity as the attorney for the Appellant Company under POA No., against the Decision No. (IZD-2021-11) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam in case No. (Z-8511-2019) in respect of the zakat assessment for the year 2017 AD, filed by the Appellant against ZATCA. The primary decision ruled as follows:

Dismiss in form the case of the Plaintiff ... Company, C.R. No.....

Dissatisfied with the decision, the Zakat Payer..... Company filed a statement of appeal, which is summarized as follows:

The Zakat Payer appeals the decision of the primary department claiming that the Company's officer responsible for accounts and zakat was outside the Kingdom when the assessment was issued and due to Internet connection issues in the country where he was, he was unable to submit the assessment within the regular period; and also acknowledging that Zakat is a pillar of Islam and a religious duty that does not expire with the passage of time. Accordingly, the Zakat Payer requested that the decision of the primary department be overturned for the reasons stated above. On,./.../..... .../.. corresponding to/.. /.../..., the Department decided to hold a 10-day e-hearing season. During that period, the Zakat Payer submitted a number of petitions that did not present any new arguments beyond what had already been submitted.

On,./.../..... .../.. corresponding to/.. /..., the Department, having reviewed the appeal petitions and replies, and having examined the case papers and documents contained in the case file, the Department decided that the case was ripe for adjudication. Therefore, it decided to close the pleading and set the case for adjudication.

Grounds

Having taken a look at the case papers and the statement of appeal submitted by the Zakat Payer, the Department found that the formal conditions for considering the appeal were met as per the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is acceptable in form for being submitted by a person with a capacity, and within the period prescribed by law.

As On Merits, the Zakat Payer argued that he was unable to file his objection within the period prescribed by law due to Internet connection issues in the country where the officer responsible for the zakat accounts has been at the time of assessment. Having perused the statement of appeal and the documents contained in case file as well as the assessment letter issued by ZATCA, the



Department found that the letter did not satisfy its formal requirements as stipulated by the law, as it didn't include the grounds for assessment that enable the Zakat Payer to submit reasoned objection. ZATCA should have stated the grounds on which it based the amendment of tax assessment so that the Zakat Payer can accept or object to the amendment. As such, the Department holds that ZATCA's assessment was marred with formal defect and thus it loses the status of a correct administrative decision. This conclusion however is not diminished by the legal provision that ZATCA's decision is not appealable after the expiration of the period prescribed by law for challenging it; since this provision applies if the decision is valid and sound and if it has satisfied its legal requirements. Accordingly, the Department concludes to cancel the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam and to remand the case to the primary department to redetermine it.

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

Decision

First: Accept in form the appeal filed by the Zakat Payer.....Company, C.R. No., TIN No. against the Decision No. (IZD-2021-11) of the First Department for Determination of Income Tax Violations and Disputes in Dammam delivered in case number (Z-8511-2019) related to the zakat assessment for the year 2017.

Second: On Merits:

Accept the Zakat Payer's appeal, cancel the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam, and remand the case as per the reasons and grounds stated in this decision.

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

Similar Decisions

First Appellate Department for Income Tax
Violations and Disputes

IR-2022-62

IR-2022-121



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-6

Case No.: Z-32888-2020

Principle No. 282

- Failure to send the link to the hearing before the primary department to the Zakat Payer and failure to give the Zakat Payer ample time and ensure his ability to attend the hearing nullifies the dismissal of the case due to the absence of the Zakat Payer's representative.

Facts

The Department convened to consider the appeal filed on .../.../..., corresponding to .../.../..... by....., National ID No. in his capacity as the attorney for the Appellant Company under POA No. against the Decision No. (IFR-2020-195) of the First Department for Determination of Income Tax Violations and Disputes in Riyadh delivered in case No. (Z-8382-2019) in relation to the zakat assessment for the year 2017 AD against ZATCA. The primary decision ruled as follows:

Dismiss the case filed by the Plaintiff.....Company, TINagainst the Defendant the General Authority of Zakat and TAX (currently ZATCA).

Dissatisfied with the decision, the Zakat PayerCompany filed a statement of appeal, the summary of which is as follows:

The Zakat Payer objects to the decision of the primary department claiming that he was notified of the date of the session but he didn't receive a link to the session and that he has requested the link before the start of the session but received nothing from the General Secretariat of the Zakat, Tax and Customs Committees, and accordingly the Zakat Payer requests that the primary decision be overturned for the grounds stated above.

On, /.../..... .../... corresponding to/... /..., the Department decided to hold 10-day e-hearing session. however, the specified period passed without receiving any further document from the parties to the appeal.

On,.../.../..... .../.. corresponding to/.. /..., the Department, having reviewed the appeal petitions and replies, and having examined the case papers and documents contained in the case file, the Department decided that the case was ripe for adjudication. Therefore, it decided to close the pleading and set the case for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

As on merits, the Zakat Payer objects to not receiving a link to the hearing before the primary department from the General Secretariat of the Zakat, Tax and Customs Committees. Having examined the dispute and reviewed the case papers, the department established that the primary



department ordered that the case be dismissed due to absence of the Zakat Payer's representative holding that the Zakat Payer was duly notified. The Department, having reviewed the documents attached to the appeal file, found that the Zakat Payer had addressed the General Secretariat via e-mail to request the link to the hearing before the primary department so that he could attend it. However, there was no evidence that the link had been sent to the Zakat Payer, nor that the Zakat Payer had been given an enough time to ensure he could appear at the hearing, which confirms that the decision of the primary department is invalid. Accordingly, this Department decided to cancel the primary decision and remand the case to the primary department to re-determine it after having ensured that the Zakat Payer was given the chance to attend the hearing. In view of the foregoing, and in light of stated reasons, the Department unanimously decided as follows:

Decision

First: Accept in form the appeal filed by the Zakat PayerCompany, C.R. No....., TIN No..... against the Decision No. (IFR-2020-195) of the First Department for Determination of Income Tax Violations and Disputes in Riyadh delivered in case number (Z-8382-2019), related to the Zakat assessment for the year 2017.

Second: On Merits: Accept the Zakat Payer's appeal, cancel the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, and remand the case for the reasons and grounds stated in this decision.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-14

Case No.: Z-25092-2020

Principle No. 283

To determine whether to accept or reject the objection due to non-payment of the undisputed amounts falls within the jurisdiction of the committees for determination of tax disputes based on the relevant laws and regulations.

Facts

The Department convened to consider the appeal filed on .../.../..., corresponding to .../.../..., by, National ID No. in his capacity as the attorney for the Appellant Company under POA No. against the Decision No. (IZD-2020-90) of the First Department for Determination of Income Tax Violations and Disputes in Dammam delivered in Case No. (Z-2202-2019) in relation to the zakat assessment for the year 2014 AD, filed by the Appellant against ZATCA. The primary decision ruled as follows:

Dismiss in form the case filed by the Plaintiff.....Company, C.R. No.....for instituting the case after the period prescribed by law.

Dissatisfied with the decision, the Zakat Payer..... Company filed a statement of appeal, which is summarized as follows:

The Zakat Payer appeals the decision of the primary department claiming that he was notified of the assessment for the year 2016 on .../.../..., and that he tried to make the payment on due date, but he was unable to do so due to ZATCA's requirement to pay the undisputed amounts in order to admit the objection. But being unable to pay the undisputed amount for lack of liquidity, his accounts were frozen by the Saudi Central Bank. The Zakat Payer requested to pay the amount in installments, but ZATCA didn't accept that. As such, the Zakat Payer argued that the objection was submitted within the period prescribed by law but not accepted due to the requirement to pay the undisputed amounts. Accordingly, the Zakat Payer requests that the decision of the primary department be overturned for the grounds stated above.

On,.../.../.... AH corresponding to/... AD, the Department decided to hold a 10-day e-hearing session. During that period, ZATCA submitted a plea whereby it answered the Zakat Payer's claims maintaining its statements submitted before the primary department, and claiming that the decision of the primary department was consistent with the provisions of paragraph (1) and paragraph (4/A) of Article (22) of the Implementing Regulations for Zakat Collection issued in 1438 AH, and Article (2) of the Tax Disputes and Violations Committee Procedures. Accordingly, ZATCA maintained the validity and soundness of its procedure and requested that the Zakat Payer's appeal be dismissed and the decision of the primary department be upheld for the grounds stated above.

On,.../.../.... .../.. corresponding to/.. /..., the Department, having reviewed the appeal petitions and replies, and having examined the case papers and documents contained in the case file, the Department decided that the case was ripe for adjudication. Therefore, it decided to close the pleading and set the case for adjudication.



Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

As On Merits, the Zakat Payer challenged the primary decision as it approved ZATCA's rejection of his objection despite being submitted within the prescribed period on grounds that he had not paid the undisputed amounts, while ZATCA moved to dismiss the Zakat Payer's appeal and to uphold the primary decision. The Department, having reviewed the Zakat Payer's appeal for the year 2014, and examined the primary decision, and having taken cognizance of the contents of the case file, found that the Zakat Payer had submitted to the department documents proving that ZATCA had rejected his objection due to non-payment of the undisputed amounts. However, the Department established that this rejection, if proven, does not fall within the jurisdiction of ZATCA but rather falls within the jurisdiction of the committees for settlement of tax disputes based on the relevant laws and regulations; and Since the Zakat Payer is entitled to file an objection regardless of whether the undisputed amounts were paid or not, and given that the appealed decision was found to have not discussed the submissions made by the Zakat Payer, nor was it established that the Zakat Payer was allowed to file his submissions in this respect, therefore, this Department concludes to overturn the primary department's decision since it did not fulfill its jurisdiction to adjudicate the subject matter of the dispute, thus making the dispute unsettled in terms of its subject matter, and as such this Department also decides to remand the case to the First Department for determination of Income Tax Violations and Disputes in Dammam.

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

Decision

First: Accept in from the appeal filed by the Zakat Payer.....Company, C.R. No....., TIN No..... against the decision No. (IZD-2020-90) of the First Department for Determination of Income Tax Violations and Disputes in Dammam delivered in Case No. (Z-2202-2019) in relation to the zakat assessment for the year 2014 AD.

Second: On Merits: Dismiss the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam, and remand the case for the reasons and grounds stated in this decision.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-26

Case No.: Z-28984-2020

Principle No. 284

- **The failure by Zakat Payer to object to the assessment before ZATCA before bringing his case before the primary department caused his case to be dismissed for being prematurely filed as a result of his failure to initially submit an objection to the administrative authority.**

Facts

The Department convened to hear the appeal filed on .../.../..., corresponding to .../.../..... by.....,holder of National ID No., in his capacity as the attorney for the Appellant Company by virtue of POA No..... against the Decision No (IZD-2020-179) of the First Department for Determination of Income Tax Violations and Disputes in Dammam delivered in case No. (Z-10195-2019) in relation to the zakat assessment for the years 2015 and 2016, filed by the Appellant against ZATCA. The primary decision rules as follows:

Dismiss in form the case filed by the Plaintiff.....Company, C.R. No. for not submitting an objection to the zakat assessment for the years 2015 and 2016 to the Defendant.

Dissatisfied with the decision, the Zakat PayerCompany filed a statement of appeal, the summary of which is as follows:

The Zakat Payer objects to the primary decision claiming that ZATCA originally rejected the objection after the prescribed period, even if the site failure was repaired after the case was filed, which means that the objection to ZATCA after the case was filed is not acceptable, because ZATCA does not consider the grounds leading to the delay in the objection, which are administrative grounds that have been overlooked when entering the correspondence in ZATCA's system, and despite the presence of the amendment letter in the correspondence, it did not reach the email. Accordingly, the Zakat Payer requests that the primary department's decision be overturned for the grounds mentioned above.

On Wednesday 07/03/1443 AH, corresponding to 13/10/2021 AD, the department decided to hold a 10-day e-hearing session. During that period, ZATCA submitted a plea answering the claims contained in the Zakat Payer's statement of appeal arguing that it adheres to the validity of the decision of the primary department, being consistent with the provisions of Article 22.1 of the Implementing Regulations for Zakat Collection issued in 1438 AH. ZATCA also maintained its arguments submitted before the primary department, stating that the Zakat Payer didn't provide any new arguments other than those raised before the primary department which was responded to by ZATCA. In conclusion of its plea, ZATCA maintained the validity and soundness of its decision and requested that the Zakat Payer's appeal be dismissed and the decision of the primary department be upheld for the grounds stated.

On Tuesday 18/04/1443 AH corresponding to 23/11/2021 AD, the Department, having reviewed the Zakat Payer's appeal, requested the Zakat Payer to provide proof of his inability to submit his objection before ZATCA within no more 7 days from the date of that session. However, nothing was received from the Zakat Payer.



On Sunday 01/05/1443 AH corresponding to 05/12/2021 AD, the Department, having reviewed the case file, once again requested the Zakat Payer to provide justification for his failure to submit an objection before ZATCA before instituting his case before the primary department, and to provide proof of his inability to submit his objection before ZATCA within not more 3 days from the date of that session. The Department also requested ZATCA to provide proof that it had notified the Zakat Payer of the assessment and to clarify how the Zakat Payer was so notified within 3 days from the date of that session. The department then received a docket of documents from the parties.

On Sunday, 20/06/1443 AH corresponding to 23/01/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: Having taken cognizance of Case file, the Department found that Zakat Payer's appeal involves claim that it did not receive amendment letter via email from ZATCA, so that Zakat Payer can file an objection to such amendment. On the other hand, ZATCA maintains validity and correctness of its procedures and requests the Department to dismiss Zakat Payer's appeal and uphold the primary decision. Having carefully considered the subject matter of the dispute and examined the case file, the Department finds that the Zakat Payer confirmed in its appeal that it did not initially submit an objection to ZATCA before filing the case before the Primary Department, thereby confirming correctness of the conclusion concluded by the Primary Department. The Zakat Payer's claim of not receiving the amendment letter via email does not undermine validity of the appealed decision. It is well-established in jurisprudence that filing a complaint with the issuing authority is binding before seeking judicial review, as outlined in Rules of Tax Dispute and Violation Committee Procedures. The Department is obligated to first verify procedural compliance before addressing the substantive issues of the case. Since the Zakat Payer did not file an objection to ZATCA before initiating its claim before the Primary Department, which concludes that the Zakat Payer filed its case prematurely due to its failure to objection before the administrative authority. Therefore, this Department dismisses the Zakat Payer's appeal and affirms the primary decision.

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

Decision

First: Accept appeal in form filed by Zakat Payer (... Company, C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-179) rendered in Case No. (Z-10195-2019) regarding zakat assessment for 2015 and 2016.

Second: On Merits:

Dismiss Zakat Payer's appeal and uphold decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-33

Case No.: Z-27906-2020

Principle No. 285

- **The provisions set by legislator, which make ZATCA assessment decision unappealable by lapse of statutory period for objection, as this matter applies when the decision is valid and meets formal requirements stipulated by the law. In the event the appealed decision is seriously flawed, such decision shall be appealable without being bound by procedural time limits specified by law.**

Facts

To consider the appeal filed on .././... corresponding to .././... by ..., holder of National ID No. (...), in his capacity as representative of Appellant Company by virtue of its Articles of Association, against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-184) rendered in Case No. (Z-7022-2019) regarding zakat assessment for 2014 filed by Appellant against ZATCA, in which the Primary Department ruled as follows: Dismiss the Case filed by Plaintiff (... Company), C.R. No. (...), due to expiry of the statutory period.

Dissatisfied with the decision, the Zakat Payer..... Company filed a statement of appeal, which is summarized as follows:

Zakat Payer objects to Primary Department's decision, subject matter of appeal, claiming that zakat assessment in question was made before completion of full lunar year. In addition, the Primary Department addressed the procedural aspects rather than substance of the case. Therefore, Zakat Payer requests overturning the appealed decision for the aforementioned reasons.

On,.././.... AH corresponding to .././..., the Department decided holding 10-day e-hearing. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal. The answer is summed up in that ZATCA maintains its previous position submitted before the Primary Department. Moreover, the primary decision aligns with Article (22) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. ZATCA also stated that the arguments raised by Zakat Payer do not differ from such arguments previously raised, to which ZATCA replied at that time. Furthermore, ZATCA requests the Department to dismiss any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Civil Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On,.././..... .././... corresponding to/./... /..., the Department, having reviewed the appeal petitions and replies, and having examined the case papers and documents contained in the case file, the Department decided that the case was ripe for adjudication. Therefore, it decided to close the pleading and set the case for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the



conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: Zakat Payer's appeal involves objection to zakat assessment in question, claiming that the required lunar year had not passed. On the other hand, ZATCA requests the Department to dismiss Zakat Payer's appeal and uphold the Primary Department's decision. Having taken cognizance of the subject matter of dispute, Zakat Payer's appeal, documents included in Case file and ZATCA assessment notification, the Department found that such notification did not meet the formal requirements stipulated by law, since it did not include reasons for amendment whereby Zakat Payer can file a reasoned objection. Therefore, this Department concludes that ZATCA assessment is marred by a defect in form, rendering it an invalid administrative decision. This is not undermined by the provisions set by legislator, which make ZATCA assessment decision unappealable by lapse of statutory period for objection, as this matter applies when the decision is valid and meets the requirements stipulated by the law. Since this Department found that the appealed decision contains a serious flaw; therefore, such decision may be appealable without being bound by the procedural time limits stipulated by the law. Thereupon, this Department overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam and remands the Case to the First Department for Determination of Income Tax Violations and Disputes in Dammam for reconsideration on merits.

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-184) rendered in Case No. (Z-7022-2019) regarding zakat assessment for 2014.

Second: On Merits:

Dismiss the decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam, and remand the case for the reasons and grounds stated in this decision.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-68

Case No.: Z-31414-2020

Principle No. 286

- **If it is proven that Zakat Payer filed its case within the statutory period from the date of being notified of rejecting settlement request, the case shall be remanded to the primary department for reconsideration on merits.**

Facts

To consider the appeal filed on .././... corresponding to .././... by ..., holder of National ID No (...), in his capacity as Appellant Company's attorney under POA No. (...), against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-268) rendered in Case No. (Z-15178-2020) regarding zakat assessment for 2014 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

Dismiss the Case filed by Plaintiff (... Company), TIN (...), against Defendant (ZATCA) for failure to file a grievance before the Primary Department against Defendant's decision, subject matter of the Case, within the statutory period.

Dissatisfied with the decision, the Zakat Payer..... Company filed a statement of appeal, which is summarized as follows:

Zakat Payer objects to Primary Department's decision, subject matter of appeal, claiming that dismissing the Case in form by the Primary Department is invalid, since the Department did not consider the decision of Internal Committee (Resolution Committee) on the ground that after ZATCA issued assessment decision, Zakat Payer filed an objection within the statutory period. Thereafter, Zakat Payer submitted settlement request to Resolution Committee whose decision was issued on 30/04/2020 AD. Thereupon, Zakat Payer requests overturning Primary Department's decision, subject matter of appeal, for the aforementioned reasons.

On,.././.... AH corresponding to .././..., the Department decided holding 10-day e-hearing. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal, by reiterating its previous position presented before the Primary Department. In addition, Primary Department's decision was rendered in accordance with Article (2) of Tax Dispute and Violation Committee Procedures. Since the interval between objection rejection date and Case filing date is more than (30) days. Therefore, the decision becomes unappealable by expiry of statutory period. Moreover, Zakat Payer's arguments do not differ from such arguments previously submitted, to which ZATCA has already answered at that time. Furthermore, ZATCA requests the Department to dismiss any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Civil Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On,.././..... .././... corresponding to/./... /..., the Department, having reviewed the appeal petitions and replies, and having examined the case papers and documents contained in the case file, the Department decided that the case was ripe for adjudication. Therefore, it decided to close the pleading and set the case for adjudication.



Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: Since Zakat Payer's appeal involves the argument that there are no valid reasons for Primary Department to dismiss the Case in form, as it was filed a by a party having capacity and within the statutory period from the date of being notified of ZATCA Resolution Committee's decision. On the other hand, ZATCA requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and Primary Department's decision, the Department found that the appeal involves Zakat Payer's claim to accept its Case in form on the ground of being filed within the statutory period from the date of being notified of Resolution Committee's decision. Since Primary Department's decision to dismiss the Case in form was based on the fact that the Case was filed after expiry of statutory period from the date of notifying Zakat Payer of ZATCA rejection of objection to its decision. Since this Department found that Zakat Payer submitted a settlement request to ZATCA Internal Settlement Committee on 22/01/2020 AD, and that Zakat Payer was notified of settlement request rejection on 30/04/2020 AD, and subsequently filed the case with the General Secretariat on 12/05/2020 AD in accordance with Article (2) of Tax Dispute and Violation Committee Procedures that grants Zakat Payer the right to file its Case before Primary Committees within thirty days from the date of being notified of Internal Committee's decision or expiry of statutory period. This indicates that Zakat Payer filed its Case within the statutory period from the date of being notified of settlement request rejection. Therefore, this Department overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh and remands the Case for reconsideration on merits.

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (IFR-2020-268) rendered in Case No. (Z-15178-2020) regarding zakat assessment for 2014.

Second: On Merits: Accept the Zakat Payer's appeal, cancel the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, and remand the case for the reasons and grounds stated in this decision.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-141

Case No.: Z-74278-2021

Principle No. 287

- **If there is no legal entity available for the assessment for the year in question, as the enterprise that was assessed had been transformed into a different legal entity. Consequently, the Department concludes that ZATCA assessment was incorrect and invalid, as it was not issued against a zakat payer. Accordingly, ZATCA assessment decision is marred by a defect in reasoning, rendering it an invalid administrative decision due to the absence of one of its essential elements.**

Facts

To consider the appeal filed on 29/02/1443 AH corresponding to 06/10/2021 AD by ..., holder of National ID No. (...), in his capacity as the owner of Appellant Enterprise against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-965) rendered in Case No. (Z-42246-2021), regarding zakat assessment for 2017 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

Dismiss the Case in form filed by Plaintiff (...), holder of National ID No. (...), against Defendant (ZATCA) as stated in the grounds.

Dissatisfied with the decision, the Zakat Payer filed a statement of appeal, which is summarized as follows:

Zakat Payer objects to the primary decision, claiming that it did not file an objection within the statutory period because it was not notified of the assessment at the correct address. In addition, Zakat Payer closed all records for the enterprise and converted it into branches of another company, so Zakat Payer is no longer holds commercial records or licenses for assessment period and has no domicile at that time. Moreover, ZATCA procedure outlined in levying zakat on both the company and the enterprise simultaneously constitutes a double payment of zakat. Therefore, Zakat Payer requests overturning Primary Department's decision, subject matter of appeal, and hearing its Case on merits for the aforementioned reasons.

On Monday 04/08/1443 AH corresponding to 07/03/2022, the Department decided to hold a 10-day e-hearing. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal, by reiterating its previous position presented before the Primary Department. In addition, Zakat Payer did not file an objection before ZATCA within the statutory period. Therefore, ZATCA decision becomes unappealable in accordance Article (2) of Tax Dispute and Violation Committee Procedures. In addition, Zakat Payer did not file an objection before the Primary Committee within the statutory period. Therefore, ZATCA decision becomes unappealable by lapse of the statutory period in accordance with Paragraph (1) of Article (3) of Tax Dispute and Violation Committee Procedures. Furthermore, ZATCA requests the Department to dismiss any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Civil Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing



Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On Thursday 21/081443 AH corresponding to 24/03/2022 AD, the Department, having considered the submissions related to the appeal and the replies thereto and having examined the case papers and documents, established that the case is ripe for adjudication and delivering a decision, and accordingly decided to close the pleading and set the case for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: Since Zakat Payer's appeal involves claim that the enterprise has no legal status during assessment year in question. On the other hand, ZATCA requests the Department to dismiss Zakat Payer's appeal and uphold the primary decision. The Department, upon reviewing the dispute regarding 2017 and having taken cognizance of Case file, found that there was no legal entity available for the assessment for the year in question, as the enterprise that was assessed had been converted into a different legal entity. Accordingly, the Department concludes that ZATCA assessment was incorrect and invalid, as it was not issued against a zakat payer. Therefore, this Department finds that ZATCA assessment decision is marred by a defect in reasoning, rendering it an invalid administrative decision due to the absence of one of its essential elements. This is not undermined by the provisions set by legislator, which make ZATCA assessment decision unappealable by lapse of the statutory period for objection, as this matter is does not apply to the administrative decision that are marred by a defect in reasoning. Since this matter is established if the decision is valid and meets the legal requirements. Therefore, this Department accepts Zakat Payer's appeal, annul ZATCA assessment decision and overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Enterprise), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No (IZJ-2021-965) rendered in Case No. (Z-42246-2021) regarding zakat assessment for 2017.

Second: On Merits:

Accept Zakat Payer's appeal, overturn the decision rendered by the First Department for the Determination of Income Tax Violations and Disputes in Jeddah, and annul ZATCA assessment subject of the case according to reasons and grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-200

Case No.: ZW-72364-2021

Principle No. 288

- **The case may not be heard regarding an item that has already been adjudicated.**

Facts

To consider appeal filed on ../../... corresponding to ../../... by ..., holder of National ID No. (...), in his capacity as the legal representative of Appellant Company, under its memorandum of association, and appeal filed on 22/02/1443 AH corresponding to 29/09/2021 AD by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-883) rendered in Case No. (ZW-22993-2020) regarding zakat assessment for years from 1427 to 1433 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

First: Dismiss objection filed by Plaintiff (... Company), C.R. No. (...), to (Ministry of Finance Loan for 1433) item.

Second: Accept objection filed by Plaintiff (... Company), C.R. No. (...), to (Amounts Payable by Some Founders) item.

Third: Dismiss objection filed by Plaintiff (... Company), C.R. No. (...), to (Derecognizing Amounts Related to CWIP) item.

Fourth: Dismiss objection filed by Plaintiff (... Company), C.R. No. (...), to (Accumulated Losses) item.

Fifth: Establish resolution of dispute over (Withholding Tax) item when Plaintiff accepted Defendant's procedure.

Dissatisfied with this decision, both parties filed a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer's appeal involves: Regarding (Company's Objection for years from 1427 to 1430) item, Zakat Payer claims that Primary Department's decision dismissed its objection on the ground that Appellate Committee rendered a decision in this regard. In addition, Zakat Payer states that it submitted a petition to the Board of Grievances "BoG" against Decision No. (2473) of 1439 for reconsideration of grievance. Therefore, Zakat Payer requests considering such grievance according to Company's petition. Regarding (Ministry of Finance Loan for 1437) item, Zakat Payer claims that the amount of loan used in financing long-term assets is SAR 868,326,168. In addition, the remaining amount of loan included in zakat base amounting to SAR 669,218,139 was not used in financing long-term assets and did not complete a full year. Regarding (Derecognizing Amounts Related to CWIP for Years from 1431 to 1433) item, Zakat Payer claims that CWIP balance outlines expenses incurred by the Company in developing lands, construction works and others. Regarding (Accumulated Losses) item, Zakat Payer requests deducting carried forward losses according to Company's financial statements, rather than ZATCA assessment. Therefore, Zakat Payer requests overturning Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons.

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



First: formal aspect: ZATCA insists on its request submitted to the Primary Department regarding inadmissibility of the Case in form in accordance with Article (2) and Article (3) of Tax Dispute and Violation Committee Procedures, as the interval between Zakat Payer's objection before ZATCA and its grievance before the Primary Department is more than 120 days. Thereupon, by expiry of the statutory period, the appealed decision becomes unappealable. However, the Primary Department did not discuss this plea in the details of its decision subject matter of appeal, nor did it discuss reasons for accepting the Case in form. Therefore, the decision is considered marred by a defect in form. Second: On Merits: As for ZATCA appeal regarding (Amounts Payable by Some Founders for Years from 1431 to 1433) item, ZATCA states that, according to notes to the financial statements, these amounts were paid to some landlords in return for lost revenues due to the cessation of their business activities and operations. In addition, such amounts will be recovered from their dividend payout ratios according to Company's memorandum of association. Therefore, such amounts are considered loans and are subject to zakat in accordance with Fatwa No. (3077/2) dated 08/11/1426 AH pertaining to zakat on payables and receivables. As for Primary Department's conclusion that these amounts do not outline outstanding debts owed by founders but are considered advance dividends that should be accounted for under equity due to treating founders as owners rather than third parties, ZATCA replies by stating that this item is classified in the financial statements as advance payments from some shareholders, and it is not a deductible item. In addition, Primary Department's assumption that these amounts outline advance dividend payout ratio is unfounded and groundless. Moreover, the dividend payout ratios are only allowed to be deducted upon the actual occurrence of payment. Thereupon, ZATCA insists on validity and correctness of its procedure and requests upholding its procedure and overturning Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons.

On Monday, 13/07/1443 AH corresponding to 14/02/2022 AD, the Department decided holding 10-day e-hearing. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal. The answer is summed up in that ZATCA insists on validity of Primary Department's decision that upheld ZATCA procedure regarding the items subject matter of Zakat Payer's appeal. As for Zakat Payer's objection for years from 1427 to 1430, ZATCA states that these years were addressed in Appellate Committee's Decision No. (1603) for 1437, and Zakat Payer filed a grievance before the Administrative Court. In addition, the Administrative Appellate Court issued a ruling thereon. Therefore, ZATCA insists on its argument that the Case cannot be reconsidered as it has already been adjudicated (Principle of *Res Judicata*). Regarding (Ministry of Finance Loan for 1433) item, ZATCA insists on Primary Department's decision, as it aligns with provisions of Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Paragraph (3) of Article (20) of the same regulations. Regarding (Derecognizing Amounts Related to CWIP), ZATCA insists on Primary Department's decision, as it aligns with Paragraph (2) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Paragraph (3) of Article (20) of the same regulations. Regarding (Accumulated Losses) item, ZATCA insists on Primary Department's decision, as it aligns with Paragraph (9) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Moreover, ZATCA requests the Department to dismiss any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Civil Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons. In addition, Zakat Payer submitted an answer summarized in that Zakat Payer requests dismissing ZATCA appeal and upholding Primary Department's decision regarding the items subject matter of ZATCA appeal.

On Wednesday, 27/08/1443 AH corresponding to 30/03/2022 AD, since Zakat Payer submitted a copy of the petition filed before BoG dated 29/07/2019 AD; therefore, the Department asked Zakat Payer, for the second time, to provide BoG ruling regarding its petition within (7) days from that date. As a result, Taxpayer submitted some documents.



On Sunday, 28/10/1443 AH corresponding to 29/05/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

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

On Merits: As for Zakat Payer's appeal regarding (Company's Objection for Years from 1427 to 1430) item, Zakat Payer's appeal involves the fact that the Primary Department did not consider its objection on the ground that the Appellate Committee rendered a decision regarding such years, despite the fact that Zakat Payer submitted a petition to BoG against the ruling rendered regarding the appeal related to this matter. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Since the Department found that Appellate Committee's Decision No. (1603) for 1437 was rendered and upheld by BoG ruling in Administrative Case No. (12837) for 1437, which became final. Therefore, the Department found that the Case cannot be reconsidered regarding this matter, as it has already been adjudicated in accordance with Paragraph (1) of Article (76) of the Law of Civil Procedure.

As for Zakat Payer's appeal regarding (Ministry of Finance Loan for 1433) item, Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in adding this item to zakat base, and claims that the remaining part of loan added to zakat base was not used to finance long-term assets and did not complete a full lunar year. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of appeal, and since it is noted that the inclusion of the Ministry of Finance loan in appealed item was not due to the passage of a full lunar year. The loan was obtained during the year in accordance with loan agreement. Since ZATCA did not provide a direct relation between that loan and any asset deducted from zakat base, which could serve as a ground for disregarding Zakat Payer's declaration. Furthermore, the Department that rendered the decision grounded its decision to dismiss Zakat Payer's objection on Zakat Payer's failure to submit supporting documents, without clarifying the missing documents or what could have been requested from Zakat Payer. Since the principal rule is to accept Zakat Payer's declaration unless evidence suggests otherwise, and since ZATCA did not, in its documents submitted to either Primary Department or in response to Zakat Payer's appeal, what elaborates how it came up with amounts different from those declared by Zakat Payer. Therefore, this Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

As for Zakat Payer's appeal regarding (Derecognizing Amounts Related to CWIP for Years from 1431 to 1433) item, Zakat Payer's appeal involves Zakat Payer's objection to Primary Department's decision that upheld ZATCA procedure outlined in adding this item to zakat base. In addition, Zakat Payer claims that CWIP balance outlines expenses incurred by the Company in developing lands, construction works and others. On the other hand, ZATCA argues that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that the audited financial statements are presumed to be accurate, and that this Department finds no evidence to contradict what has been elaborated in such statements. Since zakat assessment for Zakat Payers based on their statutory accounts requires observing principle of budget balance, and that disallowing deduction of a specific acquisition asset requires either not adding its financing or that ZATCA calculates zakat using the direct method, which includes only zakatable assets. Since ZATCA did not follow any of these alternatives when it rejected deducting



item in question, Zakat Payer's statement is presumed to be correct. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

On Merits: As for Zakat Payer's appeal regarding (Accumulated Losses) item, Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in adding this item to zakat base, and claims that the carried forward losses shall be deducted pursuant to Company's financial statements, rather than ZATCA assessment. On the other hand, ZATCA argues that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that Zakat Payer is requesting to be accounted based on the financial statements, while ZATCA made the assessment based on its amended assessments. Having taken cognizance of ZATCA amendments to accounting profit for each year in question, the Department found that the amendments included addition of depreciation variances, as well as adding provisions for each year in question, in addition to adding profits from the sale of property and equipment for 1431. Since the depreciation variances and formed provisions are considered temporary variances between the accounting profit and adjusted profit for zakat purposes, which Zakat Payer is entitled to request for their deduction from its zakat base when realized or paid, in accordance with zakat accounting principles. Therefore, ZATCA procedure outlined in adding back depreciation variances and formed provisions to losses is valid. As for adding back profit of property and equipment sale for 1431: Since this procedure resulted in increased loss amount and did not result in decreased loss, it does not affect Zakat Payer's objection to ZATCA procedure. Since Zakat Payer's objection was regarding the increased zakat base compared to figures included in Zakat Payer's declaration. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for ZATCA appeal regarding the form of Zakat Payer's appeal: Having taken cognizance of ZATCA appeal and request for dismissing the Case in form, in addition to its reliance on Article (2) of Tax Dispute and Violation Committee Procedures. Since it is concluded from Case file that the dispute, subject matter of appeal, was before effectiveness of such Procedures. Therefore, this Department dismisses ZATCA appeal in this regard.

As for ZATCA appeal regarding (Amounts Payable by Some Founders for Years from 1431 to 1433) item, the Department found that ZATCA appeal involves adding amounts to zakat base because they are loans, and that Primary Department's conclusion of considering such amounts as dividends is invalid, as this item was classified in the financial statement as a non-deductible item. In addition, Primary Department's assumption is unfounded and groundless. Moreover, dividend payout ratios are only allowed to be deducted upon the actual occurrence of payment. On the other hand, Zakat Payer requests dismissing ZATCA appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, Case file, documents and arguments included therein, the Department found that Note No. (5) to the financial statements reflects that advance payments to some founders outline amounts paid to some landlords in return for lost revenues due to cessation of their business activities and operations. In addition, such amounts are to be recovered by deduction from their dividend payout ratio. Thereupon, the Department concludes that ZATCA position is valid. Therefore, this Department dismisses ZATCA appeal and upholds Primary Department's decision in this regard.

Accept appeal filed by Zakat Payer (... Company), C.R No. (...), TIN (...) and appeal filed by ZATCA, against First Department for Determination of Income Tax Violations and Disputes Jeddah Decision No. (IZJ-2021-883) rendered in Case No. (ZW-22993-2020) regarding zakat assessment for years from 1427 to 1433.

Decision

First: Accept the appeal filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), and appeal filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-883) rendered in Case No. (ZW-22993-2020) regarding zakat assessment for years from 1427 to 1433.



Second: On Merits:

1. Inadmissibility of hearing Zakat Payer's Appeal regarding (Company's Objection for Years from 1427 to 1430) item due to *res judicata* rule and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Ministry of Finance Loan for 1433) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
3. Accept Zakat Payer's appeal regarding (Derecognizing Amounts Related to CWIP for Years from 1431 to 1433) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
4. Dismiss Zakat Payer's appeal regarding (Accumulated Losses) item and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
5. Dismiss ZATCA appeal regarding (Amounts Payable by Some Founders for Years from 1431 to 1433) item and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-229

Case No.: ZI-25724-2020

Principle No. 289

- **If the Primary Department considers two elements as a single item without elaborating in its decision's reasoning justifications for not considering such items separately, Zakat Payer shall file a partial appeal regarding this item. Thereupon, the Case shall be rendered to the Primary Department to consider each item independently.**

Facts

To consider the appeal filed on .././... AH corresponding to .././..., filed by ..., holder of National ID No. (...) in his capacity as the attorney of Appellant Company under POA No. (...) against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-113) rendered in Case No. (ZI-6055-2019) regarding zakat assessment for 2016 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

formal aspect: Accept the case in form.

On Merits: Dismiss Plaintiff's objection to (Suppliers and Customers of Advance Payments for 2016) item.

Dissatisfied with the decision, the Zakat Payer..... Company filed a statement of appeal, which is summarized as follows:

Zakat Payer objects to Primary Department's decision, subject matter of appeal, claiming that regarding (Suppliers and Advance Payments that Completed a Full Year) item, this item should be deducted from zakat base, since the full amount of this item did not complete a full lunar year. The trial balance was attached to reflect the detailed movement. In addition, a financial analysis was prepared for each account with the opening balance and method of payment. Therefore, the balances paid at the beginning of the year are not carried forward and did not complete a full year. Thereupon, Zakat Payer requests overturning Primary Department's decision for the aforementioned reasons.

Since the Department decided opening of pleadings, ZATCA submitted a memorandum dated 11/08/1442 AH corresponding to 24/03/2021 AD, wherein replies to Zakat Payer's appeal by reiterating its position presented before the Primary Department. In addition, Zakat Payer's arguments do not differ from such arguments previously raised, to which ZATCA answered at that time. Regarding (Suppliers and Advance Payment Customers) item, ZATCA added the opening and closing balances, whichever is less, considering that such balance completed a full year. ZATCA bases its procedure on Fatwa No. (22665) of 1424 AH, Fatwa No. (3077/2) of 1426 AH and Paragraph (5) and (4) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. In addition, ZATCA requests the Honorable Department to dismiss any new documents from Zakat Payer that have not been submitted during the examination and objection phase. Therefore, ZATCA insists on the validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.



On Monday, 22/10/1443 AH corresponding to 23/05/2022 AD, the Department decided holding 10-day e-hearing, but the period lapsed without submitting any addition by the parties to appeal.

On Tuesday, 08/11/1443 AH corresponding to 07/06/2022 AD, the Department, having taken cognizance of Primary Department's decision, found that there were material errors related to reference to the year in question. The appealed decision indicated in its facts that its objection was related to zakat and tax assessment for 2010, but the decision referred in its reasons to 2016 and 2015, and referred in decision wording to 2016. Since the assessment of Zakat Payer was zakat assessment, and the year in question addressed by the decision was 2016. Accordingly, in accordance with provisions of Article (38) of Tax Dispute and Violation Committee Procedures, this Department remands the decision to the First Department for Determination of Income Tax Violations and Disputes in Dammam to correct it, notify parties to the Case and then return the Case to this Department to complete its consideration.

On Thursday 24/11/1443 AH corresponding to 23/06/2022 AD, the Department, having considered the submissions related to the appeal and the replies thereto and having examined the case papers and documents, established that the case is ripe for adjudication and delivering a decision, and accordingly decided to close the pleading and set the case for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: As for Zakat Payer's appeal regarding (Suppliers and Advance Payments that Completed a Full Year) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in levying zakat on amounts that did complete a full lunar year. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, the Department found that the Primary Department's decision did not provide, in its facts, reasons for ZATCA procedure regarding this item, despite its acknowledgment of Zakat Payer's objection when it listed the contested items at the beginning of presenting stance included in facts of Primary Department's decision. Since it tuned out that this item consists of two elements, namely suppliers and advance payment customers. Since the Primary Department considered such two elements as a single item in decision reasons and wording. Thereupon, Zakat Payer filed a partial appeal regarding this item related to suppliers, despite that fact that Zakat Payer stratified with ZATCA procedure regarding customers of advance payments. Since the Primary Department did not explain in reasons of its decision the justification for not considering such two items independently. Since the rules of justice require enabling Zakat Payer and ZATCA to litigate in a manner that enables both parties to object thereto and submit their appeal in accordance with the relevant rules that require submitting justifications for the appeal against the contested item. Since the Primary Department adjudicated such two elements as a single one rather than addressing each of such two items separately. Therefore, this Department overturns Primary Department's decision and remands the case to the Primary Department to reconsider this item after hearing stance of both parties in the (Suppliers) item and (Advance Payments) item separately.

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

Decision



First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-113) rendered in Case No. (ZI-6055-2019) regarding zakat assessment for 2016.

Second: On Merits:

Overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, and remand the Case to it to reconsider (Suppliers and Advance Payments that Completed a Full Year) item according to reasons and grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-282

Case No.: Z-28950-2020

Principle No. 290

- **If a final judicial ruling has previously been issued regarding the subject matter of dispute, the decision shall acquire the force of *res judicata*. Therefore, Zakat Payer may not be accounted for regarding the subject matter of the case.**

Facts

The Department convened to consider the Appeal filed on ../../.. corresponding to ../../... by ..., holder of National ID No. (...), in his capacity as attorney of Appellant Company under POA No. (...), and the appeal filed on ../../.. corresponding to ../../.. by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-118) rendered in Case No. (Z-131-2018) regarding zakat assessment for years from 2008 to 2013 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

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

Second: On Merits:

1. Dismiss the objection filed by Plaintiff (...) against field inspection procedures for years from 2008 to 2013.
2. Amend Defendant's decision on approving financial statements provided by Plaintiff (...) for years from 2008 to 2013 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company; 6. For 2013 of (...) Company.
3. Amend Defendant's decision by adding opening or closing balances, whichever is less, to Plaintiff (...) zakat base for years from 2008 to 2013 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company; 6. For 2013 of (...) Company.
4. Amend Defendant's decision by adding net accounting profit to zakat base (...) for years from 2008 to 2013 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company; 6. For 2013 of (...) Company.
5. Dismiss the objection filed by Plaintiff (...) to (Investment Value Provision for 2008) item.
6. Amend Defendant's decision by adding the opening balance (After deducting the balance used throughout the year) to zakat base of Plaintiff (...) for years from 2008 to 2013 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company; 6. For 2013 of (...) Company.
7. Dismiss the objection filed by Plaintiff (...) to (Doubtful Debt Provision for 2012 and 2013) item.
8. Dismiss the objection filed by Plaintiff (...) to (Zakat Provision for 2013) item.
9. Amend Defendant's decision by adding the statutory reserve at beginning of year to zakat base of Plaintiff (...) for years from 2008 to 2013 according to the precedence of their preparation



- dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company; 6. For 2013 of (...) Company.
10. Amend Defendant's decision by adding retained earnings based at the beginning of year to zakat base of Plaintiff (...) for years from 2008 to 2012 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company.
 11. Amend Defendant's decision by adding balance of accounts payable and due amounts at the beginning or end of the year, whichever is less, to zakat base of Plaintiff (...) for years from 2008 to 2013 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company; 6. For 2013 of (...) Company.
 12. Dismiss the objection filed by Plaintiff (...) to (Creditor Banks for 2013) item.
 13. Amend Defendant's decision by adding amounts in excess of performed work value to zakat base of Plaintiff (...) for 2008 and 2009 based on the precedence of issuance dates of the financial statements prepared by chartered accounting offices, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office;
 14. Amend Defendant's decision by adding short-term loans to zakat base of Plaintiff (...) for years from 2008 to 2012 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; For 2011 of (...) Company; 5. For 2012 of (...) Company.
 15. Amend Defendant's decision by adding long-term loans to zakat base of Plaintiff (...) for 2008 and 2009 based on the precedence of issuance dates of the financial statements prepared by chartered accounting offices, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office;
 16. Amend Defendant's decision by adding investments to zakat base of Plaintiff (...) for years from 2008 to 2010 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company. For 2013 of (...) Company.
 17. Amend Defendant's decision by adding fixed assets to zakat base of Plaintiff (...) for years from 2009 to 2013 according to the precedence of their preparation dates, which are as follows: 1. For 2008 of (...) Company; 2. For 2009 of (...) Office; 3. For 2010 of (...) Office; 4. For 2011 of (...) Company; 5. For 2012 of (...) Company. For 2013 of (...) Company.
 18. Dismiss the objection filed by Plaintiff (...) to (Advance Payments for 2013) item.
 19. Dismiss the objection filed by Plaintiff (...) to (Related Parties for 2013) item.
 20. Dismiss the objection filed by Plaintiff (...) to (Accrued Expenses for 2013) item.

Dis

satisfied with this decision, both parties filed a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer's appeal involves (Approving Financial Statements issued by (...) Office for Years from 2008 to 2013) item, as Zakat Payer states that the requirements for administrative decision, subject matter of dispute, are not met due to invalidity of the reason on which the decision is based, which was ZATCA claim that the financial statements audited by (...) Office Chartered Accountants are not true. Zakat Payer also argued that acceptance of the financial statements prepared by (...) Office for 2009 and 2010 by the Primary Committee based on the precedence of their issuance dates is an evidence that the Committee believes that the financial statements were unquestionable, valid, correct and reflect the actual financial position of the Company. Moreover, Zakat Payer argues that the financial statements prepared by (...) Office were the actual and valid financial statements because they are certified by third party government agencies, such as the Ministry of Finance, through matching contract invoices provided to the Ministry with those attached to the financial statements, matching statements received from General Organization for Social Insurance (GOSI) with those recognized in the financial statements as expenses related to wages and salaries, matching bank balances with



balances mentioned in the financial statements and matching financial statements prepared in accordance with requirements of Saudi Companies Law with audited financial statements prepared by (...) Office Chartered Accountants licensed in accordance with the Law of Certified Public Accountants. In addition, the Primary Committee based its decision on the precedence of financial statement issuance dates, which is incorrect based on accounting principles and financial statement preparation standards, and violates the principle of equality between legal positions, as the financial statements reflect the financial position at a specific period, showing balances as of that date, which then become the opening balances for the subsequent fiscal year. The differences in the financial statements stem from adjusting one side of estimation equation to modify Company's results for bank financing purposes, without causing accounting errors or concealment. Furthermore, the Committee's decision resulted in liabilities on the Company, disregarding that 70% of it was purchased by new owners unrelated to the years in question but still subject to zakat obligations. Therefore, Zakat Payer requests overturning Primary Department's decision regarding the appealed item for the aforementioned reasons.

Dissatisfied with this decision, ZATCA filed its appeal against the contested decision under a statement of appeal that included the following, in summary:

As for ZATCA appeal against Primary Department's decision, ZATCA appeal primarily involves claim not to consider the Case due to the force of *res judicata*; an argument raised before the Primary Department that was disregarded. Regarding (Financial Statements for Years from 2008 to 2013 Based on Precedence of Preparation Date) item, ZATCA elaborates that it requests overturning Primary Department's decision on approving financial statements for years from 2008 to 2013 based on precedence due to non-matching of the opening and closing balances, as the financial statements shall be prepared based on applicable accounting standards and principles, most importantly previous and subsequent financial events, which means that any financial event that occurred at the end of the period shall be consistent with the same financial event that occurred at the beginning of the period for the upcoming year. Therefore, the Primary Department decided that ZATCA action shall be amended based on the fact that all financial statements were prepared after auditing and matching Appellant's accounts and documents. In addition, such matching was approved by Company Management. Therefore, the financial statements for years from 2008 to 2013 were approved based on precedence of preparation date. Moreover, ZATCA argued that the grounds upon which the Primary Department decision was rendered are ambiguous, since the primary decision ruled regarding (Amounts in Excess of Performed Work Value for 2008 and 2009) item, (Short-Term Loans for Years from 2008 to 2012) item and (Long-Term Loans for 2008 and 2009) item by adding such items to zakat base based on the financial statements determined by the Department, but it did not determine whether balances should be approved. In addition, Primary Department's decision concluded to annul ZATCA procedure and recognize the amounts reflected in the financial statements approved by the Primary Department. Regarding (Adding Investments to Zakat Base for Years from 2008 to 2010) item, ZATCA states that the investments are not added to zakat base but rather deducted from zakat base. Therefore, the wording was inconsistent with zakat base calculation mechanism, which in turn proved that such decision is flawed. Moreover, the Department relied on the audited financial statements based on precedence of preparation date, and the conditions set forth in Ministerial Resolution No. (1005) dated 28/04/1428 AH were not met as well. In addition, such the primary decision ruled adding such item as reflected in the financial statements for years from 2011 to 2013, which was not included in the item. Therefore, the decision should be amended and such item shall be deducted from zakat base, rather than addition and determining balance. Regarding (Adding Fixed Assets for Years from 2009 to 2013), ZATCA argues that the fixed assets are not added to zakat base but rather deducted from zakat base. Thereupon, the wording is inconsistent with zakat base calculation mechanism, which in turn proved that the decision is flawed. Moreover, the Primary Department relied on a ministerial decision issued with regard to investments, other than fixed assets. In addition, the balance should have been determined if it was unclear, which made Primary Department's decision ambiguous and flawed. Furthermore, the Department did not ask Zakat Payer to prove the validity of its



objection, nor did it provide any documents to that effect. Zakat Payer also requested the Primary Department to dismiss any new documents that were not provided previously before it. The Primary Department concluded to annul ZATCA procedure and add fixed assets to zakat base as reflected in the financial statement and based on the precedence of preparation date. On the other hand, ZATCA requests the Department to dismiss any new documents that were not previously submitted during the examination and objection stages. Therefore, ZATCA maintained the validity and correctness of its procedure and requests overturning Primary Department's decision regarding the item, subject matter of appeal, for the aforementioned reasons.

Since the Department decided to open pleadings, ZATCA submitted an answer dated 21/09/1442 AH corresponding to 02/05/2021 AD. ZATCA answer is summed in that it contested the formal aspect due to Zakat Payer's failure to pay or provide the financial security, which is a prerequisite for hearing its Case based on Paragraph (3.D) of Article (23) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. ZATCA also confirmed that after taken cognizance of Case documents, it turned out that Zakat Payer did not submit the statement of appeal brief, so ZATCA was unable to identify Zakat Payer's requests and identify the items, subject matter of appeal. In addition, ZATCA requested the Department to dismiss Zakat Payer's appeal for failure to file the Case in accordance with Article (41) of the Law of Civil Procedure and Article (8) of Tax Dispute and Violation Committee Procedures. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's Appeal and upholding Primary Department's decision for the aforementioned reasons. Zakat Payer also submitted an answer, in which it requested dismissing ZATCA appeal in form, upholding Primary Department's decision regarding the items, subject matter of ZATCA appeal, and annulling ZATCA assessment, subject matter of the Case.

On Sunday, 01/02/1444 AH corresponding to 28/08/2022 AD, the Department decided holding 10-day e-hearing. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal, by reiterating its previous position presented before the Primary Department. Moreover, Zakat Payer's arguments do not differ from such arguments previously submitted, to which ZATCA has already answered at that time. Regarding (Field Inspection Procedures for Years from 2008 to 2013) item, ZATCA states that there is no defect or error in field inspection procedures, or irregularities by inspection team members. Accordingly, there is nothing that compromises inspection process. ZATCA also insists on validity of Primary Department's decision, since it was rendered in accordance with Paragraph (1) of Article (21) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Paragraph (4) of Article (21) of the same Regulations. Based on inspection reports and submitted provided, the Committee found that there was no defect in the performed inspection procedures, which in turn confirmed validity of ZATCA procedure. Therefore, we request the Honorable Department to uphold Primary Department's decision. Regarding (Approving Plaintiff's Financial Statements for Years from 2008 to 2013) item, (Credit balances at the beginning or end of the period, whichever is less, for years from 2008 to 2013) item, (Net Accounting Profit for Years from 2008 to 2013) item, (Adding Opening Balance (After deducting balance used during the year) to Zakat Base for Years from 2008 to 2013) item, (Adding Statutory Reserve at the Beginning of Year to Zakat Base for Years from 2008 to 2013) item, (Retained Earnings for Years from 2008 to 2012) item, (Accounts Payable and Due Amounts for Years from 2008 to 2013) item, (Adding Amounts in Excess of Performed Work value to Zakat Base for 2008 and 2009) item, (Short-Term Loans for Years from 2008 to 2012) item, (Long-Term Loans for 2008 and 2009) item, (Investments for Years from 2008 to 2010) item and (Fixed Assets for Years from 2008 to 2013) item, ZATCA filed its appeal regarding the item under a statement of appeal dated 10/11/2020 AD and requested the Department to review the facts mentioned therein to avoid repetition. Regarding (Investment Value Provision for 2008) item, ZATCA insists on validity of Primary Department's decision, as it aligns with ZATCA Circular No. (2/8443/2) dated 18/08/1392 AD, Paragraph (1) of Article (5) and Paragraph (2) of Article (6) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH, since Zakat Payer did not submit any new documents regarding the above-mentioned item in the statement of appeal.



Thereupon, ZATCA insists on validity and correctness of its procedure. Regarding (Provision for Doubtful Debts for 2012 and 2013) item and (Zakat Provision for 2013) item, ZATCA insists on validity of Primary Department's decision regarding the above-mentioned items, as it was rendered in accordance with Paragraph (9) of Articles (4) and Paragraph (6) Article (6) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH, as Zakat Payer did not submit any new documents regarding the above-mentioned item in the statement of appeal. Thereupon, ZATCA insists on validity and correctness of its procedure. Regarding (Creditor Banks for 2013) item, ZATCA insists on validity of Primary Department's decision, as it was rendered in accordance with Fatwa No. (2/2384) of 1406 AH, Fatwa No. (22665) dated 15/04/1424 AH, and Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH, since loans constitute a part of zakat base components regardless of their type, source or usage field, provided that balances shall complete a full lunar year in accordance with the above-mentioned Fatwas and Paragraph. Therefore, ZATCA insists on validity and correctness of its procedures side by side with Primary Department's decision. Regarding (Advance Payments for 2013) item, ZATCA insists validity of Primary Department's decision regarding the above-mentioned items, as the decision was rendered in accordance with Fatwa No. (23408) dated 18/11/1426 Ah, Fatwa No. (22384) dated 30/03/1406 AH and Paragraph (4) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Since Plaintiff did not provide any supporting documents for its claim and supporting documents for proving non-completion of a full lunar year. Thereupon, we insist on validity of ZATCA procedure and the conclusion reached in Primary Department's decision. Regarding (Related Parties for 2013) item, ZATCA insists on validity of Primary Department's decision regarding the above-mentioned items, as it was rendered in accordance with Fatwa No. (2/2384) of 1406 AH and Paragraph (5) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH, since Plaintiff did not provide any supporting documents for its claim. Thereupon, we insist on validity of ZATCA procedure and the conclusion reached in Primary Department's decision. Regarding (Accrued Expenses for 2013) item, ZATCA insists on validity of Primary Department's decision, as it was rendered in accordance with Paragraph (1) of Article (5), Paragraph (2) of Article (6) of the Implementing Regulations for the Collection Zakat issued in 1438 AH and Fatwa No. (3077/2) dated 08/11/1426 AH, since Plaintiff did not provide supporting documents for its claim. Thereupon, we insist on validity of ZATCA procedure and the conclusion reached in Primary Department's decision. Moreover, ZATCA requests dismissing any new documents that were not submitted previously before it or before the Primary Department and dismissing any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Civil Procedure. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons.

On Tuesday, 03/02/1444 AH corresponding to 30/08/2022 AD, the Department, having taken cognizance of appeal memorandums, replies thereto and documents included Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On Merits: As for ZATCA appeal regarding the formal aspect, the Department, having taken cognizance of ZATCA Appeal, found that it involves considering Zakat Payer's objection to zakat assessment for 2008, in which the primary decision has previously been rendered. Since this Department found that ZATCA has reassessed Zakat Payer twice for the same year after the



primary decision was rendered. Since a final judgment was rendered with regard to the year in question. Therefore, this decision acquires the force of *res judicata*. Thereupon, the Department concluded that ZATCA is not entitled to assess Zakat Payer for 2008. Since this Department decided that ZATCA assessment for that year was prescribed. Accordingly, its amended assessment shall not be considered after the Department rendered a decision concerning prescription of ZATCA second assessment that was the subject matter of Primary Department's decision. Therefore, the Department dismisses ZATCA appeal regarding this item.

Regarding (Approving Financial Statements Issued by (...) Office for Years from 2009 to 2013) item, Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, claiming that the bases upon which the administrative decision, subject matter of the dispute, was issued were not met due to invalidity of grounds in ZATCA claim that the financial statements were not true, despite being accepted by the Primary Department according to the precedence of issuance dates. Accordingly, the financial statements are true and valid and reflect the actual financial position of the Company. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. The Department found that ZATCA assessment for years from 2009 to 2010 was made after expiry of the statutory period for introducing amendments to Zakat Payer's declaration, which is five years from the deadline for filing Zakat Payer's declaration for each year. It is worth noting that these rules are established to maintain transaction stability and prevent instability of Zakat Payers' financial positions in case of lack of a timeframe that ensures maintaining their financial positions. Since this matter does not result in releasing Zakat Payer from its legal obligation if Zakat Payer is already concerned with fulfilling such obligation but rather outlines a procedural issue with relation to ZATCA entitlement to assess Zakat Payer after expiry of the statutory period. Therefore, the Department concluded that ZATCA procedure outlined in making such amendments was invalid. Accordingly, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

As for Zakat Payer's objection for years from 2011 to 2013: Since Zakat Payer requested to have its accounts audited by more than one chartered accountant for the same year without any reference in the subsequent financial statements to the reasons for adjustment of balances reflected in the previous financial statements, which is considered an evidence of its intention to come up with a predetermined financial position or financial performance that is not reflected in the actual economic transactions and figures reflected in commercial books. It is worth noting that preparing more than one set of financial statements for the same year with different financial data, is considered a valid reason for disregarding the same if the subsequent financial statements do not include objective reasons for amending the previous ones. Moreover, recognizing different amounts in various financial statements could be attributed to invalidity of financial statements' presentation or incompleteness of accounting books. Since ZATCA did not disregard Zakat Payer financial statements. Since the Primary Department decided to consider financial statements based on precedence of their auditing. Since the grounds adopted by the Primary Department were justified based on the fact that the oldest financial statements included information reflecting Zakat Payer's financial position and business results. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary Department's decision.

As for ZATCA appeal regarding (Department's decision that ruled amending Defendant's decision regarding Items Nos. (3), (4), (6), (9), (10), (11), (13), (14) and (15) based on precedence of financial statement preparation dates by chartered accounting offices): ZATCA appeal involves challenging Primary Department's decision, claiming that the opening and closing balances are not matched, as the financial statements are prepared based on applicable accounting standards and principles, most importantly the previous and subsequent financial events. On the other hand, Zakat Payer requested dismissing ZATCA appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, ZATCA appeal and documents included in Case file, the Department found that ZATCA appeal was based on Department's decision with regard to adopting financial statements of each year by their precedence. Since this Department upheld



Primary Department's decision. Therefore, the Department dismisses ZATCA appeal and amend ZATCA assessment based on the financial statements recognized by the Primary Department and upheld by this Department for the years that are prescribed.

As for the allegations stated in ZATCA appeal that Primary Department's decision was ambiguous with regard to the balance of short-term loans for 2011 and 2012: Since this Department upheld Primary Department's decision regarding accounting Zakat Payer based on its financial statements for the years preceding to such two years. Therefore, there is no need for determining balance, as the dispute was not related to such balance, but rather the source of information related to this item. Therefore, the Department dismisses ZATCA appeal.

As for ZATCA appeal regarding (Adding Investments to Zakat Base for Years from 2008 to 2010) item, ZATCA appeal involves challenging Primary Department's decision regarding this item. ZATCA claims that the investments are not added to zakat base but rather deducted from zakat base. Thereupon, the wording is inconsistent with zakat base calculation mechanism, rendering such decision flawed. In addition, the decision ruled to add the item based on the financial statements for years from 2011 to 2013, which was not included in by such item. Therefore, the decision shall be amended by deduction rather than addition and determining balance. On the other hand, Zakat Payer requests dismissing ZATCA appeal and upholding Primary Department's decision. Having taken cognizance of ZATCA appeal and documents included in Case file, the Department found that the statutory period for ZATCA assessment was expired, and decided to rely on Zakat Payer's declaration. Therefore, the Department dismisses ZATCA appeal regarding this item. As for ZATCA claim stated in its appeal in the wording of decision regarding adding years that were not contested in this item, and having taken cognizance of Primary Department's decision, the Department found that ZATCA claim was just an additional explanation for the wording and did not affect the subject matter thereof, as the wording referred to the years in question and such additional explanation was related to determining financial statements that should be relied when making zakat assessment. Therefore, the Department concluded that such error did not affect the wording of Primary Department's decision.

As for ZATCA appeal regarding (Adding Fixed Assets to Zakat Base for Years from 2009 to 2013) item, the Department found that ZATCA appeal involves challenging Primary Department's decision regarding this item. ZATCA claims that the fixed assets are not added to zakat base but rather deducted from zakat base. Thereupon, the wording is inconsistent with zakat base calculation mechanism, rendering such decision flawed. On the other hand, Zakat Payer requests dismissing ZATCA appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute regarding 2009 and 2010, the Department decided that the statutory period for ZATCA entitlement to make assessments had lapsed. Accordingly, the Department decided to rely on Zakat Payer's declaration. Regarding years from 2011 to 2013, the Department, having taken cognizance of ZATCA appeal and documents included in Case file, found that ZATCA appeal involves challenging Primary Department's decision regarding reliance on the financial statements prepared for each year by precedence of their issuance dates. Since this Department upheld Primary Department's decision. Therefore, the Department dismisses ZATCA appeal and amends ZATCA assessment based on the financial statements recognized by the Primary Department and upheld by this Department for years from 2011 to 2013. With reference to ZATCA claim regarding Department's error outlined in relying on the ministerial decision issued with relation to investments, the Department found that this matter did not affect the conclusion reached in the appealed decision, which required amending ZATCA assessment to align with the financial statements that the Department decided to adopt for making zakat assessment of Zakat Payer.

Decision

First: In From:

Accept the appeal in from filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), and the appeal filed by ZATCA against First Department for Determination of Income Tax



Violations and Disputes in Jeddah Decision No. (IZJ-2020-118) rendered in Case No. (Z-131-2018) regarding zakat assessment for years from 2008 to 2013.

Second: On Merits:

1. Dismiss ZATCA appeal regarding the peremptory defense related to dismissing the Case due to the force of res judicata, and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
2. As for Zakat Payer's appeal regarding (Approving financial statements issued by (...) Office for years from 2009 to 2013) item:
 - A. Accept Zakat Payer's Appeal regarding this item for 2009 and 2013, and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
 - B. Dismiss Zakat Payer's appeal regarding this item for years from 2011 to 2013, and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
3. Reject ZATCA appeal regarding (Primary Department's decision by amending Defendant's decision regarding Items Nos. (3), (4), (6), (9), (10), (11), (13), (14) and (15) based on precedence of financial statement preparation dates by chartered accounting offices), and amend ZATCA assessment based on the financial statements recognized by the Primary Department and upheld by this Department for the years for which ZATCA assessment is not prescribed according to reasons and grounds stated herein.
3. Dismiss Zakat Payer's appeal regarding ambiguity in Primary Department's decision with regard to the balance of short-term loans for 2011 and 2012 according to reasons and grounds stated herein.
5. Dismiss ZATCA appeal regarding (Adding Investments to Zakat Base for Years from 2008 to 2010) item, rely on Zakat Payer's declaration and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
6. As for ZATCA appeal regarding (Adding Fixed Assets to Zakat Base for Years from 2009 to 2013) item:
 - A. Dismiss ZATCA appeal regarding this item for 2009 and 2010, and decide relying on Zakat Payer's declaration according to reasons and grounds stated herein.
 - B. Dismiss ZATCA appeal regarding this item for years from 2011 to 2013, and decide amending ZATCA assessment based on the financial statements recognized by the Primary Department and upheld by this Department for years from 2011 to 2013 according to reasons and grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-321

Case No.: Z-28715-2021

Principle No. 291

- **If the item is not included within the contested items at the time of considering dispute before the primary department, it shall be considered a new petition and shall not be accepted.**

Facts

To consider the appeal filed on ../../... AH corresponding to ../../... by (...), Holder of National Identity No (...) in his capacity as Appellant Company's attorney under POA No.(...), and the appeal filed on ../../...corresponding to ../../... against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-150) rendered in Case No. (Z-132-2018) regarding zakat assessment for 1426 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

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

Second: On Merits:

1. Dismiss Plaintiff's objection to (Dividends to Investors) item.
2. Dismiss Plaintiff's objection to (Shareholders' Accounts Payable) item.
3. Dismiss Plaintiff's objection to (Contributions Under Implementation) item.
4. Accept Plaintiff's objection to (Other Accounts Payable for 1432, 1433 and 1434) item.
5. Establish resolution of dispute over (Accounts Payable for 1427 and 1428) item.
6. Dismiss Plaintiff's objection to (Other Credit Balances (Overdrafts) for 1427) item.
7. Dismiss Plaintiff's objection to (Investments) item.

Dissatisfied with this decision, both parties filed a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer primarily involves a plea of limitation, as Zakat Payer states that ZATCA is not entitled to amend zakat declaration after lapse of five (5) years from the deadline for filing declaration. In addition, Zakat Payer's right to plead of limitation may not be disregarded at this stage, even if Zakat Payer did not plead for the same primarily. Regarding (Disallowing Deduction of Dividends from Zakat Base) item, Zakat Payer claims that the profits were distributed to the shareholders, which indicates that Zakat Payer does not own the funds; hence, they are no longer in Zakat Payer's possession, as contributions are credited to their owners and reflected as accounts payable to shareholders. Upon using funds to purchase real estate assets, such funds are credited to shareholders' accounts payable in "contributions under implementation" account for the same persons. In addition, all costs and expenses incurred on the real estate or land are recorded in shareholders' costs account, compared to contribution sale value and profits or loss of contribution, and then distributed to shareholders during the year; hence, these amounts are profits of shareholders that have already been paid and received from shareholders in the same year without completing zakatable year. Accordingly, zakat on such amounts falls on the shareholder himself, as they are no longer in Zakat Payer's possession. Moreover, dividends were recorded in the statement of income as actual dividends by checks. The payment of such amounts was proved by the statement of cash flow that reflects cash flows from



operating and investment activities and the purpose for which they were used, starting with net profits after deduction of dividends; hence, the chartered accountant who has certified the financial statements and issued an unqualified report according to the accounting standards approved by SOCPA is another evidence of dividends. Furthermore, if such dividends were not actually paid, they would have been reflected in the statement of financial position as balances under distribution. Regarding (Accounts Payable) item, Zakat Payer claims that the balances of such accounts are not considered funds that are subject to zakat, as the condition of perfect ownership does not apply thereon, nor are they considered among the available or beneficial sources of funds that are subject to zakat. According to Fatwa No. (22665) dated 15/04/1424 AH, if the funds were used in trading assets, they would have entered into another zakat base that and its result has appeared in the net profits. Regarding (Contributions Under Implementation) item, Zakat Payer claims that this account outlines the work in progress carried out by Zakat Payer using investors' funds outlined in accounts payable of contribution that have been subject to zakat and associated therewith. In addition, the established practice is to deduct debit balances within shareholder's share if such balances are owned by one of the shareholders, and they are indeed so, as the account payable of contribution is associated with amounts spent, whether for purchasing land or works carried thereon in construction phase. Accordingly, such balances should be deducted in exchange for subjecting accounts payable to zakat, which were subjected by ZATCA, as it is consistent with the legal basis. In addition, it should be noted that the matter that constrained Zakat Payer is related to three (3) projects within such contributions, as well as Dubai projects established for the purpose of acquisition. In this case, the variance between them should be subject to Sharia. Regarding (Overdrafts) item, Zakat Payer claims that overdrafts were used to pay part of a building project recognized in the financial statements for 1426 and 1427 in the amount of SAR 27,600,000 corresponded by the account payable of building project investors as a source of financing in the amount of SAR 17,303,500, and the variance to complete the purchase of overdrafts is the credit balance of (...) Bank, i.e., they are investments outside the Kingdom. This balance is related to the debit balance of work in progress in the project that was purchased for rental and receipt of proceeds; hence, it is considered an acquisition asset that should be deducted from zakat base. Moreover, the accounts payable of investors who finance the project were subject to zakat within shareholders' accounts payable. Regarding (Investments) item, Zakat Payer claims that the investments are outlined in the purchase of two offices in Dubai in a total amount of SAR 3,033,855 from (...) Company in Dubai, where an advance payment has been made and the remaining amount is to be paid in installments. These offices were purchased to be Company's headquarters in Dubai. In addition, ZATCA has subjected their equivalent to zakat within the accounts payable and other accounts payables. Due to the crisis that occurred in Dubai in 2008, the payment was not made, which caused the offices to be withdrawn. Since this issue remains unresolved, and Zakat Payer was unable to take over the offices or the amounts paid, in addition to what relates to the investments in securities in Dubai outlined by subscription shares in (...) Bank, such investments are managed for the benefit of some investors whose credits have been subject to zakat under assessment. In addition, the financial statements show that such shares were acquired for the purpose of realizing profit, and that the corresponding accounts payable have been subject to zakat. Regarding (Shareholders' Current Account) item, Zakat Payer claims that shareholders' current accounts have been subject to zakat based on the rule of opening or closing balance, whichever is less, and for that matter. If Zakat Payer did not object to this item, the rights do not forfeit by limitation, especially if they will result in the collection of zakat on funds that are not subject to zakat. Furthermore, the detailed movement of current accounts was attached based on books and records, which reflects that the current accounts for 1428, 1429 and 1434 were the accounts that completed a full lunar year. Thereupon, Zakat Payer requests overturning Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons.

Decision was not accepted by ZATCA, so it appealed against the contested decision by virtue of a statement of appeal including the following claims:



As for ZATCA appeal against Primary Department's decision, ZATCA appeal regarding (Other Accounts Payable for 1432, 1433 and 1434) item involves claim that the Primary Department has accepted Zakat Payer's objection and stated in the grounds of its decision that it turned out that there was a dispute between the heirs of one of the owners of such lands that lasted for several years and ended by reconciliation in 1434 AH. Such dispute resulted in failure to complete sale of lands, resulting in inability to operate and invest the contribution and realizing a profit therefrom, which indicates that it did not complete a full lunar year. In addition, ZATCA replies that Primary Department's conclusion is invalid, as Zakat Payer received the amounts as advance payments from buyers and became in its possession and under its disposal, meeting conditions of perfect ownership and the completion of a full lunar year. ZATCA also replied to Primary Department's statement that there was a dispute between Zakat Payer and some landlords that this dispute did not change the fact that such amounts are at Zakat Payer's disposal as funds from third parties. Thereupon, such amounts are subject to zakat. Moreover, the completion of the sale transaction emphasizes validity of ZATCA procedures. Therefore, ZATCA insists on validity and correctness of its procedure and requests overturning Primary Department's decision regarding the item, subject matter of appeal, for the aforementioned reasons.

On Sunday,/... corresponding to/..., the Department decided to hold 10-day e-hearing session. Therefore, ZATCA submitted an answer wherein insisting on validity and correctness of its procedure. Moreover, Zakat Payer's arguments do not differ from such arguments previously submitted, to which ZATCA has already answered at that time. Regarding (Statute of Limitation) item, ZATCA states that this item was not subject to objection before ZATCA or the Primary Department. Therefore, this item shall be dismissed in accordance with Article (186) of the Law of Civil Procedure. Regarding (Dividends to Investors) item, ZATCA elaborates that Zakat Payer's business activity outlines real estate management, and this item outlines, as stated by Zakat Payer, shareholders' portion in profits of contributions realized from funds subject to zakat. Thereupon, zakat should be levied on such profits, as the majority of shareholders are individuals, not legal entities registered with ZATCA, and are subject to zakat separately. Moreover, ZATCA based its procedure on Paragraph (2) of Article (1) and Paragraph (1) of Article (2) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Shareholders' Accounts Payable) item and (Contributions Under Implementation) item, ZATCA added such items to zakat base due to the completion of a full lunar year, since such items outline balances of funds received from shareholders that are managed by Zakat Payer. In addition, ZATCA based its procedure on Fatwa No. (22665) of 1424 AH and Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Other Credit Balances (Overdrafts) item, ZATCA added the item to zakat base due to the completion of a full lunar year, and ZATCA based its procedure on Fatwa No. (22665) of 1424 AH and Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Long-Term Investments Abroad) item, ZATCA asked Zakat Payer to submit supporting documents, but Zakat Payer failed to do so, which demonstrates the validity and correctness of ZATCA procedure in accordance with Paragraphs (4/B) and (4/C) of (Second) of Article (4) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Shareholders' Current Account) item, ZATCA stated that this item was not subject to objection before ZATCA or the Primary Department. Therefore, this item shall be dismissed in accordance with Article (186) of the Law of Civil Procedure. Furthermore, ZATCA requests the Department to dismiss any new documents submitted by Zakat Payer or any new petitions in accordance with Article (186) of the Law of Civil Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the



aforementioned reasons. Zakat Payer also submitted an answer to ZATCA appeal summarized in that it requests dismissing ZATCA appeal and upholding Primary Department's decision regarding the item subject matter of ZATCA appeal.

On Wednesday,/... corresponding to/..., the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds



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

On Merits: As for Zakat Payer's appeal regarding (Limitation of Assessment for Years from 1426 to 1434) item, the Department, having taken cognizance of Case file, found that zakat declarations for years from 1426 to 1430 were governed by the provisions of Income Tax Law and Rules for Levying Zakat at that time that regulate the process of making and amending zakat assessment. Since these provisions were explicit by stating that ZATCA is entitled to amend zakat assessment for a period of five (5) years from the deadline for filing zakat declaration. As such, Zakat Payer's declaration shall be final in the event of a lapse of five (5) years from the deadline for filing declaration, unless ZATCA exercises its right to amend zakat declaration within that period, or proves the existence of a tax evasion event by Zakat Payer in submitting an incomplete declaration within ten (10) years from the deadline for filing declaration. Since stability of legal and financial positions is a fundamental goal affirmed by the law by stipulating that ZATCA shall not exceed the five-year period to reopen the assessment except in case of tax evasion, and also in such case ZATCA shall not exceed ten years to exercise its right to reopen the assessment. Since reopening the assessment without relying on what the regulator has stipulated as previously stated does not achieve the goal of stabilizing financial and legal positions of zakat payers. Therefore, the Department concludes that ZATCA has no right to make zakat assessment for years in question thereupon, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision regarding the items objected by Zakat Payer for the years in which this Department ruled that ZATCA assessment was subject to the statute of limitation.

As for Zakat Payer's appeal regarding (Disallowing Deduction of Dividends from Zakat Base) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that the profits were distributed to shareholders, which indicates that Zakat Payer does not own the amounts. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's appeal and documents included in Case file, and since the basis for calculating zakat is meeting the two conditions of the completion of a full lunar year and the perfect ownership. Having taken cognizance of documents, the Department found that that the audited financial statements for years in question confirm that Zakat Payer has distributed the profits in question to shareholders. Since the subject of dispute is not related to documents, and since the profits in question were no longer under Zakat Payer's disposal. Therefore, it is inadmissible to oblige Zakat Payer to pay zakat on such profits. This not undermined by ZATCA rejection of the deduction of dividends from zakat base, as the shareholders are natural persons and are not registered with ZATCA. Accordingly, dividends are not subject to zakat, as the basis for calculating zakat the perfect ownership, and by the distribution of profits, the condition of ownership is no longer existing, and the funds transferred to shareholders. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision.



As for Zakat Payer's appeal regarding (Adding Shareholders' Accounts Payable to Zakat Base) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that account balances are not among the funds that are subject to zakat. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's objection and documents included in Case file, and since Zakat Payer is accounted based on its statutory accounts and financial statements. Since these accounts payable were reflected in the statement of financial position, which indicates that such accounts payable outline a source of financing that should be added to zakat base whenever they complete a full lunar year or are used to finance deducted assets. Since the completion of full year on such accounts payable is not disputed. Accordingly, accounts payable are considered a positive element of zakat base. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary Department's decision in this regard. As for Zakat Payer's argument in its appeal that there are assets financed by such amounts and that Zakat Payer was unable to sell such assets. Since this petition is a new subject that was not included in Zakat Payer's objection primarily filed before ZATCA. Therefore, the Department dismiss this petition.

As for Zakat Payer's appeal regarding (Contributions Under Implementation) item, the Department found Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that this account outlines the work in progress, which is a type of acquisition assets, rather than trading assets. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's appeal and documents included in Case file, and since the projects under implementation are not for sale in their current situation. Accordingly, such projects are not considered trading assets and should not be added to zakat base. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

As for Zakat Payer's appeal regarding (Overdrafts) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that the variance for completing purchase of overdrafts pertains to the credit balance of investments outside the Kingdom. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's objection and documents included in Case file, and since Zakat Payer is accounted based on its statutory accounts and financial statements. Since the overdrafts were reflected in the statement of financial position, which indicates that such overdrafts outline a source of financing that should be added to zakat base whenever completing a full lunar year or are used to finance deducted assets. Since the completion of full year on such overdrafts is not disputed. Accordingly, the overdrafts should be added zakat base. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary Department's decision in this regard.

As for Zakat Payer's appeal regarding (Investments) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that the real estates were purchased to be its headquarters, and that the accounts payable equivalent to corresponding to shares were subjected to zakat. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's objection and documents included in Case file, and since this Department found that the investments in question comprise of real estate and investments in securities. Since this Department found that the real estates in question were not intended for trade. Therefore, Zakat Payer is entitled to deduct such real estates from its zakat base. As for investment in securities: Since Zakat Payer did not supporting documents for payment of zakat on such investment in the country of investment, nor did it provided the audited financial statements of investee companies in a way that zakat can be calculated on its share and pay the same to ZATCA. Thereupon, Zakat



Payer is not entitled to deduct such investment from its zakat base. Therefore, the Department amends Primary Department's decision by accepting Zakat Payer's appeal regarding the real estates and dismissing it regarding investments in securities.

As for Zakat Payer's appeal regarding (Shareholders' Current Account) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that that shareholders' current accounts have been subject to zakat based on the rule of opening or closing, whichever is less. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal. Having taken cognizance of Zakat Payer's objection and documents included in Case, the Department, having taken cognizance of the subject matter of objection to this item, found that this item was not included in the contested items at the time of considering dispute before the Primary Department. Therefore, the Department considers this item as a new petition in accordance with Article (186) of the Law of Civil Procedure that stipulates: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion". Therefore, the Department dismisses Zakat Payer's appeal regarding this item.

As for ZATCA appeal regarding (Other Accounts Payable) item, the Department found ZATCA appeal involves objection to the Primary Department's decision regarding this item, as ZATCA claims that Zakat Payer received the amounts as advance payments from the buyers and became in Zakat Payer's possession and under its disposal, meeting the conditions of perfect ownership and completed a full lunar year. On the other, Zakat Payer argued that it requests dismissing ZATCA appeal and upholding Primary Department's decision. Having taken cognizance of ZATCA appeal and documents included in Case file, the Department found that Zakat Payer is accounted based on its statutory accounts and financial statements. Since such accounts payable were reflected in the statement of financial position, which indicates that such accounts payable outline a source of financing that should be added to zakat base whenever they complete a full lunar year or are used to finance deducted assets. Since the completion of full year on such accounts payable is not disputed. Accordingly, accounts payable are considered a positive element of zakat base. On the other hand, Zakat Payer shall be entitled to deduct assets that were not offered for sale in their current situation or could not be offered due to lawsuits filed in this regard. Since such assets outline projects in progress, which is a contested item included in Zakat Payer's appeal accepted by this Department. Therefore, the Department accepts ZATCA appeal and overturns Primary Department's decision in this regard.

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), and the appeal filed by ZATCA against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-150) rendered in Case No. (Z-132-2018) regarding zakat assessment for years from 1426 to 1434.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Statute of Limitation for Years from 1426 to 1430) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh in this regard according to reasons and grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Disallowing Deduction of Dividends from Zakat Base) item and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
3. Dismiss Zakat Payer's appeal regarding (Adding Shareholders' Accounts Payable to Zakat Base) item, and uphold the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.



4. Accept Zakat Payer's appeal regarding (Contributions Under Implementation) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
5. Dismiss Zakat Payer's appeal regarding (Overdrafts) item, and uphold the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
6. Regarding (Investments) item:
 - A. Accept Zakat Payer's appeal regarding investment in real estates, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
 - B. Dismiss Zakat Payer's appeal regarding investments in securities, and uphold the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
7. Dismiss Zakat Payer's appeal regarding (Shareholders' Current Account) item according to reasons and grounds stated herein.
8. Accept ZATCA appeal regarding (Other Accounts Payable) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.

Similar Decisions
First Appellate Department for Income Tax
Violations and Disputes
IR-2022-324



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-310

Case No.: I-1475-2018

Principle No. 292

- **Taxpayer's petition to stay proceedings due to submitting a financial restructuring initiation request, in accordance with Bankruptcy Law and its Implementing Regulations, and the issuance of a ruling by the Commercial Court by appointing two bankruptcy trustees to execute company's financial restructuring, coupled with the failure to respond to Department's request regarding continuation with the appeal within a 30-day period, shall result in the forfeiture of Taxpayer's right to appeal.**

Facts

To consider appeal filed on .././... corresponding to .././... by ... Company against Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (8) of 1439 AH in regarding tax assessment for years from 2011 to 2014 in Case filed by Appellant against ZATCA, in which Tax Appellate Committee ruled as follows:

First: formal aspect: Accept the appeal in form filed by Taxpayer (... Company) - a foreign limited liability company - regarding tax assessment for years from 2011 to 2014 according to decision grounds.

Second: On Merits:

1. Calculate depreciation differences for the disputed years in accordance with the Committee's calculation as per the reasons stated in the decision.
2. A. Uphold Taxpayer's position in deducting the full amount of salary variances for 2011 amounting to SAR 4,261,994 from tax base and SAR 4,269,315 for 2012 according to decision grounds.
B- Uphold ZATCA in adding salary and wage variances for 2013 and 2014 to Taxpayer's tax base according to decision grounds.
3. Allow deduction of remunerations for years in question from Taxpayer's tax base within the limits of the amounts included in Committee's calculation according to decision grounds.
4. Uphold ZATCA position in rejecting (Gratuities, Hospitality Expenses, Miscellaneous Expenses and Fines) item as deductible expenses from Taxpayer's tax base for years in question according to decision grounds.
5. Uphold ZATCA position in disallowing deduction of bad debts for 2013 and 2014 as deductible expenses from Taxpayer's tax base for years in question according to decision grounds.
6. Accept the deduction of temporary labor expenses (subcontractors) for 2014 amounting to (SAR 1,378,273) from the Taxpayer's tax base and adjusting the difference amounting to (SAR 958,476), as per the reasons stated in the decision.

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

Taxpayer objects to the decision rendered by Objection Committee, subject matter of appeal, by requesting acceptance of the appeal in form and on merits: cancellation of the primary decision in



its entirety, and rule in manner that does not conflict with laws and directives. As such, the Taxpayer requests to overturn the primary committee's decision for the aforementioned reasons.

On/.. /... AH corresponding to .. /.. /..., the Department held its remote session. Having asked Appellant's attorney about the reasons for objecting to the decision, subject matter of appeal, Appellant's attorney replied that there is a judgment issued on .. /.. /... corresponding to .. /.. /... regarding financial restructuring initiation request in bankruptcy case filed with Jeddah Commercial Court No. (...) of ... whose wording concluded with Court's acceptance to initiate financial restructuring procedures for Taxpayer Company and appointing bankruptcy trustees (... and ...) as trustees to execute the financial restructuring. Since the judgment on a request to initiate financial restructuring requires staying all decisions, orders and procedures issued against the debtor, his guarantors or sureties, we request, based on the foregoing and after taking cognizance by the Department, staying proceedings by the Department as stipulated by bankruptcy Law in this regard. Having asked ZATCA representatives about the statements made by Taxpayer Company's attorney and the judicial judgment provided regarding the financial restructuring of Taxpayer Company, they replied that they had reviewed the copy of judgment provided by Appellant Company's attorney, and that they would follow up on the Case between them and Taxpayer before this Department after expiry of the period specified for staying claims or Court's decision regarding accepting and initiating financial restructuring procedure. In addition, the Department asked Appellant Taxpayer to communicate the Department through the General Secretariat of Zakat, Tax and Customs Committees to set a session for its appeal after expiry of the period for staying proceedings. As such, the record was closed, and the Department decided to complete hearing and adjudicating the Case in light of any new developments regarding Taxpayer's position, whether by initiating or terminating financial restructuring procedure in such manner that would allow proceeding with the Case.

On/.. /... AH corresponding to .. /.. /..., the Department, having taken cognizance of Taxpayer's appeal and documents included in Case file, found that Taxpayer did not request to proceed with the Case after the Department decided staying proceedings due to the fact there was a judgment rendered by Jeddah Commercial Court by accepting financial restructuring procedure. Since the period of staying proceedings has exceeded (21) months. Thereupon, the Department requested the General Secretariat of Zakat, Tax, and Customs Committees to contact Taxpayer's legal representative and ensure the cessation of reason for staying proceedings and inform the Department of the same. Therefore, the Department decided to adjourn considering the Case until receiving a report from the General Secretariat in this regard.

Since the Department decided opening of pleadings, ZATCA submitted an answer dated 02/04/1443 AH corresponding to 08/11/2020 AD wherein replies to Taxpayer's appeal. The answer is summed up in that ZATCA reiterates its previous position submitted before Primary Department. Moreover, Zakat Payer's arguments do not differ es for such arguments previously submitted, to which ZATCA has already answered at that time. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Objection Committee's decision.

On ..., .. /.. /... corresponding to .. /.. /..., the Department, having taken cognizance of Taxpayer's appeal and documents included in Case file, found that Taxpayer did not request to proceed with the Case after the Department decided to stay proceedings due to the fact that there is a judgment rendered by Jeddah Commercial Court by accepting financial restructuring procedure. Since the period of staying proceedings has exceeded (21) months, and since the General Secretariat of Zakat, Tax, and Customs Committees has informed this Department of the inability to communicate with Taxpayer's legal representative, the Department requested the General Secretariat to validate Taxpayer's representation before this Department based on Articles (8) and (10) of Tax Dispute and Violation Committee Procedures, and then setting a date for adjudication by this Department.

On ..., .. /.. /... corresponding to .. /.. /..., the Department, having taken cognizance of Taxpayer's appeal filed before this Department, found that Taxpayer had previously requested to



stay proceedings in the Case due to filing a request to initiate financial restructuring in accordance with Bankruptcy Law and its Implementing Regulations. Since it turns out that there is a judgment rendered by Jeddah Commercial Court, appointing ... and... as bankruptcy trustees to execute the financial restructuring of the Company. Therefore, the Department requested the General Secretariat to notify bankruptcy trustees of the Case registered before this Department and filed by Taxpayer (... Company) against ZATCA, and to ask bankruptcy trustees to inform the Department whether or not to proceed with the Case within (30) days from this date, or else Taxpayer's right to appeal shall be forfeited. If they request to proceed with the Case, the Department requests the bankruptcy trustees to submit their report regarding this Case within 30-day period from that date.

On,././.... AH corresponding to .././..., the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

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

On Merits: Having taken cognizance of the subject matter of dispute and Taxpayer's appeal, the Department found that Taxpayer had previously requested to stay proceedings in the Case due to filing a request to initiate financial restructuring in accordance with Bankruptcy Law and its Implementing Regulations. Since it turned out that a judgment was rendered by Jeddah Commercial Court, appointing ... and... as bankruptcy trustees to execute the financial restructuring of the Company. Since the Department asked Taxpayer to inform it whether or not to proceed with the appeal within (30) days. Since no response was received from Taxpayer or bankruptcy trustees regarding proceeding with appeal filed before this Department. Since this Department granted Taxpayer and bankruptcy trustees an opportunity and no reply was received regarding proceeding with the appeal, and in accordance with Article (12) of the Implementing Regulations of appeal procedures. Therefore, this Department concludes that Taxpayer's right to appeal has forfeited.

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

Decision

First: Accept the appeal in form filed by Taxpayer (... Company), C.R. No. (...), TIN (...), against Second Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (8) of 1439 AH regarding tax assessment for years from 2011 to 2014.

Second: On Merits:

Dismiss Taxpayer's appeal due to forfeit of Taxpayer's right to appeal according to reasons and grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-181

Case No.: I-33196-2020

Principle No. 293

- ZATCA's right to adjust the assessment within ten years from the end of the deadline for filing the tax return for the tax year is relevant in cases where Taxpayer has not filed a return at all, or if it is found that the return is incomplete or incorrect with the intent to evade tax. Furthermore, raising a revised assessment without relying on the provisions of the regulations as previously stated does not achieve the purpose of stabilizing the financial and legal positions of Taxpayers.

Facts

The Department convened its session to consider the Appeal filed on 16/05/1442 AH corresponding to 30/12/2020 AD, by (.....), Holder of National Identity No (...) in his capacity as the Appellant institution owner, against First Appellate Department for Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-160) issued in Case No. (I-10460-2019) with relation to tax assessment for the period (2005-2011), filed by Appellant against ZATCA, in which the Primary Department decision ruled as follows:

First: formal aspect:

Accept the Case of the Plaintiff/ Trading Enterprise, C.R. No. (.....), in form.

Second: On Merits:

1. Dismiss the objection raised by the Plaintiff/..... Institution on Item (Income Tax Imposed on Advertising and Publicity Revenues for the Period 2005-2011 AD).
2. Dismiss the objection filed by the Plaintiff (...) Enterprise On Item (Late payment and late return fine).

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

Taxpayer is objecting to the Primary Department's decision under consideration, arguing that regarding item (Income tax imposed on advertising and publicity revenues), Taxpayer was confined in Lebanon due to the COVID-19 pandemic at the time the primary decision was issued. As such, he was unable to communicate or monitor the Company's affairs, and the Company's employees were unable to perform any actions as they lacked the authority to do so without the authorization of the Company's owner. Additionally, Taxpayer asserts that it is standard practice for agents to enter into advertising service contracts under the names of agencies, as these are well-known trademarks in the media industry. Without the reputation of these agencies, the agent would not have had to contract with them or pay royalties. Furthermore, the practice of separating the revenues and expenses of each agency is a regulatory measure aimed at determining the net income of each agency and its viability. If ZATCA considers this activity to be carried out by a non-resident, then why did it not consider the financial statements submitted and certified by an accredited chartered accountant, and why did it estimate the tax despite acknowledging the royalties included in those statements and calculating withholding taxes based on them. Regarding item (Late tax return fine), Taxpayer claims that as an agent for advertising agencies, it is not obligated to submit



a tax return for each agency, as these agencies are not considered permanent establishments. Regarding item (Late payment fine), Taxpayer claims that the fine should not be imposed from the date the tax was due because there is a dispute between the parties regarding the tax. Therefore, Taxpayer requests to overturn the primary decision based on the aforementioned reasons.

On Tuesday, 29/06/1443 AH corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing. ZATCA submitted a Reply, responding to Taxpayer's appeal. ZATCA initially requested that the appeal be dismissed in form, as Taxpayer had filed its appeal more than 30 days after receiving the primary decision. Additionally, ZATCA argued that Taxpayer's appeal did not address the case on merits but rather focused on justifying its absence from KSA when the decision was issued. ZATCA clarified that the appealed decision was issued in the presence of both parties, and therefore maintained that its procedures were correct and valid. As a result, ZATCA requested to dismiss Taxpayer's appeal and uphold the primary decision based on the aforementioned reasons.

On Wednesday, 05/09/1443 AH, corresponding to 06/04/2022, after reviewing the Case file, the Department requested that Taxpayer submit a detailed Appeal Memorandum outlining the reasons for its appeal. Taxpayer was also required to provide the Department with a certified translated copy of its contracts with the agencies, its audited financial statements, and its tax returns for the disputed years, along with any other supporting documents. Taxpayer was given a period of 15 days from that date to comply with this request. As a result, Taxpayer submitted some documents. On Sunday, 23/09/1443 AH corresponding to 24/04/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in form for being submitted with a person with a capacity and within the period prescribed by law.

On merits: Regarding item (Income tax imposed on advertising and publicity revenues), Taxpayer's appeal centers on objecting to the Primary Department's decision to uphold ZATCA's action of discarding its systematic accounts and reassessing it based on an estimated method. However, ZATCA maintains the accuracy and correctness of its procedure and requests to dismiss Taxpayer's appeal and uphold primary decision. With respect to the period from 2005 to 2008 AD, and upon careful examination of the Case by the Department, and after reviewing the documents in the Case file, the Department found that tax returns are governed by the provisions of the Tax Law and its Implementing Regulations governing the process of assessment adjustment. Article (65.a) explicitly states that ZATCA's right to adjust the assessment is within five years from the end of the deadline for submitting the tax return. ZATCA's right to adjust the assessment within ten years from the end of the deadline for submitting the tax return for the tax year relates to cases where Taxpayer has not submitted a return at all, or if it is found that the return is incomplete or incorrect with the intent to evade tax. Raising a revised assessment after the expiration of the five-year period specified under the Law for ZATCA to exercise its right to adjust the assessment is not consistent with the Case at hand. It did not appear from the Department's examination of the appealed decision, nor from ZATCA's opinion during the consideration of the dispute before that Department, that Taxpayer was accused of committing an act constituting tax evasion in a manner that indicates Taxpayer's intent to conceal such information. Based on the above, raising a revised assessment is not valid or consistent with the provisions of Article (65.a), which implies that the tax return for a tax year is final if five years have passed from the end of the deadline for submitting it, unless ZATCA exercises its right to make an adjustment during that period, or proves the existence of an intent to evade tax in submitting an incomplete return within ten years from the



end of the deadline for submitting the return. Stability of legal and financial positions is a fundamental goal affirmed by the Law by stipulating that ZATCA shall not exceed the five-year period for raising a revised assessment except in the case of tax evasion, and applying this in such a case to not exceeding ten years for ZATCA to exercise its right to raise a revised assessment, and because raising a revised assessment without relying on what the regulator has stipulated as previously stated does not achieve the goal of stabilizing the financial and legal positions of taxpayers, in which case this Department concludes that ZATCA is not entitled to adjust the assessment for the period from 2005 to 2008, and therefore this Department decides to accept Taxpayer's appeal on all items appealed by Taxpayer for the period from 2005 to 2008.

Regarding the period from 2009 to 2011 AD: Having considered the subject matter of dispute and after examining the documents in the case file, the Department has established the validity of the conclusion made by the Primary Department, issuer of the appealed decision. The reasons upon which that decision was based are sufficient to uphold it. Given that Taxpayer has not provided this Department with any evidence to support its claim, accordingly, this Department hereby dismisses Taxpayer's appeal and upholds the primary decision with regard to this item.

As for item (fine for late payment of income tax imposed on advertising and publicity revenues), Taxpayer's appeal centers on its claim that the fine should not have been imposed from the date the tax becomes due if there is a technical dispute regarding the items on which the tax is calculated. However, ZATCA has maintained the correctness and validity of its procedures and requests to dismiss Taxpayer's appeal and uphold the primary decision. It has become clear to this Department that ZATCA has assessed the tax on estimated profits. Given that Taxpayer only becomes aware of the result of the estimated assessment after being notified by ZATCA, the Department decided in this regard that Taxpayer cannot be held liable for the fine for late payment of the tax difference until it is aware of the actual adjusted assessment. Therefore, ZATCA is entitled to impose such fine from the date of notifying Taxpayer of its adjusted assessment, pursuant to the provisions of Article (68.1.b) of the Implementing Regulations of the Income Tax Law, which grants ZATCA the right to impose a fine for late payment of the tax due pursuant to ZATCA's assessment. Therefore, based on the aforementioned, this Department concludes that the fine should be imposed from the date of notifying Taxpayer of ZATCA's assessment.

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

Decision

First: In form, Accept the Appeal filed by Taxpayer (...) Enterprise, C.R No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (...), rendered in Case No. (...) Related to tax assessment for the period from 2005 to 2011 AD.

Second: On Merits:

1. Regarding item (Income tax imposed on advertising and publicity revenues):
 - A. Accept Taxpayer's appeal regarding that item for the period (2005-2008), and overturn the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to the merits and grounds stated herein.
 - B. Reject Taxpayer's appeal regarding that item for the period (2009-2011), and uphold the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to the merits and grounds stated herein.

Regarding item (Fine for late payment of income tax imposed on advertising and publicity revenues): Accept Taxpayer's appeal, and amend the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah by stipulating that the fine shall be imposed from the date of notifying Taxpayer of ZATCA's assessment, according to the merits and grounds stated herein.



Similar Decisions
First Appellate Department for Income Tax
Violations and Disputes
IR-2022-284
IR-2022-314

Substantive Principles (Zakat)



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-70

Case No.: Z-31938-2020

Principle No. 294

- Absence of funds in Zakat Payer's possession that are subject to Zakat, coupled with Zakat Payer's presentation of evidence indicating cessation of its activity, such as a certificate of business closure, results in the estimated assessment not accurately reflecting Zakat Payer's activity.

Facts

The Department convened to consider the appeal filed on .../../, corresponding to .../../, by/ (...), ID No. (...) in his capacity as former Owner of Enterprise (...), C.R. No. which was canceled on 22/02/1440AH pursuant to the Commercial Register Cancellation Certificate issued by the Ministry of Commerce, against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (IFR-2020-167) issued in Case No. (Z-3128-2020) in connection with estimated Zakat assessment for the period from 1429 AH to 1440 AH, filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

Reject the objection filed by the Plaintiff (...) TIN (...), against decisions of the Defendant/ZATCA, concerning Zakat assessment for the period from 1429 AH to 1440 AH, and confirm settling the dispute regarding the Plaintiff's objection to Zakat assessment for the year 1439 AH due to absence of any claim by the Defendant against the Plaintiff for any amounts due for the year 1439 AH.

Dissatisfied with the decision, Zakat Payer (...) filed a statement of appeal that can be summed up as follows:

Zakat Payer is objecting to the primary decision, claiming that he no longer has any commercial activity as his commercial registration has been canceled. Zakat Payer also states that he does not have an employment visa or a municipal license, and that he ceased import activities in 1433 AH. Additionally, he claims to be eligible for the Citizen Account Program, has not obtained a commercial loan, and was on a scholarship during the disputed years. He further argues that the amounts assessed for the years from 1434 AH to 1440 AH are incorrect and were all automatically calculated, and that the Enterprise was canceled in 1440 AH without completing 90 days, meaning that a full lunar year was not completed. Zakat Payer asserts that the actual activity ended in 1433 AH. Therefore, Zakat Payer requests to overturn the primary decision based on the aforementioned reasons.

The Department decided to open pleadings, ZATCA accordingly submitted a Reply on ... /.. .../... AH corresponding to ... /.../.... AD, in which ZATCA responded to Zakat Payer's appeal, it affirms its position presented before the Primary Department. Moreover, the primary decision is in accordance with the provisions of the Law. Furthermore, based on Article (7) of the Electronic Transactions Law, and since Zakat Payer did not cancel his registration until 22/02/1440ZATCA maintains the validity and correctness of its procedures and requests rejection of Zakat Payer's appeal and upholding of the primary decision for the aforementioned reasons.



On Tuesday, 29/06/1443 AH, corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing session. The period elapsed without any additional submissions from either party to the appeal.

The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on Thursday 16/07/1443 AH corresponding to 17/02/2022 AD. 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 claims submitted by Zakat Payer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On merits: Upon reviewing Zakat Payer's appeal and examining the Case file, it appears that Zakat Payer's appeal is based on the claim that he was not engaged in any commercial activity during the years subject to Zakat assessment. Meanwhile, ZATCA has maintained that its procedures are valid and correct, and has requested dismissal of Zakat Payer's appeal and upholding of the primary decision. Regarding Zakat Payer's assessment for the years from 1429 AH to 1434 AH, the Department has established that ZATCA's assessment for those years was made after the expiration of the prescribed period for amending Zakat payer's declaration, which is stipulated to be five years from the final deadline for Zakat payer to submit their Zakat declaration for each year, and considering that these rules were established to ensure the stability of transactions and to prevent Zakat Payers from experiencing uncertainty without a defined period within which they can be assured that their financial position will not be disrupted, which has been proven in Zakat payer's objection against ZATCA, and since this matter does not result in Zakat payer being absolved of their legal obligation if, in fact, they are liable for such obligation, but rather its effect is a procedural matter related to ZATCA's right to reinitiate the assessment after the expiration of the prescribed period, this Department concludes that ZATCA's action in making such amendments is invalid. Accordingly, this Department decides to accept Zakat Payer's appeal for the years from 1429 AH to 1434 AH and overturn the primary decision.

Regarding Zakat Payer's appeal for the years from 1435 AH to 1440 AH (except for the year 1439 AH, where the dispute was resolved in favor of Zakat Payer's objection due to the absence of any amounts according to ZATCA's assessment), and after examining all the Case files and the facts surrounding it, as well as the documents attached to the file regarding Zakat Payer's activities and his status in terms of being subject to Zakat, the Department found that the estimated assessment requested by ZATCA does not accurately reflect Zakat Payer's actual activity in light of the circumstances and facts related to Zakat payer's situation. Zakat Payer has provided a set of evidence indicating that his activity ceased after 1433 AH, including proof of his scholarship and a certificate of commercial registration cancellation dated 22/02/1440 AH. ZATCA has not provided any evidence to contradict what Zakat payer has proven regarding the cessation of activity after 1433 AH, and has not provided any material facts to justify the amendment of Zakat Payer's Zakat declarations or the results it has reached. This Department has not found any funds in Zakat Payer's possession that are subject to Zakat for the disputed years. As such, this Department concludes that Zakat Payer's position is valid and correct. Therefore, this Department accepts Zakat Payer's appeal for the years from 1435 AH to 1440 AH (except for the year 1439 AH, where the dispute was resolved in favor of Zakat Payer's objection



due to the absence of any amounts according to ZATCA's assessment), and overturns the primary decision..

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

Decision

First: In form, Accept the appeal filed by Zakat Payer (...), ID No. (...), TIN (...) against First Department for the Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-167) issued in Case No. (Z-3128-2020) in connection with estimated Zakat assessment for the period from 1429 AH to 1440 AH.

Second: On Merits: Accept the appeal filed by Zakat Payer and overturn decision of First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds and merits mentioned in the decision. May Allah's blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions



Principle No. 295

- Zakat Payer's failure to prove their claim that the amounts on which Zakat was calculated in the Enterprise's accounts do not represent all of its income results in the invalidity of their claim that the disputed estimated assessment amounts do not represent all of the income realized during Zakat year.

Facts

The Department convened to consider the appeal filed on 12/02/1442 AH, corresponding to 29/09/2020 AD, by (...), ID. No. (...), against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-42) issued in Case No. (Z-8713-2019), related to Zakat assessment for 1436 AH, filed by the Appellant against ZATCA, in which the primary decision ruled as follows:

Dismiss the objection filed by Plaintiff/ ..., (TIN No....) against the decision issued by the Defendant/ZATCA in connection with Zakat assessment for 1435 AH, subject matter of the Case.

Dissatisfied with the decision, Zakat Payer (...) filed a statement of appeal that can be summed up as follows:

Zakat Payer is objecting to the appealed primary decision, as it is claiming that the profit margin percentage stated in the decision lacks a clear and explicit mandatory provision for determining the exact 15% rate. The percentage actually ranges between 10% and 15%, and there are also certain expenses that have not been taken into account. Therefore, Zakat Payer objects to the decision and requests to overturn the appealed decision for the aforementioned reasons.

On Monday, 22/10/1443AH, corresponding to 23/05/2022 AD, the Department decided to hold a 10-day e-hearing session. Therefore, ZATCA submitted a Reply in response to Zakat Payer's appeal, that can be summarized as follows: ZATCA requests that the Case not be dismissed due to Zakat Payer's failure to properly prepare it and for not fulfilling the form and procedures stipulated in Article (41) of the Law of Civil Procedures and Article (8) of the Tax Dispute and Violation Committee Procedures.

On Tuesday, 29/11/1443 AH corresponding to 28/06/2022 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having taken a look at the case papers and the statement of appeal submitted by Zakat Payer, the Department found that the formal conditions for considering the appeal were met as per the conditions stipulated in the relevant laws, regulations and decisions, which



means that the appeal request is acceptable in form for being submitted by a person with a capacity, and within the period prescribed by law.

On merits, Zakat Payer's appeal is based on the argument that the disputed estimated assessment amounts do not fully represent the realized revenues during Zakat year. However, ZATCA maintains the accuracy and correctness of its procedure and requests to dismiss Zakat Payer's appeal and uphold primary decision for the aforementioned reasons. Having reviewed Zakat Payer's appeal and examined the Case file, and considering that Zakat Payer has failed to prove its claim that the amounts on which Zakat was calculated for the Enterprise do not represent all of its revenue, and given that this Department has ascertained the correctness of the Primary Department's conclusion and that the reasons upon which it based its decision are sufficient to uphold it, this Department therefore decides to reject Zakat Payer's appeal and uphold the primary decision.

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

Decision

First: In form, Accept the appeal filed by Zakat Payer (...), ID. No. (...), TIN No. (...) against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-42) issued in Case No. (Z-8713-2019), in connection with Zakat assessment for 1436 AH.

Second: On Merits: Dismiss the appeal filed by Zakat Payer and affirm the Decision taken by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-170

Case No.: Z-30500-2020

Principle No. 296

- The fact that Zakat Payer has substantiated the expenses incurred for salaries and board members' fees with supporting documents is not negated by the failure to register the recipients of these salaries and benefits with the social insurance. This is because such failure does not affect Zakat Payer's right to deduct these expenses as long as it is proven that Zakat Payer has actually incurred them.

Principle No. 297

- Zakat Payer has the right to present evidence to support their claim at any stage of the legal proceedings.

Facts

The Department convened to consider the appeal filed on./../...AH, corresponding to .../... /.. AD, by (...), ID No. (...) in his capacity as Manager of Appellant Enterprise, under its commercial registration, against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-189) issued in Case No. (Z-10801-2019), in connection with Zakat assessment for the period from 2008 to 2015 AD, filed by the Appellant against ZATCA, in which the primary decision stated as follows:

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

Second: On Merits:

1. Dismiss the Case with respect to item (Salaries and Bonuses of Board Members).
2. Confirm resolution of dispute related to item (Import Discrepancies).

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

Zakat Payer is objecting to the appealed primary decision. Regarding item (salaries and bonuses of board members), Zakat Payer is requesting to deduct all salaries and wages from Zakat base since they are expenses that have been paid and are no longer its liability. Additionally, the reason for not providing a social security certificate, upon which the Primary Department based its rejection decision, is that the social security Law has a specific age limit for registration. Therefore, the registration of board members was excluded due to exceeding this age limit. Furthermore, a portion of the rejected amounts is due to exceeding the maximum allowable salary for registration. Moreover, there is evidence of the payment of salaries to board members in the form of contracts, payrolls, and bank transfers. Therefore, Zakat Payer requests to overturn the primary decision due to the aforementioned reasons.

The Department decided to open pleadings. Therefore, ZATCA submitted a Reply on 16/08/1442 AH, corresponding to 29/03/2021 AD, in response to Zakat Payer's appeal. In



summary the Reply included as follows: ZATCA reaffirms its position presented before the Primary Department. It further asserts that it did not accept this item because Zakat Payer failed to provide evidence of the social security registration of the board members for the disputed years, in accordance with Article (5.2) and Article (20.3) of the Implementing Regulations for Zakat Collection. Zakat Payer did not provide a social security certificate to the Primary Department as proof of the registration of salaries and bonuses. As such, ZATCA requests that no new documents be accepted from Zakat Payer that were not submitted during the examination and objection phases. ZATCA accordingly maintains the correctness and validity of its action, and requests that Zakat Payer's appeal be dismissed and the primary decision be upheld based on the aforementioned reasons.

On Tuesday, dated 29/06/1443 Ah corresponding to 01/02/2022 AD, the Department decided to hold an electronic pleading session for a period of ten (10) days, During this pleading, Zakat Payer submitted some documentation.

On Wednesday, 12/09/1443 AH corresponding to 13/04/2022 AD, upon reviewing Appeal memoranda and replies thereto, and after examining documents of the Case file, the Department decided that the Case was ready for adjudication and issuance of a decision, and therefore decided to close pleadings and set a date for adjudication.

Grounds

Having reviewed Case documents and statement of claims submitted by Zakat Payer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted by a person with capacity and within the period prescribed by law.

On Merits, with regard to item (salaries and bonuses of board members), Zakat Payer's appeal is based on the argument that this item should be deducted as it is supported by documentation and is necessary for the operation of the business that generates Zakat subjected income. However, ZATCA has maintained the correctness and validity of its action and requests to dismiss Zakat Payer's appeal and uphold the primary decision. Having carefully considered the subject matter of dispute, and after examining the Case file with regard to this disputed item for the period from 2008 to 2012 AD, the Department has established that ZATCA's assessment for that year was made after the expiration of the prescribed period for amending Zakat Payer's declaration, which is stipulated to be five years from the final deadline for Zakat Payer to submit their Zakat declaration for each year, and considering that these rules were established to ensure the stability of transactions and to prevent Zakat Payers from experiencing uncertainty without a defined period within which they can be assured that their financial position will not be disrupted, which has been proven in Zakat Payer's objection against ZATCA, and since this matter does not result in Zakat Payer being absolved of their legal obligation if, in fact, they are liable for such obligation, but rather its effect is a procedural matter related to ZATCA's right to reinitiate the assessment after the expiration of the prescribed period, this Department concludes that ZATCA's action in making such amendments is invalid. Accordingly, this Department decides to accept Zakat Payer's appeal and overturn the primary decision.

As for the dispute concerning this item for the period from 2013 to 2016, and after carefully considering the subject matter of dispute and examining the case file, the Department has found that Zakat Payer has proven that these expenses were incurred with supporting documents. ZATCA's argument that the recipients of these salaries and bonuses were not registered with social security does not undermine Zakat Payer's right to deduct these expenses, as long as Zakat Payer has proven that they were incurred. Therefore, this Department concludes that Zakat Payer's position is valid. Furthermore, ZATCA's argument that new documents cannot be accepted at this stage is also without merit, as



Zakat Payer has the right to present evidence to support its claim at any stage of the proceedings, in accordance with Article (23) of the Tax Dispute and Violation Committee Procedures. Since ZATCA has not presented any evidence to challenge the documentation provided by Zakat Payer, this Department has decided to accept Zakat Payer's appeal and overturn the primary decision.

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

Decision

First: Accept in form the appeal filed by Zakat Payer/(.....Enterprise), C.R. No. (...), TIN (...), against Second Department for the Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-189) issued in Case No. (Z-10801-2019), in connection with Zakat assessment for the period from 2008 to 2015.AD.

Second: On Merits:

Accept Zakat Payer's appeal regarding the item (Salaries and Bonuses of Board Members), and overturn the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds and merits mentioned therein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-203

Case No.: Z-29772-2020

Principle No. 298

The fundamental principle for calculating Zakat on Zakat Payers is to rely on supporting evidence and documents

Principle No. 299

If Zakat Payer submits audited financial statements for the disputed years and ZATCA does not challenge these statements or their contents, then Zakat Payer is entitled to have their Zakat base calculated based on the information provided in the audited financial statements.

Facts

The Department convened to consider the appeal filed on .../.. AH, corresponding to .../.. AD, by/ ..., ID No. (...) in his capacity as the Appellant Company's Attorney under POA No. (...), against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IRF-2020-116), issued in Case No. (Z-174-2018), in connection with Zakat assessment for the period from 2007 to 2012 AD, in the Case filed by the Appellant against ZATCA, in which the Primary Department ruled as follows:

First: Dismiss the objection filed by Plaintiff/Company... (TIN ...) to the decision of Defendant/ZATCA regarding the disputed item (Retained earnings and statutory reserves).

Second: Dismiss the objection filed by Plaintiff/ Company ... (TIN ...) to the decision of Defendant/ZATCA regarding net profit for 2007 AD

Third: Dismiss the objection filed by Plaintiff/Company... (TIN ...) to the decision of Defendant/ZATCA regarding deduction of the value of lands sold to ... for 2007 to 2012 AD, as detailed in the aforementioned reasons.

Fourth: Cancel the decision of Defendant/ ZATCA, against Plaintiff, Company ... (TIN ...) regarding deduction of the investment land for the period from 2007 to 2011, as detailed in the aforementioned reasons.

Fifth: Dismiss the objection filed by Plaintiff/Company... (TIN ...) to the decision of Defendant/ZATCA regarding retained earnings resulting from disputed land sales.

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

Zakat Payer objects to the decision issued by the Primary Department, arguing that the basis for calculating Zakat for any establishment is the actual financial reality, which was not reflected in the financial statements due to irregular, illegal, and erroneous transactions that have been corrected in the amended financial statements. Furthermore, final judicial rulings confirm the inaccuracy of the Company's previous financial situation. It is also evident that the primary decision ignored the fact that all the lands involved in the transactions were part of a single plot owned by the Company under a single title deed,



fully mortgaged to a bank against a loan. This loan is subject to Zakat and cannot be disposed of through sale or any other transactions. Additionally, the Company's articles of association do not include a real estate or land sales activity. Therefore, all these transactions were illegal acts committed by the former chairman of the board, who introduced his own assets into the Company in exchange for an increase in capital and shares, and then attempted to reacquire these assets in an irregular manner, causing harm to the Company by issuing incorrect financial statements that did not reflect the actual situation and resulted in losses for more than 10 years, necessitating the issuance of amended financial statements. Zakat Payer has repeatedly requested ZATCA to approve the amended statements, but to no avail. Moreover, ZATCA calculated the short-term loan as a long-term loan and ignored the Company's default due to its poor financial condition. Therefore, Zakat Payer requests to overturn the primary decision for the aforementioned reasons.

On Tuesday, 29/06/1443 AH, corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing session. ZATCA submitted a Reply addressing Zakat Payer's appeal. In summary, ZATCA reiterated its previously stated position and argued that Zakat Payer's arguments were not new. Furthermore, Zakat Payer failed to submit the amended financial statements for the period from 2006 to 2012, or a statement explaining the adjustments made during that period, either to ZATCA or to the Primary Committee. This was the primary point of contention in the assessment. Zakat Payer did submit a letter dated 22/05/1439AH expressing its intention to submit the amended financial statements and requesting a meeting with a chartered accountant, but did not provide any reasons for the delay, despite the fact that the statements were issued on 04/05/1439AH. Therefore, ZATCA proceeded with the assessment based on the available data and the information contained in the financial statements, without making any changes that contradicted them. Since Zakat Payer filed an appeal within the specified period but did not submit its Zakat declaration within the 120-day period required by Article (20.2) of the Zakat Collection Regulations issued in 1438 AH, ZATCA maintained that Zakat base is calculated based on Zakat Payer's actual financial situation as reflected in the financial statements at the end of disputed Zakat year. ZATCA requested that any documents not submitted during the examination and appeal phases be rejected. As such, ZATCA maintains the correctness and validity of its action and requests to dismiss Zakat Payer's appeal and uphold the primary decision for the aforementioned reasons.

On Tuesday, 01/11/1443 AH corresponding to 31/05/2022 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

On Tuesday dated 29/06/1443 AH, corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing session. The period elapsed without any additional submissions from either party to the appeal.

Grounds

Having reviewed the case papers and the statement of claims submitted by Zakat Payer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On merits, Zakat Payer's appeal centers on objecting to the Primary Department's decision to uphold ZATCA's action of discarding to assess Zakat Payer based on the amended financial statements. However, ZATCA requests to dismiss Zakat Payer's appeal and uphold the primary decision. After examining the documents of the Case file, the



Department established that Zakat Payer's request was to cancel the assessment made by ZATCA and to rely on its Zakat declarations based on the amended financial statements. ZATCA did not object to the reasonableness of these amendments, and the Department established that these revised financial statements reflect the true financial position of Zakat Payer. Additionally, Zakat Payer has provided documents supporting the justifications for reissuing the financial statements and the review by an accredited chartered accountant. However, ZATCA has not presented any evidence to refute the reasons provided by Zakat Payer for reissuing the financial statements, including evidence indicating a legal dispute regarding the disputed lands. Given the circumstances as described, and considering that the principle in calculating Zakat for Zakat Payers is to rely on supporting evidence and documents, and since Zakat Payer has submitted revised financial statements for the disputed years, and ZATCA has not challenged these statements or their contents, it is therefore determined that Zakat Payer is entitled to have its Zakat base calculated based on the information in the revised financial statements. Consequently, this Department hereby cancels ZATCA's assessment decisions based on the pre-amended financial statements and overturns the primary decision.

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

Decision

First: Accept in form the appeal filed by Zakat Payer/ Company, CR. No. (...), TIN No (...) against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (IRF-2020-116) issued in Case No. (Z-174-2018) in connection with Zakat assessment for the period from 2007 to 2012 AD.

Second: On Merits:

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-261

Case No.: Z-19110-2020

Principle No. 300

- Zakat Payer is subject to the regulations governing the collection of Zakat, under which the amounts owed by Zakat Payer are considered for Zakat calculation. In calculating Zakat base, the source of income is not taken into account.

Facts

The Department convened to consider the Appeal filed on /../... AH, corresponding to /../... AD, by (...), ID No. (...) in his capacity as Owner of Appellant Enterprise, against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-47) issued in Case No. (Z-2249-2020) related to Zakat assessment for 1438 AH filed by Appellant against ZATCA, in which the Primary Department decided as follows:

Accept the Case filed by the Plaintiff (...), Owner of (... Enterprise), C.R. No. In form, and reject it on merits.

Dissatisfied with the decision, Zakat Payer (... Enterprise), filed a statement of appeal that can be summed up as follows:

Zakat Payer objects to the decision of the Primary Department, claiming that the inspection was conducted outside of the Enterprise's official working hours at 7 PM, in violation of Article (61) of the Tax Law, which stipulates that the inspection of Zakat Payer's books and records must occur during working hours. Article (59.2) of the Regulations clarifies that working hours refer to Zakat Payer's working hours. Additionally, Zakat Payer asserts that the cases of reassessment and inspection outlined in the Law do not apply to it, as it has submitted its declarations in accordance with the Law's requirements. Furthermore, the Enterprise engages in marketing activities for third parties outside KSA, and therefore, the source of income is derived from these marketing activities for third parties outside KSA, which are excluded from Zakat base as specified in Article (6) of the Tax Law. Upon reviewing the amended assessment issued by ZATCA, it is evident that the assessment was arbitrary and failed to consider the percentage charged for marketing services to third parties or the size of the expenses. It is also inconsistent with the submitted documents. Therefore, Zakat Payer requests to overturn the primary decision based on the aforementioned reasons.

Since the Department decided to open pleadings, ZATCA submitted a Reply dated 01/03/1443AH, corresponding to 07/10/2021AD, responding to Zakat Payer's appeal. In summary, the Reply reaffirmed its previous position presented before the Primary Department. ZATCA requested that no new requests be accepted from Zakat Payer, citing Article (186) of the Law of Civil Procedures. As such, ZATCA maintains accuracy and correctness of its action and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.



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

On Sunday, 25/12/1443 AH corresponding to 24/07/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the Case papers and the statement of claims submitted by Zakat Payer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On merits, Zakat Payer's appeal centers on challenging the Primary Department's upholding of ZATCA's action to raise a revised Zakat assessment . Zakat Payer claims that the revised assessment was arbitrary and failed to consider the percentage charged for marketing services to third parties or the size of the expenses. However, ZATCA maintains the accuracy and correctness of its procedure and requests to dismiss Zakat Payer's appeal and uphold the primary decision. Having reviewed Zakat Payer's appeal and examined the Case file, the Department found that Zakat Payer had acknowledged the contents of the inspection report in the primary decision. Moreover, any procedural irregularities in the inspection report, which Zakat Payer contested, do not affect the substantive aspects of the assessment, neither the correctness of the assessment nor the total amounts included therein. Zakat Payer's appeal primarily focused on the source of income, relying on the provisions of the Income Tax Law and its Implementing Regulations. However, as Zakat Payer is a payer of Zakat, it is subject to the regulations governing the collection of Zakat, under which the amounts owed by Zakat Payer are considered for Zakat calculation. In calculating Zakat base, the source of income is not taken into account. Furthermore, Zakat Payer has not provided any evidence to support the profit margin it claims. Given that this Department finds the decision issued by the Primary Department to be correct, it is hereby decided to reject Zakat Payer's appeal and uphold the primary decision.

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

Decision

First: In form, Accept the appeal filed by Zakat Payer/Enterprise..., CR. No. (...) (...), TIN No (...) against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (ISZR-2020-47) issued regarding Case No. (Z-2249-2020), in connection with Zakat assessment for 1438 AH.

Second: On Merits:

Dismiss the appeal filed by Zakat Payer and uphold the Decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-200

Case No. ZW-72364-2021

Principle No. 301

- Assessment of Zakat Payers based on their systematic accounts requires considering the principle of budget balance. If a specific asset from the acquisition assets cannot be deducted, its financing should not be included. Alternatively, ZATCA can calculate Zakat directly, considering only Zakatable assets.

Principle No. 302

- ZATCA's failure to provide a direct link between the loans obtained during the year and the asset deducted from Zakat base, and its failure to provide a clear explanation of how the amounts arrived at differ from what Zakat Payer has declared, results in acceptance of Zakat Payer's declaration unless there is evidence to the contrary.

Facts

The Department convened to consider the appeal filed on ../../... AH, corresponding to ../../... AD, by/ ..., ID No. (...) in his capacity as the Appellant Company' Representative under its AOA, and the appeal filed on 22/02/1443 AH, corresponding to 29/09/2021 AD, by ZATCA against First Department to Adjudicate Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2021-883) issued in Case No. (ZW-22993-2020) in connection with Zakat assessment for the period from 1427 to 1433 AH, filed by the Appellant against ZATCA. in which the Primary Department ruled as follows:

First: Dismiss the objection filed by Plaintiff (... Company), CR. No. (...), regarding item (Ministry of Finance loan for 1433 AH).

Second: Accept the objection filed by Plaintiff (... Company), CR. No. (...), regarding item (Amounts due by some founders).

Third: Dismiss the objection filed by Plaintiff (... Company), CR. No. (...), regarding item (Exclusion of certain amounts in capital works under execution).

Fourth: Dismiss the objection filed by Plaintiff (... Company), CR. No. (...), regarding item (Accumulated losses).

Fifth: Establish resolution of dispute over (Withholding Tax) item when Plaintiff accepted Defendant's procedure.

Since both parties to the Case dissatisfied with this decision; therefore, both parties submitted a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer's appeal involves: Regarding (Company's Objection for the years from 1427 to 1430) item, Zakat Payer claims that Primary Department's decision dismissed its objection on the ground that Appellate Committee rendered a decision in this regard. In addition, Zakat Payer states that it submitted a petition to the Board of Grievances "BoG" against Decision No. (2473) of 1439 AH for reconsideration of grievance. Therefore, Zakat Payer requests considering such grievance according to Company's petition. Regarding (Ministry of



Finance Loan for 1437) item, Zakat Payer claims that the amount of loan used in financing long-term assets is SAR 868,326,168. In addition, the remaining amount of loan included in zakat base amounting to SAR 669,218,139 was not used in financing long-term assets and did not complete a full year. Regarding (Derecognizing Amounts Related to CWIP for Years from 1431 to 1433) item, Zakat Payer claims that CWIP balance outlines expenses incurred by the Company in developing lands, construction works and others. Regarding (Accumulated Losses) item, Zakat Payer requests deducting carried forward losses according to Company's financial statements, rather than ZATCA assessment. Therefore, Zakat Payer requests overturning Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons.

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

First: formal aspect: ZATCA insists on its request submitted to the Primary Department regarding inadmissibility of the Case in form in accordance with Article (2) and Article (3) of Tax Dispute and Violation Committee Procedures, as the interval between Zakat Payer's objection before ZATCA and its grievance before the Primary Department is more than 120 days. Thereupon, by expiry of the statutory period, the appealed decision becomes unappealable. However, the Primary Department did not discuss this plea in the details of its decision subject matter of appeal, nor did it discuss reasons for accepting the Case in form. Therefore, the decision is considered marred by a defect in form. Second: On Merits: Regarding ZATCA's appeal with respect to item (Amounts due by some founders for the period from 1431 to 1433 AH.) ZATCA clarifies that according to the explanations in the financial statements, these amounts were paid to some landowners as compensation for lost revenue due to the cessation of their activities and businesses. These amounts will be recovered from their shares in profit distributions according to the Company's articles of association., and therefore, they are considered loans and are subject to Zakat based on Fatwa No. (2/3077) dated 08/11/1426 AH regarding Zakat of debts for both the creditor and debtor. As for the Primary Department's argument that these amounts do not represent liabilities owed by the founders but rather are advance profit distributions that should be treated as equity in accounting due to dealing with the founders as owners rather than third parties, ZATCA responds by stating that the classification of the item in the financial statements as "advance payments from some shareholders" is not a mandatory item to be deducted, and the Primary Department's assumption that the item is an advance profit distribution is a hypothesis without any evidence or proof. Moreover, profit distributions are allowed to be deducted when the actual payment occurs. Therefore, ZATCA maintains the validity and soundness of its procedure and requests upholding its action and overturning of the primary decision with regard to the items appealed by ZATCA, based on the aforementioned reasons.

On Monday, 13/07/1443 AH corresponding to 14/02/2022 AD, the Department decided holding 10-day e-hearing. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal. The answer is summed up in that ZATCA insists on validity of Primary Department's decision that upheld ZATCA procedure regarding the items subject matter of Zakat Payer's appeal. As for Zakat Payer's objection for years from 1427 to 1430, ZATCA states that these years were addressed in Appellate Committee's Decision No. (1603) for 1437, and Zakat Payer filed a grievance before the Administrative Court. In addition, the Administrative Appellate Court issued a ruling thereon. Therefore, ZATCA insists on its argument that the Case cannot be reconsidered as it has already been adjudicated (Principle of *Res Judicata*). Regarding (Ministry of Finance Loan for 1433) item, ZATCA insists on Primary Department's decision, as it aligns with provisions of Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Paragraph (3) of Article (20) of the same regulations. Regarding (Derecognizing Amounts Related to CWIP), ZATCA insists on Primary Department's



decision, as it aligns with Paragraph (2) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Paragraph (3) of Article (20) of the same regulations. Regarding (Accumulated Losses) item, ZATCA insists on Primary Department's decision, as it aligns with Paragraph (9) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Moreover, ZATCA requests the Department to dismiss any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Civil Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons. In addition, Zakat Payer submitted an answer summarized in that Zakat Payer requests dismissing ZATCA appeal and upholding Primary Department's decision regarding the items subject matter of ZATCA appeal.

On Wednesday, 27/08/1443 AH corresponding to 30/03/2022 AD, since Zakat Payer submitted a copy of the petition filed before BoG dated 29/07/2019 AD; therefore, the Department asked Zakat Payer, for the second time, to provide BoG ruling regarding its petition within (7) days from that date. As a result, Taxpayer submitted some documents. On Sunday 28/10/1443 AH corresponding to 29/05/2022 AD, upon reviewing appeal notes and replies thereto, examining all papers and documents contained in Case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Accordingly, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On Merits: As for Zakat Payer's appeal regarding (Company's Objection for Years from 1427 to 1430) item, Zakat Payer's appeal involves the fact that the Primary Department did not consider its objection on the ground that the Appellate Committee rendered a decision regarding such years, despite the fact that Zakat Payer submitted a petition to BoG against the ruling rendered regarding the appeal related to this matter. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Given that this Department has found that the Appeal Committee issued Decision No. (1603) in 1437 AH, which was upheld by a final ruling by the Board of Grievances in Administrative Case No. (12837) of 1437 AH, it is evident that the Case cannot be considered with regard to this item due to the previous adjudication based on the provisions of Article (76.1) of the Law of Civil Procedure.

As for Zakat Payer's appeal regarding (Ministry of Finance Loan for 1433) item, Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in adding this item to zakat base, and claims that the remaining part of loan added to Zakat base was not used to finance long-term assets and did not complete a full lunar year. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of appeal, and since it is noted that the inclusion of the Ministry of Finance loan in appealed item was not due to the passage of a full lunar year. The loan was obtained during the year in accordance with loan agreement. Since ZATCA did not provide a direct relation between that loan and any asset deducted from Zakat base, which could serve as a ground for disregarding Zakat Payer's declaration. Furthermore, the Department that rendered the



decision grounded its decision to dismiss Zakat Payer's objection on Zakat Payer's failure to submit supporting documents, without clarifying the missing documents or what could have been requested from Zakat Payer. Since the principal rule is to accept Zakat Payer's declaration unless evidence suggests otherwise, and since ZATCA did not, in its documents submitted to either Primary Department or in response to Zakat Payer's appeal, what elaborates how it came up with amounts different from those declared by Zakat Payer. Therefore, this Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

As for Zakat Payer's appeal regarding (Derecognizing Amounts Related to CWIP for Years from 1431 to 1433) item, Zakat Payer's appeal involves Zakat Payer's objection to Primary Department's decision that upheld ZATCA procedure outlined in adding this item to zakat base. In addition, Zakat Payer claims that CWIP balance outlines expenses incurred by the Company in developing lands, construction works and others. On the other hand, ZATCA argues that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that the audited financial statements are presumed to be accurate, and that this Department finds no evidence to contradict what has been elaborated in such statements. Since zakat assessment for Zakat Payers based on their statutory accounts requires observing principle of budget balance, and that disallowing deduction of a specific acquisition asset requires either not adding its financing or that ZATCA calculates zakat using the direct method, which includes only zakatable assets. Since ZATCA did not follow any of these alternatives when it rejected deducting item in question, Zakat Payer's statement is presumed to be correct. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

On Merits: As for Zakat Payer's appeal regarding (Accumulated Losses) item, Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in adding this item to zakat base, and claims that the carried forward losses shall be deducted pursuant to Company's financial statements, rather than ZATCA assessment. On the other hand, ZATCA argues that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that Zakat Payer is requesting to be accounted based on the financial statements, while ZATCA made the assessment based on its amended assessments. Having taken cognizance of ZATCA amendments to accounting profit for each year in question, the Department found that the amendments included addition of depreciation variances, as well as adding provisions for each year in question, in addition to adding profits from the sale of property and equipment for 1431. Since the depreciation variances and formed provisions are considered temporary variances between the accounting profit and adjusted profit for zakat purposes, which Zakat Payer is entitled to request for their deduction from its zakat base when realized or paid, in accordance with zakat accounting principles. Therefore, ZATCA procedure outlined in adding back depreciation variances and formed provisions to losses is valid. As for adding back profit of property and equipment sale for 1431: Since this procedure resulted in increased loss amount and did not result in decreased loss, it does not affect Zakat Payer's objection to ZATCA procedure. Since Zakat Payer's objection was regarding the increased zakat base compared to figures included in Zakat Payer's declaration. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for ZATCA appeal regarding the form of Zakat Payer's appeal: Having taken cognizance of ZATCA appeal and request for dismissing the Case in form, in addition to its reliance on Article (2) of Tax Dispute and Violation Committee Procedures. Since it is concluded from Case file that the dispute, subject matter of appeal, was before



effectiveness of such Procedures. Therefore, this Department dismisses ZATCA appeal in this regard.

As for ZATCA appeal regarding (Amounts Payable by Some Founders for Years from 1431 to 1433) item, the Department found that ZATCA appeal involves adding amounts to zakat base because they are loans, and that Primary Department's conclusion of considering such amounts as dividends is invalid, as this item was classified in the financial statement as a non-deductible item. In addition, Primary Department's assumption is unfounded and groundless. Moreover, dividend payout ratios are only allowed to be deducted upon the actual occurrence of payment. On the other hand, Zakat Payer requests dismissing ZATCA appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, Case file, documents and arguments included therein, the Department found that Note No. (5) to the financial statements reflects that advance payments to some founders outline amounts paid to some landlords in return for lost revenues due to cessation of their business activities and operations. In addition, such amounts are to be recovered by deduction from their dividend payout ratio. Thereupon, the Department concludes that ZATCA position is valid. Therefore, this Department dismisses ZATCA appeal and upholds Primary Department's decision in this regard.

Accept appeal filed by Zakat Payer (... Company), C.R No. (...), TIN (...) and appeal filed by ZATCA, against First Department for Determination of Income Tax Violations and Disputes Jeddah Decision No. (IZJ-2021-883) rendered in Case No. (ZW-22993-2020) regarding zakat assessment for years from 1427 to 1433 AH.

Decision

First: Accept in form the appeal filed by Zakat Payer/ Company ..., CR. NO. (...), TIN No (...) and the appeal filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No (IZJ-2021-883) issued in Case No. (ZW-22993-2020) in connection with Zakat assessment for the period from 1427 to 1433 AH

Second: On Merits:

1. Inadmissibility of hearing Zakat Payer's Appeal regarding (Company's Objection for Years from 1427 to 1430) item due to *res judicata* rule and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Ministry of Finance Loan for 1433) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
3. Accept Zakat Payer's appeal regarding (Derecognizing Amounts Related to CWIP for Years from 1431 to 1433) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
4. Dismiss Zakat Payer's appeal regarding (Accumulated Losses) item and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
5. Reject ZATCA's appeal regarding item (Amounts due by some founders for the period from 1431 to 1433 AH), and uphold the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to the reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-262

Case No.: ZI-21519-2020

Principle No. 303

- Zakat Payer's contribution to cover the losses of subsidiary companies, whether mandated by corporate law or voluntary, is considered an investment in those companies and is therefore deductible from Zakat Payer's Zakat base.

Principle No. 304

- The argument of whether remunerations and incentives are granted in accordance with the procedures stipulated by the Labor Law and whether they should be included in Zakat Payer's Zakat base is irrelevant. These regulatory procedures serve a different purpose, namely, to protect the rights of employees within establishments.

Principle No. 305

- If Zakat Payer fails to submit audited financial statements for a foreign company prepared by an accredited chartered accountant in the country of investment, the deduction of this investment from Zakat base shall not be accepted.

Facts

The Department convened to consider the Appeal filed on /.../.. AH, corresponding to /.. /... AD, by (...), ID No. (...) in his capacity as attorney of Appellant Company under POA No. (...), and the appeal filed on .. /.. /.. AH, corresponding to .. /... /... AD, against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-50) issued in Case No. (Z-94-2018) in connection with Zakat assessment for the period from 1998 to 2010 AD, filed by the Appellant against ZATCA, in which the Primary Department decided as follows:

First: In Form:

Accept the Case filed by the Plaintiff (... Company), C.R. No. (...), In form for submission during the period prescribed by law.

Second: On Merits:

1. Accept the objection filed by the Plaintiff (... Co.), and cancel the Defendant's decision regarding the Contributions item (Loans and advances from partners) to cover the losses of affiliated companies for the following years (1998, 2000, 2001, and 2002).
2. Confirm resolution of the dispute regarding item (Company expenses for the period from 1998 to 2003 AD), as the Defendant accepted the viewpoint of the Plaintiff (... Co.) regarding this item.
3. Dismiss the objection filed by the Plaintiff (... Co.), regarding the Remunerations and Incentives item for the years from 1998 to 2007.



4. Confirm resolution of the dispute regarding item (Car loan amortization for the period from 1998 to 2000 AD), as the Defendant accepted the viewpoint of the Plaintiff (... Co.) regarding this item.
5. Dismiss the objection filed by the Plaintiff (... Co.), regarding item (Professional fees, board of directors' fees, and distributed profits for the period from 1998 to 2010 AD).
6. Regarding item (Investments for the period from 1998 to 2010 AD): 1. Dismiss the objection filed by the Plaintiff (... Co.), Regarding item (Foreign investments in (... Co.), for the period from 1998 to 2010 AD. 1. Accept the objection filed by the Plaintiff (... Co.), And cancel the Defendant's decision regarding item (Foreign investments in (... Co.), for 2009 and 2010 AD. 3. Dismiss the objection filed by the Plaintiff (... Co.), regarding item (Stock portfolio for the period from 1998 to 2006 AD). 4. Accept the objection filed by the Plaintiff (... Co.), and cancel the Defendant's decision regarding stock portfolio for the period from 2007 to 2010 AD. 5. Dismiss the objection filed by the Plaintiff (... Co.), regarding Attorney's Fees item. 6. Dismiss the objection filed by the Plaintiff (... Co.), regarding item (government bonds for the period from 1998 to 2006 AD). 7. Dismiss the objection filed by the Plaintiff (... Co.), regarding the Supporting (Additional) Financing item in affiliates.
7. Accept the objection filed by the Plaintiff (... Co.), and cancel the Defendant's decision regarding item (Current account of the creditor partner for 2007 and 2008).
8. Accept the objection filed by the Plaintiff (... Co.), and cancel Defendant's decision regarding the Debtor Partner's Current Account item for the year 2009.
9. Amend the Defendant's decision regarding item (Balance of the loans account for 2006), by adding the accrued interest on the loan, amounting to SAR (160,409,540).
10. Accept the objection filed by the Plaintiff (... Co.), And cancel the Defendant's decision regarding item Professional fees for (... Co.) for 1999 AD.
11. Accept the objection filed by the Plaintiff (... Co.), and cancel the Defendant's decision regarding the Fixed Assets and Depreciation Differences Item for the years from 2006 to 2009.
12. Dismiss the objection filed by the Plaintiff (... Co.), regarding other items that were not allowed to be deducted for the years 2004 to 2009.
13. Confirm resolution of the dispute regarding item (Provision for the value of the recovered investment for 2009 and 2010 AD), as the Defendant accepted the viewpoint of the Plaintiff (... Co.) regarding this item.
14. Dismiss the objection filed by the Plaintiff (... Co.), regarding item (Claim for provisions for the period from 2006 to 2010 AD).
15. Cancel the Defendant's decision regarding item (Vacations for 2004), and dismiss the Plaintiff's objection regarding item (Outstanding travel tickets for 2004 AD).

Since both parties to the Case dissatisfied with this decision; therefore, both parties submitted a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer's appeal involves: Regarding item (Remunerations and incentives for the period from 1998 to 2007 AD), Zakat Payer claims that these expenses are ordinary and necessary business expenses, and that they were paid out and did not remain in the Company for twelve months. Regarding item (Professional fees, board of directors' fees, and distributed profits for the period from 1998 to 2010), Zakat Payer claims that the Professional fees obtained from (...) Company, (TIN. ...) have already been subject to Zakat and tax in the subsidiary company. For the sake of fairness, this income should not be subject to Zakat in the same year that (...) Company paid Zakat on it. Regarding the board of directors' fees, Zakat Payer claims that it has requested a deduction to avoid double taxation as these fees have already been subject to Zakat in the subsidiary companies. As for the distributed profits, subjecting them to Zakat has led to double taxation, as they have been taxed in the current year's profits and again in the profits of the investee companies for that year. Regarding



item (Investments), Zakat Payer is requesting acceptance of the deductions for investments in the stock portfolio for all years from 2005 to 2010. Zakat Payer argues that the management intended to hold these investments for the long term to increase capital rather than for short-term profits. Additionally, Zakat Payer claims that government bonds should be deducted from Zakat base, as these funds were taken out of the Company as investments and were not held within the Company for twelve months. Regarding item (Other items that were not allowed to be deducted for the period from 2004 to 2009 - expenses related to donations, general administrative expenses, and hospitality expenses), Zakat Payer claims that these expenses should be deducted because they are considered ordinary and necessary business expenses. Regarding item (Provisions for the period from 2004 to 2009). Zakat Payer claims that they do not know the basis on which ZATCA disallowed or demanded differences in provisions. Regarding item (Travel tickets for 2004), Zakat Payer claims that the nature of these travel tickets is necessary and not discretionary, and additionally, costs associated with these tickets do not remain within the company for twelve months. Therefore, Zakat Payer requests to overturn the primary decision regarding the appealed items based on the aforementioned reasons.

Decision was not accepted by ZATCA, so it appealed against the contested decision by virtue of a statement of appeal including the following claims:

Regarding ZATCA's appeal on item (Contributions "loans and advances from partners") to cover losses of subsidiary companies for the years 1998, 2000, 2001, and 2002," ZATCA clarifies that the coverage of losses, which Zakat Payer claims to have provided as loans and advances to subsidiary companies, was not subject to Zakat in subsidiary companies in the coverage year. Additionally, these losses were charged to the Company's accounts. Therefore, ZATCA did not accept the deduction of these losses from Zakat base as they are considered non-deductible expenses. Furthermore, the fact that Zakat Payer has reclassified this item as loans and contributions to the subsidiary Company does not change the nature of the item, which was confirmed by the Appeal Department (as an expense charged to the income statement). If Zakat Payer's claim that this item represents loans and advances to subsidiary companies is proven, then only the portion corresponding to Zakat Payer's share in the capital of the subsidiary companies should be deducted from Zakat Payer's Zakat base. As for item (Investments), ZATCA clarifies that although the Committee accepted the documents submitted by Zakat Payer, these documents were requested during the examination and objection phase but were not provided at that time. As for the investments in the stock portfolio, ZATCA pointed out that the dispute is not limited to the supporting documents, as ZATCA did not accept the deduction of these investments because they appeared in the financial statements under the classification of "trading investments available for sale" which clearly indicates that these investments are for trading purposes and the objective is speculation. Regarding items (Current account of the creditor partner for the years 2007 and 2008, and (Current account of the debtor partner for the year 2009), (Loans for the year 2006), and (Professional fees) for (...) Company for the year 1999, ZATCA clarifies that the Committee accepted the documents submitted by Zakat Payer, although these documents were requested during the examination and objection phase but were not provided. As for item (Fixed assets and depreciation differences for the years 2006 to 2009), ZATCA clarifies that it has applied Circular No. (2574/9) dated 14/05/1426 AH, which includes the application of certain procedural provisions and accounting standards from the Income Tax Law to Zakat Payers in order to unify the treatment, including the depreciation method specified in Article 17 of the Income Tax Law. Based on this, a depreciation schedule was prepared and adjustments were made to the depreciation differences for the net book value, and fixed assets were deducted from Zakat base. Regarding item (Leaves for 2004), ZATCA clarifies that it has treated this item as a provision, as the component of it was added to the profits during the year and was also deducted from the user. Therefore, the result of the calculations was



adjusted with the item of accrued leave salaries, as they are due to employees for their annual leave. As such, ZATCA maintains the correctness and soundness of its procedure and requests overturning of the primary decision regarding the items appealed by ZATCA for the aforementioned reasons.

On Thursday, 17/11/1443 AH corresponding to 16/06/2022 AD, the Department decided to hold a 10-day e-hearing session. ZATCA submitted a Reply reaffirming the validity and soundness of its procedure. ZATCA also stated that Zakat Payer's arguments do not present anything new that has not already been addressed and responded to by ZATCA. Regarding item (Contributions to cover the losses of subsidiary companies), ZATCA has appealed against it and refers to what was stated in its appeal memorandum to avoid repetition. As for item (Remunerations and incentives), ZATCA has added remunerations and incentives to Zakat base based on Article (5.1) of the Implementing Regulations for Zakat Collection issued in 1438 AH and Article (6.2) of the same Regulations. As for item (Professional fees, board of directors' fees, and profit distributions), ZATCA has determined that these expenses are not deductible according to the Law, as per ZATCA's letter no.(5097/10) of 1423 AH. Based on Article (20.3) of the Implementing Regulations for Zakat Collection, Zakat Payer's objection was rejected. Regarding item (Investments), for foreign investments, ZATCA relies on paragraph (4-b) of Clause II of Article (4) of the Implementing Regulations for Zakat Collection issued in 1438 AH. As for (Stock portfolio), ZATCA has appealed against this item and refers to its appeal memorandum to avoid repetition. As for (Government bonds), these are treated as loans, not investments, based on paragraph (4-c) of Clause II of Article (4) of the Implementing Regulations for Zakat Collection. Regarding item (Loans and advances granted to subsidiary companies), these are treated as loans and not as investments based on several Fatwas, including Fatwa No. (18497) of 1408 AH and Fatwa No. (2/3077) of 1426 AH. Regarding (Attorney fees), ZATCA has determined that these investments do not have a capital nature and cannot be treated as fixed assets in terms of being deducted from the base. Additionally, ZATCA does not object to charging the accounts for each year's expenses in accordance with the matching principle of revenues and expenses. Regarding items (Partners' current accounts), (Partners' loans), (Professional fees - (...) Company, and (Fixed assets and depreciation differences), ZATCA has appealed against these items pursuant to the appeal memorandum submitted to this Department and refers to what was stated in its appeal memorandum to avoid repetition. As for item (Other items not allowed to be deducted - donations, hospitality, general administrative expenses, other expenses, and losses in service management), ZATCA has added this item to Zakat base based on Article (5.1) of the Implementing Regulations for Zakat Collection issued in 1438 AH as well as Article (6.2) of the same. With respect to item (Loss from sale of investment), ZATCA has determined that this item represents sale and purchase of shares traded in the local market. ZATCA has rejected investments in securities as they are tradable shares and subject to speculation, and therefore considered as tradable investments (merchandise) on which Zakat is obligatory according to Islamic law. Regarding item (Claims against provisions), ZATCA has added the balance to the adjusted profit based on Article (4.9) and Article (6.6) of the Implementing Regulations for Zakat Collection. As for item (Addition of travel tickets and accrued leave), ZATCA has appealed against it and refers to its appeal memorandum to avoid repetition. ZATCA requests that no new documents be accepted from Zakat Payer that were not submitted during the examination and objection phases. Additionally, ZATCA requests that the Department not accept any new documents based on Article (186) of the Law of Civil Procedure. Therefore, ZATCA maintains the validity and soundness of its procedure and requests dismissal of Zakat Payer's appeal and upholding of the primary decision for the aforementioned reasons. Zakat Payer also submitted a Reply with the conclusion of Zakat Payer's request to uphold the primary decision and dismiss ZATCA's appeal regarding the appealed items.



On Sunday 25/12/1443 AH corresponding to 24/07/2022 AD, upon reviewing appeal notes and replies thereto, examining all papers and documents contained in Case file, the Department decided that the Case was ready for adjudication and issuance of a decision on its merits. Accordingly, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On merits: Regarding Zakat Payer's appeal and ZATCA's appeal concerning this case, this Department finds that ZATCA's assessment for the period from 1998 to 2000 and the period from 2004 to 2010 was made after the expiration of the prescribed period for amending Zakat Payer's declaration, which is stipulated to be five years from the final deadline for Zakat Payer to submit its Zakat declaration for each year, and considering that these rules were established to ensure the stability of transactions and to prevent Zakat Payers from experiencing uncertainty without a defined period within which they can be assured that their financial position will not be disrupted, and since this matter does not result in Zakat Payer being absolved of their legal obligation if, in fact, they are liable for such obligation, but rather its effect is a procedural matter related to ZATCA's right to reinitiate the assessment after the expiration of the prescribed period, this Department concludes that ZATCA's action in making such amendments is invalid. Accordingly, this Department decides that Zakat should be calculated based on Zakat Payer's declarations, and therefore, concludes by rejecting both ZATCA's and Zakat Payer's appeals regarding the items related to these years and overturning the primary decision in this regard.

As for ZATCA's appeal concerning item (Contributions, loans, and advances from partners) to cover losses of subsidiary companies in 2001 and 2002, ZATCA's appeal centers on the fact that the Primary Department accepted Zakat Payer's objection to this item. ZATCA claims that the coverage of losses was not subject to Zakat in the subsidiary companies in the coverage year and was charged to the Company's accounts. Therefore, it was not deducted because it is considered an expense that is not permissible to deduct. Meanwhile, Zakat Payer requests to dismiss ZATCA's appeal and uphold the primary decision. Having reviewed ZATCA's appeal and examined the Case file, the Department found that Zakat Payer's contribution to cover losses of subsidiary companies, whether to comply with corporate law or as a voluntary act, is considered an investment in those companies which is deductible from Zakat Payer's Zakat base. Given that this Department has verified based on Zakat Payer's financial statements that Zakat Payer has covered the losses of the investee companies, this Department decided to reject ZATCA's appeal and uphold the primary decision.

As for Zakat Payer's appeal regarding item (Remunerations and incentives for the period from 2001 to 2003), Zakat Payer's appeal centers on its objection to the Primary Department's upholding of ZATCA's action of not deducting this item from Zakat base. Zakat Payer claims that these expenses should be deducted as they are supported by documentation and are necessary for the generation of taxable income. However, ZATCA maintains the correctness and validity of its procedure and requests to dismiss Zakat Payer's appeal and uphold the primary decision. Having reviewed Zakat Payer's appeal and examined the Case file, the Department found that all ordinary and necessary expenses incurred for the business, whether paid or accrued, may be deducted if they represent an actual expenditure supported by documentary evidence or other indications that enable ZATCA to verify their validity. Additionally, upon reviewing the Case file and submitted



documents, and since the obligation to pay Zakat is based on the fact that the money remains in Zakat Payer's possession for a full lunar year, and given that it has been established that this amount was disbursed by Zakat Payer and spent on these incentives and benefits for employees, which is undisputed, and since ZATCA's argument regarding the legality of these bonuses and the need for them to be based on procedures stipulated by Labor Law is irrelevant to the calculation of Zakat, as these regulatory procedures serve another purpose aimed at protecting the rights of employees in establishments, this Department concludes that the entire amount should be considered a deductible expense for Zakat purposes, contrary to the primary decision. Therefore, this Department decides to accept Zakat Payer's appeal and overturn the primary decision.

As for Zakat Payer's appeal regarding item (Professional fees, board of directors' fees, and distributed profits for the period from 2001 to 2003), Zakat Payer's appeal centers on its objection to the Primary Department's upholding of ZATCA's action of not deducting this item from Zakat base. Zakat Payer claims that these expenses should be deducted to avoid the double payment of Zakat, which is prohibited in Islamic law. However, ZATCA maintains the correctness and validity of its procedure and requests to dismiss Zakat Payer's appeal and uphold the primary decision. Having reviewed Zakat Payer's appeal and examined the Case file, the Department found that ZATCA based its rejection of the deduction of the disputed amounts solely on Zakat Payer's failure to submit copies of the adjusted Zakat assessments for the subsidiary Company for the disputed years. Given that the adjusted Zakat assessments, based on the appeal decisions, are decisions issued by ZATCA itself, and ZATCA has full access to them, therefore, this cannot be a justification for ZATCA to reject Zakat Payer's declaration on the basis of not submitting these assessments, especially since they relate to a separate legal entity from Zakat Payer. Furthermore, the Department's request for Zakat Payer to submit supporting documents for the disputed amounts is unjustified since ZATCA did not base its decision on Zakat Payer's failure to submit supporting documents for the disputed amounts. Based on the foregoing, this Department decides to accept Zakat Payer's appeal and overturn the primary decision.

As for Zakat Payer's appeal regarding item (Investments for the period from 2001 to 2003), Zakat Payer's appeal centers on its objection to the Primary Department's upholding of ZATCA's action of not deducting this item from Zakat base. Zakat Payer claims that this item should be deducted as the purpose of these investments is acquisition and a full lunar year has not yet passed since they were made. However, ZATCA maintains the correctness and validity of its procedure and requests to dismiss Zakat Payer's appeal and uphold the primary decision. Having reviewed Zakat Payer's appeal and examined the Case file, the Department found that the disputed investments for the years in dispute that this Department has agreed to hear consist of foreign investment in (...) Company, and investments in government bonds, and given that Zakat Payer has not submitted the audited financial statements of the foreign company from an accredited chartered accountant in the country of investment, this Department decides to reject Zakat Payer's appeal regarding this investment. As for investment in government bonds for the period from 2001 to 2003, having reviewed Zakat Payer's appeal and examined the Case file, the Department found that the bonds are considered in principle debt instruments that are subject to the same rules as all other types of debts as to Zakat assessment. Ministerial Resolution No. (32/925), dated 25/05/1409 AH, exempts Zakat Payers from paying Zakat to ZATCA on held bonds. Since this Resolution relates to the procedural aspect of ZATCA's collection of Zakat and does not relate to Zakat Payer's acquittal from Zakat, the Department concludes to accept Zakat Payer's appeal regarding ZATCA's lack of entitlement to collect Zakat on these bonds for the disputed years.



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

Decision

First: Accept in form the appeal filed by Zakat Payer/Company ..., CR. NO. (...), TIN No (...) and the appeal filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No (IZJ-2020-50) issued in Case No (Z-94-2018) in connection with Zakat assessment for the period from 1998 to 2010 AD .

Second: On Merits:

1. Dismiss ZATCA's appeal and Zakat Payer's appeal regarding all appealed items for the years from 1998 to 2000 and from 2004 to 2010 AD, and overturn decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah in this regard, while deciding to calculate Zakat based on Zakat Payer's declarations for those years, according to the grounds and merits stated herein.
2. Dismiss ZATCA's appeal regarding item (Loans and advances from partners) to cover losses of subsidiary companies for the years 2001 and 2002 AD, and uphold decision of First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to the grounds and merits stated herein.
3. Accept Zakat Payer's appeal regarding item (Remunerations and incentives for the period from 2001 to 2003), and overturn the decision issued by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to the grounds and merits stated herein.
4. Accept Zakat Payer's appeal regarding item (Professional fees, board of directors' fees, and distributed profits for the period from 2001 to 2003), and overturn the decision issued by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to the grounds and merits stated herein.
5. Regarding item (Investments for the period from 2001 to 2003):
 - A. Dismiss Zakat Payer's appeal regarding foreign Investment for the period (2001-2003), and uphold decision of First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to the grounds and merits stated herein.
 - B. Accept Zakat Payer's appeal regarding investment in government bonds for the period (2001-2003), and overturn the decision issued by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, according to the grounds and merits stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-34

Case No.: Z-28206-2020

Principle No. 306

- A litigant is not initially required to submit all documents to the administrative authority to establish their claim

Facts

The Department convened to consider the Appeal filed on ../.. /... AH, corresponding to .../.../... AD, by (...), ID No. (...) in his capacity as the Appellant Company's General Manager under its articles of association, against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No (IZD-2020-199) issued in Case No. (Z-3861-2019), in connection with Zakat assessment for 2018, in the Case filed by the Appellant against ZATCA, in which the Primary Department ruled as follows:
formal aspect: Accept the Case filed by the Plaintiff/(...) Company, C.R. No. In Form.
On Merits:

1. Accept the Plaintiff's objection regarding item (Import Difference) at (SAR 1,277,772), and cancel the Defendant's decision regarding this item.
2. Dismiss the Plaintiff's objection regarding item (Accounts Payables) at (SAR 3,683,537).

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

Zakat Payer is objecting to the appealed primary decision. Regarding item (accounts payables). Zakat Payer is requesting to deduct that amount from Zakat base and not include it in the calculation, as the required lunar year has not passed for these balances. Zakat Payer is claiming that this is in violation of Article (4.3/a) of the Implementing Regulations for Zakat Collection. As such, Zakat Payer requests to overturn the primary decision based on the aforementioned reasons.

Since the Department decided to open pleadings, ZATCA submitted a Reply dated 05/08/1442 AH corresponding to 18/03/2021 AD responding to Zakat Payer's appeal by reaffirming its previous position submitted before Primary Department. ZATCA also stated that Zakat Payer's arguments do not present anything new that has not already been addressed and responded to by ZATCA. As such ZATCA requested that the Department does not accept any new documents that were not submitted during the investigation and objection phase. ZATCA also maintains the accuracy and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding the Primary Department's decision for the aforementioned reasons.

On Wednesday 07/03/1443 AH corresponding to 13/10/2021AD, the Department decided to hold a 10-day e-hearing session, and such period ended without presenting any further statements by both litigants.

On Wednesday, 23/06/1443 AH corresponding to 26/01/2022 AD, upon reviewing Appeal memoranda and replies thereto, and after examining documents of the Case file, the Department decided that the Case was ready for adjudication and issuance of a decision, and therefore decided to close pleadings and set a date for adjudication.



Grounds

Having reviewed the case papers and the statement of claims submitted by Zakat Payer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits, Zakat Payer's appeal centers on its objection to the inclusion of item (accounts payables) in Zakat assessment, subject of the Case, arguing that the required lunar year has not passed for these payables, However, ZATCA requested dismissing Zakat Payer's appeal and upholding Primary Department's decision. Upon examination of the dispute and considering that payables, regardless of their type, source, or use, are considered a component of Zakat base provided that a lunar year has passed, and after reviewing the documents submitted by Zakat Payer, namely detailed statements of suppliers (credit balances), it is evident to the Department that a lunar year has passed for an amount of (SAR 102,475.52). This fact is not prejudiced by ZATCA's request to reject any documents that have not been initially submitted to ZATCA. This is because, under the law, a litigant is not required to present all their documents to the administrative authority at the initial stage.

Moreover, Article (23) of Tax Dispute and Violation Committee Procedures grants parties to a case the right to provide evidence before the judicial department using any means of proof at any stage of the proceedings. Therefore, this Department decided to amend the primary decision by determining that the amount for which a lunar year has passed and should be added is (SAR 102,475.52).

Decision

In light of the above and considering the aforementioned grounds, the Department unanimously decided to as follows:

First: In form, accept the Appeal filed by Zakat Payer/ Company, C.R No. (.....), TIN (.....), against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (...) issued in Case No. (...) with relation to zakat assessment for the year 2018 AD.

Second: On Merits: Accept Zakat Payer Appeal and amend the decision issued by First Department for Determination of Income Tax Violations and Disputes in Dammam by adding the amount of (SAR 102,475.52), which completed a lunar year to Zakat base, based on the grounds and merits mentioned herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-324

Case No.: ZW-30623-2020

Principle No. 307

- Accounts payable constitute a component of zakat base, provided that a lunar year has passed thereover or that such funds are used to finance fixed assets that are included in zakat base.

Principle No. 308

- If Zakat Payer fail to raise any objection to the disputed item before the Primary Department, Zakat Payer subsequent appeal on the same item will be considered a new claim, and consequently, it will be dismissed.

Facts

The Department convened to consider the Appeal filed on /../.. corresponding to .. /../... by / (...) Holder of National Identity No (...) In his capacity as Executive Manager of Appellant Company, and the And appeal filed on .. /../.. corresponding to .. /../..., against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-154) issued in Case No. (ZW-2126-2019) with relation to Zakat assessment for the period (2007-2016 AD), filed by Appellant against Zakat, Tax and Customs Authority (ZATCA), in which the Primary Department decided as follows:
First: Accept the Case filed by Plaintiff/Company, C.R. No. (.....) in form.

Second: On Merits:

1. Dismiss Plaintiff Case with regard to Item (import differences).
2. As for Item (accounts payable):
 - A. Dismiss Plaintiff Case with regard to Item (accounts payable).
 - B. Establish resolution of dispute with regard to Item (advance payments for the year 2012 AD).
3. Dismiss Plaintiff Case with regard to Item (carried forward profits).
4. Cancel Defendant action with regard to Item (withholding tax).

Since both parties to the Case dissatisfied with this decision; therefore, both parties submitted a statement of appeal summarized as follows:

Zakat Payer Appeal against the Primary Department decision included the following items: As for Item (import differences for the period 2013-2016 AD), Zakat Payer filed its Appeal challenging ZATCA action of adding the total amount of (SAR 19,855,868) for years covered by this Item to Zakat Base. Zakat Payer argued that such differences are attributed to overlap of financial periods, as goods are cleared by customs at the end of December and are recorded in procurements or costs of goods sold for the following year when they are received and the transactions are complete. Additionally, such differences may be attributed to discrepancies in classification and overlaps between domestic and foreign procurements as outlined in the chartered accountant certificate and related settlement. Also, noting in the declarations of the disputed years indicates that all foreign procurements are not recorded. As for Item (accounts payable for the years 2012 AD and



2016 AD), Zakat Payer filed its Appeal claiming that ZATCA overstated the amount of this Item added to zakat base for the years 2012 AD and 2016 AD. With respect to Item (withholding tax), Zakat Payer filed its Appeal calling for cancellation of the 5% fine imposed by ZATCA, arguing that the amount of (SAR 298,886) was paid on 24/06/2018 AD. Regarding Item (carried forward profits for the years 2010 AD and 2016 AD), Zakat Payer filed its Appeal claiming that ZATCA added the amount of (SAR 1,842,131) for the year 2016 AD, as the value of settlements for the previous years included in the audited financial statements, specifically salaries and bonuses of 2015 AD that were paid in 2016 AD and deducted from carried forward profits. Therefore, Zakat Payer called for annulment of the Primary Department decision with regard to appealed items based on the abovementioned grounds.

Decision was not accepted by ZATCA, so it appealed against the contested decision by virtue of a statement of appeal including the following claims:

ZATCA Appeal against the Primary Department decision covered the following items: Regarding Item (withholding tax), ZATCA challenged the Primary Department decision, claiming that the decision to overturn ZATCA action was incorrect. The Primary Department stated that: “These amounts were not paid to a headquarter or a subsidiary company; therefore, the Department was satisfied to abolish ZATCA action of imposing a withholding tax on these amounts at the rate of (15%) instead of (5%)”. ZATCA clarified that the 15% withholding tax was imposed on these amounts because they were paid for software licenses, as explicitly stated in the assessment sent to Zakat Payer. Accordingly, the grounds of the appealed decision are inconsistent with the grounds on which ZATCA based its action adopted in its assessment, as the amounts paid by the Company to non-resident entities are subject to the provisions of “royalties” referred to in Article (1) of Income Tax Law and pursuant to Article (68/A) of Income Tax Law and Article (63.1) of Implementing Regulations of Income Tax Law. Based on the foregoing, ZATCA adhered to the validity and soundness of its action and called for reversal of the appealed decision with regard to the appealed item, based on the abovementioned grounds.

On Tuesday 29/06/1443 AH, corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing session, in which ZATCA submitted a Reply to Zakat Payer Appeal, a summary of which included the following: With regard to Item (import differences), ZATCA clarified that it adheres to the Primary Department decision, as it is consistent with provisions of Article (20.3) of Implementing Regulations for Zakat Collection issued in 1438 AH. As for Item (accounts payable), ZATCA clarified that it adheres to the Primary Department decision, as it is consistent with provisions of Article (4.5) and Article (20.3) of Implementing Regulations for Zakat Collection issued in 1438 AH. As for Item (carried forward profits), ZATCA clarified that it adheres to the Primary Department decision, as it is consistent with provisions of Article (20.3) of Implementing Regulations for Zakat Collection issued in 1438 AH. Furthermore, ZATCA requested the Department not to accept any new motions from Zakat Payer based on Article (186) of Law of Civil Procedures. Based on the foregoing, ZATCA adhered to the validity and soundness of its action and requested that Zakat Payer Appeal be dismissed and the appealed decision be upheld based on the abovementioned grounds. Zakat Payer also submitted a Reply to ZATCA Appeal, in which Zakat Payer called for dismissal of ZATCA Appeal and confirmation of the Primary Department decision with regard to the appealed items.

On Tuesday 23/10/1443 AH, corresponding to 24/05/2022 AD, with Regard to Zakat Payer Appeal on Item (import differences for the period 2013-2016 AD), the Department requested Zakat Payer to submit a report issued by a chartered accountant explaining import differences and comparing the imports recorded in Customs clearances with imports recognized in Zakat Payer books and declarations. With regard to Zakat Payer Appeal on Item (withholding tax), for which Zakat Payer claimed that it has paid withholding tax in accordance with ZATCA initiative of: “canceling fines and exemption



from financial penalties for Zakat Payers”, the Department requested Zakat Payer to provide a proof of enrollment in such initiative and ZATCA acceptance thereof, as well as a proof of payment of withholding tax in dispute. However, Zakat Payer failed to provide the requested documents within the 30-day deadline. However, Taxpayer failed to submit the requested documents.

On Thursday, 12/02/1443 AH, corresponding to 06/01/2022 AD, upon reviewing appeal notes and replies thereto, examining all papers and documents contained in Case file, the Department decided that the Case was ready for adjudication and delivery of a decision on its merits. Accordingly, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On Merit: The Department found that ZATCA Assessment for the period (2007-2012 AD) was made after the expiry of the period prescribed by the Law to make amendments to Zakat Payer declaration, which is five (5) years from the final date set for submission of Zakat declaration by Zakat Payer for each year. It is worth noting that these rules are established to maintain transaction stability and prevent instability of Zakat Payer financial positions in case of lack of a timeframe that ensures maintaining their financial positions. Since this matter does not result in releasing Zakat Payer from its legal obligation if Zakat Payer is already concerned with fulfilling such obligation but rather outlines a procedural issue with relation to ZATCA right to assess Zakat Payer after expiry of statutory period. Therefore, the Department concluded that ZATCA action represented in making such amendments was invalid. Accordingly, the Department decided to cancel ZATCA assessment for the period (2007-2012 AD) and overturn the Primary Department decision taken in this regard.

As for Zakat Payer Appeal on Item (import differences for the period 2013 -2016 AD), Zakat Payer filed its Appeal challenging the Primary Department decision with regard to this item. Zakat Payer argued that such differences are attributed to overlap of financial periods, as well as discrepancies in classification and overlaps between domestic and foreign procurements as outlined in the chartered accountant certificate and related settlement. On the other hand, ZATCA argued that it adheres to the validity and soundness of its action and requested that Zakat Payer appeal be dismissed and the appealed decision be upheld. Since the subject of dispute is related to documents, and since Zakat Payer failed to submit documents supporting its claim regarding the differences in dispute, and since the Department found that the conclusion reached by the Primary Department was sound and valid; Therefore, the Department decided to dismiss Zakat Payer Appeal.

With respect to Zakat Payer Appeal on Item (accounts payable for the year 2016 AD), Zakat Payer filed its Appeal challenging the Primary Department decision issued with regard to this Item. Zakat Payer claimed that ZATCA overstated amount that completed the lunar Year. On the other hand, ZATCA argued that it adheres to the validity and soundness of its action and requested that Zakat Payer Appeal be dismissed and the appealed decision be upheld. Upon careful consideration of dispute subject matter and examination of documents included in Case file, the Department found that accounts payable are considered a component of zakat base provided that a lunar year has passed thereover or they have been used to finance assets deductible from in zakat base. Moreover, the Department was satisfied that this dispute is related to documents with regard to this item. Upon reviewing documents attached to Case file, the Department found that the amount



of (SAR 1,835,636) related to the year 2016 AD has completed a lunar year. Also, the amounts claimed by Zakat Payer from the total account activity; therefore, the Department decided to amend the Primary Department decision by adding the amount of (SAR 1,835,636) to zakat base regarding the year 2016 AD only, out of the disputed amount.

With respect to Zakat Payer Appeal on Item (withholding tax), Zakat Payer filed its Appeal challenging the Primary Department decision with regard to this item. Zakat Payer called for cancellation of tax-related fines, arguing that it has paid the necessary payments and qualified for the exemption initiative. On the other hand, ZATCA argued that it adheres to the validity and soundness of its action and requested that Zakat Payer Appeal be dismissed and the appealed decision be upheld. Zakat Payer Appeal was not filed against the Primary Department decision, but rather was based on its claim for benefiting from fines waiver initiative introduced by ZATCA, as Zakat Payer called for cancellation of fines that had previously been paid to ZATCA. Also, this specific item was not previously challenged before the Primary Department and Zakat Payer has not previously objected to this item before the Primary Department, the Department considered it a new motion; therefore, the Department decided to disregard this motion.

Concerning Zakat Payer Appeal on Item (carried forward profits for the year 2016 AD), Zakat Payer filed its Appeal challenging the Primary Department decision with regard to this item. Zakat Payer claimed that it had submitted the necessary documents for reconciling general ledger with bank statements side by side with the partners decision regarding distribution. On the other hand, Defendant/ ZATCA confirmed the validity and integrity of its action and requested rejection of Zakat Payer Appeal and confirmation of the Primary Department decision. Upon careful consideration of dispute subject matter and examination of documents included in Case file, the Department found that carried forward profits are added to zakat base after deducting the used portion thereof. The Department found also that the dispute subject matter is related to documents. Upon reviewing documents submitted by Zakat Payer, the Department was satisfied that the amount of (SAR 262,282) for the year 2016 AD has completed a lunar year, from amounts appealed against. Therefore, the Department decided to amend the Primary Department decision by adding only the amount of (SAR 262,282) for the year 2016 AD to zakat base, from the amount in dispute.

With respect to ZATCA Appeal on Item (withholding tax), Zakat Payer filed its Appeal challenging the Primary Department decision with regard to this item. As the Primary Department claimed that as that its action to impose a 15% withholding tax on these amounts, due to payment thereof for software licenses, is unrelated to the grounds adopted by ZATCA initially in its assessment, while Zakat Payer argued that it called for dismissal of ZATCA Appeal and confirmation of the Primary Department decision. Upon careful consideration of dispute subject matter and examination of documents included in Case file, and based on the merits of the Primary Department decision, the Department found that ZATCA imposed withholding tax on transferred amounts considering that such amounts are paid for “technical services and software licenses”, while the appealed decision concluded that these payments were not made to a head office or a subsidiary company. Therefore, the Department was satisfied that the Primary Department decision is based on grounds that are inconsistent with ZATCA action. Based on the above, the appealed decision failed to address the core dispute subject matter. Therefore, the Department decided to overturn the Primary Department decision and remand the case for reconsideration of the validity of ZATCA action of imposing a 15% withholding tax on the disputed amount.

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

Decision



First: Accept appeal in from filed by Taxpayer (... Company), C.R. No. (...), TIN (...), and the Appeal filed by ZATCA against the decision issued by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISZR-2020-154), in Case No. (ZW-2126-2019), with relation to zakat assessment for the period (2014 -2016 AD).

Second: On Merits:

1. Abolish ZATCA Assessment of the period (2007-2012 AD), and reverse the Decision issued by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh in this regard, in accordance with grounds and merits mentioned herein.
2. Dismiss Zakat Payer Appeal on Item (import differences of the period 2013 -2016 AD) and uphold the Decision issued by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with grounds and merits mentioned herein.
3. Accept Zakat Payer Appeal on Item (accounts payable for the year 2016 AD) and amend the Decision issued by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, by adding the amount of (SAR 1,835,636) to zakat base of 2016 AD, out of the disputed the amount, in accordance with grounds and merits mentioned herein.
4. Disregard Zakat Payer Appeal on Item (withholding tax), in accordance with grounds and merits mentioned herein.
5. Accept Zakat Payer Appeal on Item (Deferred Profits of 2016) and amend the Decision issued by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, by adding the amount of (SAR 262,282) to zakat base of 2016 AD, out of the disputed the amount, in accordance with grounds and merits mentioned herein.
6. Accept Zakat Payer Appeal on Item (withholding tax), abolish the Decision issued by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, and remand the Case for reconsideration on its merits, in accordance with grounds and merits mentioned herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-236

Case No.: Z-28572-2020

Principle No. 309

- Any asset recognized in the statement of financial position shall have a corresponding funding source that ensures the equation balances. Consequently, if a non-zakatable asset is not accepted to be deducted from zakat base, an equivalent amount shall be excluded from funding sources.

Facts

The Department convened a session to consider Appeal filed on ../../... AH corresponding to ../../... AD, by/ (...), ID No. (...), in his capacity as Attorney of Appellant Company under POA No. (...), against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-142), issued in Case No. (Z-9265-2019), in connection with zakat assessment for the year 2016 AD, filed by Appellant against Zakat, Tax, and Customs Authority (ZATCA), in which the Primary Department decision ruled as follows:

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

Second: On Merits:

1. Dismiss the objection filed by Plaintiff (..... Company), with regard to Item (suppliers), in accordance with merits mentioned in the decision.
2. Dismiss the objection filed by Plaintiff (..... Company), with regard to Item (liabilities against leased assets), in accordance with merits mentioned in the decision.
3. Dismiss the objection filed by Plaintiff (..... Company), with regard to Item (lands), in accordance with merits mentioned in the decision.

Dissatisfied with the decision, Zakat Payer (..... Company) submitted an appeal brief that could be summarized as follows: Zakat Payer challenged the Primary Department decision. With regard to Item (suppliers), Zakat Payer claimed that the suppliers' balance with the amount of (SAR 6,534,711) shall be deducted from zakat base for the year 2016 AD since these suppliers are not classified as "lenders" and the Company did not receive loans therefrom that could be recycled multiple times during the year or used for various financing activities within the Company. Therefore, the balance owed to suppliers does not fall under Fatwa issued by Mufti by virtue of Letter No. (2/3077) dated 08/11/1426 AH, which in turn proves the validity and accuracy of accounting and zakat assessments made for suppliers, as reflected in the Company accounting books and the resulting accounting balances. The account movement of supplier balances was submitted to the Primary Department and was also attached to the appeal brief. As for Item (liabilities against leased assets), Zakat Payer claimed that the leased assets shall be deducted from zakat base, given that such assets are not owned by the entity but are acquired through lease agreements that convert to ownership upon completion of the contract. Therefore, the cash value of these assets shall be calculated at the time of contracting and shall be recognized in "entity asset accounts," and a corresponding equal liability shall be recognized in "entity liability accounts," assuming that such assets will be utilized in full, the liability will be fully discharged, and any resulting finance costs will be recognized as expenses. If the lease



contract is cancelled or terminated, both the asset and the corresponding liability are removed from accounting books, and any profits or losses are calculated accordingly. This shall be made in accordance with the Saudi Accounting Standard for Leases, which shall be applied to all business activities operating in KSA, regardless of their legal form. With respect to Item (lands), Zakat Payer claimed that the lands item shall be deducted from zakat base, arguing that although the lands in this area are not registered with formal title deeds but are held under contractual agreements (as attached), and a warehouse has been constructed on such land for the purpose of performing the Company activities. Therefore, Zakat Payer called for annulment of the Primary Department decision based on the abovementioned grounds.

The Department decided to open pleadings. Therefore, ZATCA submitted a Reply dated 09/04/1442 AH, corresponding to 24/11/2020 AD, responding to Zakat Payer Appeal. In its Reply, ZATCA reaffirmed its position presented before the Primary Department. Regarding Item (suppliers), ZATCA stated that it had added supplier balance that had completed a full lunar year, with the amount of (SAR 6,534,711), to zakat base, in accordance with Fatwa No. (2/1570) of 1405 AH, Fatwa No. (2/2384) dated 30/10/1406 AH, Fatwa No. (18497) dated 18/11/1408 AH, Fatwa No. (22665) dated 15/01/1424 AH, Second Question Response, and Fatwa No. (23408) of 1426 AH. This is also based on Article (4.5) of Implementing Regulations for Zakat Collection issued in 1438 H. With respect to Item (liabilities against leased assets), ZATCA added the amount that had completed a full lunar year to the liabilities balance, with the amount of (SAR 1,955,789), noting that recognition of this liability as a part of liabilities corresponds to a fixed asset that has been deducted from the zakat base, in accordance with Fatwa No. (22665) dated 15/01/1424 AH, and Fatwa No. (23408) of 1426 AH. Concerning Item (lands), ZATCA contended that deducting lands from zakat base is contingent upon submitting a proof of ownership, or that reasons for why the ownership has not been transferred in the Company name. However, Zakat Payer failed to provide any supporting documents. Therefore, deduction for these amounts has been disallowed in accordance Article (4.1) and Article (20.3) of Implementing Regulations for Zakat Collection issued in 1438 AH. Accordingly, ZATCA maintained the validity and integrity of its action and called for dismissal of Zakat Payer Appeal and upholding the primary decision based on the abovementioned grounds. On Monday, 22/10/1443 AH corresponding to 23/05/2022 AD, the Department decided holding 10-day e-hearing, but the period lapsed without submitting any addition by the parties to appeal.

On Tuesday, 29/11/1443 AH corresponding to 28/06/2022 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having taken a look at the case papers and the statement of appeal submitted by the Zakat Payer, the Department found that the formal conditions for considering the appeal were met as per the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is acceptable in form for being submitted by a person with a capacity, and within the period prescribed by law.

On merits, with regard to Zakat Payer Appeal on Item (suppliers), Zakat Payer filed its Appeal challenging the primary decision, which upheld ZATCA action of disallowing deduction of the balance covered by this item from zakat base. Zakat Payer claimed that suppliers are not classified as lenders. However, ZATCA maintained the validity and soundness of its action and called for dismissal of Zakat Payer Appeal and upholding the primary decision. Upon reviewing supplier account movements provided attached by



Zakat Payer in its Appeal, it was clear that Zakat Payer paid the total amount of (SAR 15,501,270.99) out of the opening balance of (SAR 17,799,672.71), leaving the remaining amount of (SAR 2,298,401.72), and a full lunar year has passed thereover. Therefore, the Department decided to amend the Primary Department decision by adding the amount of (SAR 2,298,401.72) to zakat base of Zakat Payer, and excluding any other amounts covered by this disputed item.

With respect to Zakat Payer Appeal on Item (liabilities against leased assets), Zakat Payer filed its Appeal challenging the primary decision, which upheld ZATCA action of disallowing deduction of the balance of this item from zakat base. Zakat Payer claimed that these assets are leased, not owned, by the entity and will only be owned upon contract completion. On the other hand, ZATCA maintained the validity and integrity of its action and called for dismissal of Zakat Payer Appeal and upholding the primary decision. Upon careful consideration of Zakat Payer Appeal and examining the Case file, the Department was satisfied that there is no dispute between litigants with regard to the completion of a lunar year over the disputed funds or whether such funds were used to finance assets deducted from zakat base. In accordance with the relevant fatwas applicable to this item, any financing obtained by Zakat Payer, regardless of its source or classification, shall be added to zakat base upon completing the lunar year or if it has been used to finance an asset deductible from zakat base. Therefore, the Department decided to dismiss Zakat Payer Appeal.

Regarding Zakat Payer Appeal on Item (lands), Zakat Payer filed its Appeal challenging the primary decision, which upheld ZATCA action of disallowing deduction of the balance of this item from zakat base. Zakat Payer argued the lands in this area are not registered with formal title deeds, and a warehouse has been constructed on such land for the purpose of performing the Company activities generating the income that subject to zakat. On the other hand, ZATCA maintained the validity and integrity of its action and called for dismissal of Zakat Payer Appeal and upholding the primary decision. It is worth noting that Zakat Payer used to calculate zakat based on its regular accounts and audited financial statements. It is also established that any asset in the statement of financial position is financed by a corresponding fund that maintains budget balance, and disallowing deduction of a non-zakatable asset from zakat base necessitates exclusion of an equal amount from funding sources. However, ZATCA rejected deducting the asset but has not simultaneously excluded the corresponding financing amount. Also, the impact on zakat base is the same whether both the asset and its corresponding financing source are excluded or included, and the audited financial statements constitute evidence for the purposes of proving the amounts related to zakat base. Therefore, the Department decided to accept Zakat Payer Appeal and overturn the Primary Department decision taken in this regard.

In light of the above and considering the aforementioned grounds, the Department unanimously decided to as follows:

Decision

First: In form, Accept the Appeal filed by Zakat Payer/(...) Company, C.R. No. (...), TIN No (...), against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No (IZJ-2020-142) issued in Case No. (Z-9265-2019) with regard to zakat assessment for the year 2016 AD.

Second: On Merits:

1. Accept Zakat Payer Appeal on Item (suppliers), and amend the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah by adding the amount of (SAR 2,298,401.72) to zakat base of Zakat Payer, and excluding any other amounts, in accordance with grounds and merits mentioned herein.



2. **Dismiss Zakat Payer Appeal on Item (liabilities against leased assets), and uphold the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with grounds and merits mentioned herein.**
3. **Accept Zakat Payer Appeal on Item (lands), and overturn the decision issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with grounds and merits mentioned herein.**



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Decision No.: IR-2022-321

Case No.: Z-28715-2021

Principle No. 310

- **Zakat Payer shall have the right to deduct assets that are not offered for sale in their present condition.**

Principle No. 311

- If Zakat Payer failed to provide evidence of payment of zakat on foreign investments, Zakat Payer shall have no right to deduct the same from zakat base.

Principle No. 312

- Zakat shall be imposed on assets upon absolute ownership thereof, and upon distribution of profits, ownership is transferred to shareholders, thus ownership requirement is terminated.

Facts

To consider the appeal filed on .././... AH corresponding to .././... by (...), Holder of National Identity No (...) in his capacity as Appellant Company's attorney under POA No.(...), and the appeal filed on .././...corresponding to .././... against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-150) rendered in Case No. (Z-132-2018) regarding zakat assessment for 1426 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

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

Second: On Merits:

1. Dismiss Plaintiff's objection to (Dividends to Investors) item.
2. Dismiss Plaintiff's objection to (Shareholders' Accounts Payable) item.
3. Dismiss Plaintiff's objection to (Contributions Under Implementation) item.
4. Accept Plaintiff's objection to (Other Accounts Payable for 1432, 1433 and 1434) item.
5. Establish resolution of dispute over (Accounts Payable for 1427 and 1428) item.
6. Dismiss Plaintiff's objection to (Other Credit Balances (Overdrafts) for 1427) item.
7. Dismiss Plaintiff's objection to (Investments) item.

Dissatisfied with this decision, both parties filed a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer primarily involves a plea of limitation, as Zakat Payer states that ZATCA is not entitled to amend zakat declaration after lapse of five (5) years from the deadline for filing declaration. In addition, Zakat Payer's right to plead of limitation may not be disregarded at this stage, even if Zakat Payer did not plead for the same primarily. Regarding (Disallowing Deduction of Dividends from Zakat Base) item, Zakat Payer claims that the profits were distributed to the shareholders, which indicates that Zakat Payer does not own the funds; hence, they are no longer in Zakat Payer's possession, as contributions



are credited to their owners and reflected as accounts payable to shareholders. Upon using funds to purchase real estate assets, such funds are credited to shareholders' accounts payable in "contributions under implementation" account for the same persons. In addition, all costs and expenses incurred on the real estate or land are recorded in shareholders' costs account, compared to contribution sale value and profits or loss of contribution, and then distributed to shareholders during the year; hence, these amounts are profits of shareholders that have already been paid and received from shareholders in the same year without completing zakatable year. Accordingly, zakat on such amounts falls on the shareholder himself, as they are no longer in Zakat Payer's possession. Moreover, dividends were recorded in the statement of income as actual dividends by checks. The payment of such amounts was proved by the statement of cash flow that reflects cash flows from operating and investment activities and the purpose for which they were used, starting with net profits after deduction of dividends; hence, the chartered accountant who has certified the financial statements and issued an unqualified report according to the accounting standards approved by SOCPA is another evidence of dividends. Furthermore, if such dividends were not actually paid, they would have been reflected in the statement of financial position as balances under distribution. Regarding (Accounts Payable) item, Zakat Payer claims that the balances of such accounts are not considered funds that are subject to zakat, as the condition of perfect ownership does not apply thereon, nor are they considered among the available or beneficial sources of funds that are subject to zakat. According to Fatwa No. (22665) dated 15/04/1424 AH, if the funds were used in trading assets, they would have entered into another zakat base that and its result has appeared in the net profits. Regarding (Contributions Under Implementation) item, Zakat Payer claims that this account outlines the work in progress carried out by Zakat Payer using investors' funds outlined in accounts payable of contribution that have been subject to zakat and associated therewith. In addition, the established practice is to deduct debit balances within shareholder's share if such balances are owned by one of the shareholders, and they are indeed so, as the account payable of contribution is associated with amounts spent, whether for purchasing land or works carried thereon in construction phase. Accordingly, such balances should be deducted in exchange for subjecting accounts payable to zakat, which were subjected by ZATCA, as it is consistent with the legal basis. In addition, it should be noted that the matter that constrained Zakat Payer is related to three (3) projects within such contributions, as well as Dubai projects established for the purpose of acquisition. In this case, the variance between them should be subject to Sharia. Regarding (Overdrafts) item, Zakat Payer claims that overdrafts were used to pay part of a building project recognized in the financial statements for 1426 and 1427 in the amount of SAR 27,600,000 corresponded by the account payable of building project investors as a source of financing in the amount of SAR 17,303,500, and the variance to complete the purchase of overdrafts is the credit balance of (...) Bank, i.e., they are investments outside the Kingdom. This balance is related to the debit balance of work in progress in the project that was purchased for rental and receipt of proceeds; hence, it is considered an acquisition asset that should be deducted from zakat base. Moreover, the accounts payable of investors who finance the project were subject to zakat within shareholders' accounts payable. Regarding (Investments) item, Zakat Payer claims that the investments are outlined in the purchase of two offices in Dubai in a total amount of SAR 3,033,855 from (...) Company in Dubai, where an advance payment has been made and the remaining amount is to be paid in installments. These offices were purchased to be Company's headquarters in Dubai. In addition, ZATCA has subjected their equivalent to zakat within the accounts payable and other accounts payables. Due to the crisis that occurred in Dubai in 2008, the payment was not made, which caused the offices to be withdrawn. Since this issue remains unresolved, and Zakat Payer was unable to take over the offices or the amounts paid, in addition to what relates to the investments in securities in Dubai outlined by subscription shares in (...) Bank, such investments are managed for the benefit of some investors whose credits have been subject to zakat under assessment. In addition, the financial statements show that such shares were acquired for the purpose of realizing profit, and that the corresponding accounts payable have been subject to zakat. Regarding (Shareholders' Current Account) item, Zakat Payer claims that shareholders' current



accounts have been subject to zakat based on the rule of opening or closing balance, whichever is less, and for that matter. If Zakat Payer did not object to this item, the rights do not forfeit by limitation, especially if they will result in the collection of zakat on funds that are not subject to zakat. Furthermore, the detailed movement of current accounts was attached based on books and records, which reflects that the current accounts for 1428, 1429 and 1434 were the accounts that completed a full lunar year. Thereupon, Zakat Payer requests overturning Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons.

Decision was not accepted by ZATCA, so it appealed against the contested decision by virtue of a statement of appeal including the following claims:

As for ZATCA appeal against Primary Department's decision, ZATCA appeal regarding (Other Accounts Payable for 1432, 1433 and 1434) item involves claim that the Primary Department has accepted Zakat Payer's objection and stated in the grounds of its decision that it turned out that there was a dispute between the heirs of one of the owners of such lands that lasted for several years and ended by reconciliation in 1434 AH. Such dispute resulted in failure to complete sale of lands, resulting in inability to operate and invest the contribution and realizing a profit therefrom, which indicates that it did not complete a full lunar year. In addition, ZATCA replies that Primary Department's conclusion is invalid, as Zakat Payer received the amounts as advance payments from buyers and became in its possession and under its disposal, meeting conditions of perfect ownership and the completion of a full lunar year. ZATCA also replied to Primary Department's statement that there was a dispute between Zakat Payer and some landlords that this dispute did not change the fact that such amounts are at Zakat Payer's disposal as funds from third parties. Thereupon, such amounts are subject to zakat. Moreover, the completion of the sale transaction emphasizes validity of ZATCA procedures. Therefore, ZATCA insists on validity and correctness of its procedure and requests overturning Primary Department's decision regarding the item, subject matter of appeal, for the aforementioned reasons.

On Sunday,/... corresponding to/..., the Department decided to hold 10-day e-hearing session. Therefore, ZATCA submitted an answer wherein insisting on validity and correctness of its procedure. Moreover, Zakat Payer's arguments do not differ from such arguments previously submitted, to which ZATCA has already answered at that time. Regarding (Statute of Limitation) item, ZATCA states that this item was not subject to objection before ZATCA or the Primary Department. Therefore, this item shall be dismissed in accordance with Article (186) of the Law of Civil Procedure. Regarding (Dividends to Investors) item, ZATCA elaborates that Zakat Payer's business activity outlines real estate management, and this item outlines, as stated by Zakat Payer, shareholders' portion in profits of contributions realized from funds subject to zakat. Thereupon, zakat should be levied on such profits, as the majority of shareholders are individuals, not legal entities registered with ZATCA, and are subject to zakat separately. Moreover, ZATCA based its procedure on Paragraph (2) of Article (1) and Paragraph (1) of Article (2) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Shareholders' Accounts Payable) item and (Contributions Under Implementation) item, ZATCA added such items to zakat base due to the completion of a full lunar year, since such items outline balances of funds received from shareholders that are managed by Zakat Payer. In addition, ZATCA based its procedure on Fatwa No. (22665) of 1424 AH and Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Other Credit Balances (Overdrafts) item, ZATCA added the item to zakat base due to the completion of a full lunar year, and ZATCA based its procedure on Fatwa No. (22665) of 1424 AH and Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Long-Term Investments Abroad) item, ZATCA asked Zakat Payer to submit supporting documents, but Zakat Payer failed to do so, which demonstrates the validity and



correctness of ZATCA procedure in accordance with Paragraphs (4/B) and (4/C) of (Second) of Article (4) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Shareholders' Current Account) item, ZATCA stated that this item was not subject to objection before ZATCA or the Primary Department. Therefore, this item shall be dismissed in accordance with Article (186) of the Law of Civil Procedure. Furthermore, ZATCA requests the Department to dismiss any new documents submitted by Zakat Payer or any new petitions in accordance with Article (186) of the Law of Civil Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons. Zakat Payer also submitted an answer to ZATCA appeal summarized in that it requests dismissing ZATCA appeal and upholding Primary Department's decision regarding the item subject matter of ZATCA appeal.

On Wednesday, ../../... corresponding to ../../..., the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

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

On Merits: As for Zakat Payer's appeal regarding (Limitation of Assessment for Years from 1426 to 1434) item, the Department, having taken cognizance of Case file, found that zakat declarations for years from 1426 to 1430 were governed by the provisions of Income Tax Law and Rules for Levying Zakat at that time that regulate the process of making and amending zakat assessment. Since these provisions were explicit by stating that ZATCA is entitled to amend zakat assessment for a period of five (5) years from the deadline for filing zakat declaration. As such, Zakat Payer's declaration shall be final in the event of a lapse of five (5) years from the deadline for filing declaration, unless ZATCA exercises its right to amend zakat declaration within that period, or proves the existence of a tax evasion event by Zakat Payer in submitting an incomplete declaration within ten (10) years from the deadline for filing declaration. Since stability of legal and financial positions is a fundamental goal affirmed by the law by stipulating that ZATCA shall not exceed the five-year period to reopen the assessment except in case of tax evasion, and also in such case ZATCA shall not exceed ten years to exercise its right to reopen the assessment. Since reopening the assessment without relying on what the regulator has stipulated as previously stated does not achieve the goal of stabilizing financial and legal positions of zakat payers. Therefore, the Department concludes that ZATCA has no right to make zakat assessment for years in question thereupon, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision regarding the items objected by Zakat Payer for the years in which this Department ruled that ZATCA assessment was subject to the statute of limitation.

As for Zakat Payer Appeal on Item (disallow deduction of dividends from zakat base), Zakat Payer filed its Appeal challenging the Primary Department decision with regard to this item. Zakat Payer claimed that profits were distributed to shareholders and, therefore, were no longer owned by Zakat Payer. While, ZATCA argued that it adheres to the validity and soundness of its action and called for dismissal of Zakat Payer Appeal and upholding the Primary Department decision. Having taken cognizance of Zakat Payer's appeal and documents included in Case file, and since the basis for calculating zakat is meeting the two conditions of the completion of a full lunar year and the perfect ownership. Having taken cognizance of documents, the Department found that that the audited financial statements for years in question confirm that Zakat Payer has distributed the profits in question to shareholders. Since the subject of dispute is not related to documents, and



since the profits in question were no longer under Zakat Payer's disposal. Therefore, it is inadmissible to oblige Zakat Payer to pay zakat on such profits. This not undermined by ZATCA rejection of the deduction of dividends from zakat base, as the shareholders are natural persons and are not registered with ZATCA. Accordingly, dividends are not subject to zakat, as the basis for calculating zakat the perfect ownership, and by the distribution of profits, the condition of ownership is no longer existing, and the funds transferred to shareholders. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision.

As for Zakat Payer's appeal regarding (Adding Shareholders' Accounts Payable to Zakat Base) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that account balances are not among the funds that are subject to zakat. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's objection and documents included in Case file, and since Zakat Payer is accounted based on its statutory accounts and financial statements. Since these accounts payable were reflected in the statement of financial position, which indicates that such accounts payable outline a source of financing that should be added to zakat base whenever they complete a full lunar year or are used to finance deducted assets. Since the completion of full year on such accounts payable is not disputed. Accordingly, accounts payable are considered a positive element of zakat base. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary Department's decision in this regard. As for Zakat Payer's argument in its appeal that there are assets financed by such amounts and that Zakat Payer was unable to sell such assets. Since this petition is a new subject that was not included in Zakat Payer's objection primarily filed before ZATCA. Therefore, the Department dismiss this petition.

As for Zakat Payer's appeal regarding (Contributions Under Implementation) item, the Department found Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that this account outlines the work in progress, which is a type of acquisition assets, rather than trading assets. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's appeal and documents included in Case file, and since the projects under implementation are not for sale in their current situation. Accordingly, such projects are not considered trading assets and should not be added to zakat base. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

As for Zakat Payer's appeal regarding (Overdrafts) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that the variance for completing purchase of overdrafts pertains to the credit balance of investments outside the Kingdom. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's objection and documents included in Case file, and since Zakat Payer is accounted based on its statutory accounts and financial statements. Since the overdrafts were reflected in the statement of financial position, which indicates that such overdrafts outline a source of financing that should be added to zakat base whenever completing a full lunar year or are used to finance deducted assets. Since the completion of full year on such overdrafts is not disputed. Accordingly, the overdrafts should be added zakat base. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary Department's decision in this regard.

As for Zakat Payer's appeal regarding (Investments) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that the real estates were purchased to be its headquarters, and that the accounts payable equivalent to corresponding to shares were subjected to zakat. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of Zakat Payer's



objection and documents included in Case file, and since this Department found that the investments in question comprise of real estate and investments in securities. Since this Department found that the real estates in question were not intended for trade. Therefore, Zakat Payer is entitled to deduct such real estates from its zakat base. As for investment in securities: Since Zakat Payer did not supporting documents for payment of zakat on such investment in the country of investment, nor did it provided the audited financial statements of investee companies in a way that zakat can be calculated on its share and pay the same to ZATCA. Thereupon, Zakat Payer is not entitled to deduct such investment from its zakat base. Therefore, the Department amends Primary Department's decision by accepting Zakat Payer's appeal regarding the real estates and dismissing it regarding investments in securities.

As for Zakat Payer's appeal regarding (Shareholders' Current Account) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that that shareholders' current accounts have been subject to zakat based on the rule of opening or closing, whichever is less. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal. Having taken cognizance of Zakat Payer's objection and documents included in Case, the Department, having taken cognizance of the subject matter of objection to this item, found that this item was not included in the contested items at the time of considering dispute before the Primary Department. Therefore, the Department considers this item as a new petition in accordance with Article (186) of the Law of Civil Procedure that stipulates: "New petitions shall not be accepted in an appeal and the court shall dismiss them on its own motion". Therefore, the Department dismisses Zakat Payer's appeal regarding this item.

As for ZATCA appeal regarding (Other Accounts Payable) item, the Department found ZATCA appeal involves objection to the Primary Department's decision regarding this item, as ZATCA claims that Zakat Payer received the amounts as advance payments from the buyers and became in Zakat Payer's possession and under its disposal, meeting the conditions of perfect ownership and completed a full lunar year. On the other, Zakat Payer argued that it requests dismissing ZATCA appeal and upholding Primary Department's decision. Having taken cognizance of ZATCA appeal and documents included in Case file, the Department found that Zakat Payer is accounted based on its statutory accounts and financial statements. Since such accounts payable were reflected in the statement of financial position, which indicates that such accounts payable outline a source of financing that should be added to zakat base whenever they complete a full lunar year or are used to finance deducted assets. Since the completion of full year on such accounts payable is not disputed. Accordingly, accounts payable are considered a positive element of zakat base. On the other hand, Zakat Payer shall be entitled to deduct assets that were not offered for sale in their current situation or could not be offered due to lawsuits filed in this regard. Since such assets outline projects in progress, which is a contested item included in Zakat Payer's appeal accepted by this Department. Therefore, the Department accepts ZATCA appeal and overturns Primary Department's decision in this regard.

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), and the appeal filed by ZATCA against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-150) rendered in Case No. (Z-132-2018) regarding zakat assessment for years from 1426 to 1434.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Statute of Limitation for Years from 1426 to 1430) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh in this regard according to reasons and grounds stated herein.



2. Accept Zakat Payer's appeal regarding (Disallowing Deduction of Dividends from Zakat Base) item and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
3. Dismiss Zakat Payer's appeal regarding (Adding Shareholders' Accounts Payable to Zakat Base) item, and uphold the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
4. Accept Zakat Payer's appeal regarding (Contributions Under Implementation) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
5. Dismiss Zakat Payer's appeal regarding (Overdrafts) item, and uphold the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
6. Regarding (Investments) item:
 - A. Accept Zakat Payer's appeal regarding investment in real estates, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
 - B. Dismiss Zakat Payer's appeal regarding investments in securities, and uphold the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
7. Dismiss Zakat Payer's appeal regarding (Shareholders' Current Account) item according to reasons and grounds stated herein.
8. Accept ZATCA appeal regarding (Other Accounts Payable) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Decision No.: IR-2022-374

Case No.: Z-51712-2021

Principle No. 313

- Short-term loans shall not be added to zakat base if paid before completing a lunar year.

Facts

The Department convened to consider the appeal submitted on .. /../.., corresponding to .. /.../.. by (...) Company against First Appellate Department for Income Tax Violations and Disputes Decision No. (IR-2021-40), issued in Case No. (Z-1508-2018), with relation to zakat assessment for the period (2006-2012 AD), filed by Appellant against Zakat, Tax, and Customs Authority (ZATCA). Dissatisfied with this decision, Petitioner/ (... Company) filed a petition with this Department, which included the following, in summary: Zakat Payer challenged the appealed decision, claiming that, pursuant to Article (200) of Law of Civil Procedures, it has obtained compelling evidence that was not presented earlier before the judgment, thus warranting a reconsideration of the case. With regard to Item (short-term loans), Zakat Payer claimed that it obtained loan movements along with the relevant pages from ledger of these loans, which the Appellate Department refused to consider due to the non-submission of this movement. Concerning Item (short-term loans), Zakat Payer claimed that a lunar year had not elapsed for this item. With respect to Item (cost of goods), Zakat Payer claimed that the discrepancy is due to reclassification of excess insurance and losses stemmed from damaged goods among other direct costs recognized in Note (13) of audited financial statements. Zakat Payer also confirmed that it was denied a fair opportunity to present its viewpoint. Therefore, Zakat Payer called for overturning of the appealed decision based on the aforementioned grounds.

On Sunday 06/11/1443 AH, corresponding to 05/06/2022 AD, upon careful consideration of Zakat Payer plea with regard to Item (short-term loans), Item (short-term loans from partners), and Item (cost of goods sold), and examining the Case file, in accordance with Article (200) of the Law of Civil Procedures, due to the inability to review the Zakat Payer conclusive documents at the time of case hearing, and after examining these papers and documents, the Department decided to accept Zakat Payer Appeal in form. Consequently, the Department decided that litigants be given a ten-day period to submit written pleadings with regard to these specific items. The Department also requested that ZATCA be granted access to the documents submitted by Zakat Payer with regard to these specific items. In response to the Zakat Payer claim of being denied the opportunity to present its viewpoint, ZATCA submitted a Reply, in which it confirmed that this right was initially afforded to Zakat Payer was afforded ample opportunity to exercise right to a defense before the ZATCA, the Primary Department, and the Appellate Department, which enabled Zakat Payer to present its viewpoint and raise all its defenses. ZATCA also confirmed that Article (200) of Law of Civil Procedures, which Zakat Payer relied upon in its request, is not applicable to its case, given that the documents submitted by Zakat Payer are the same documents presented to the Department that issued the decision under appeal. Moreover, it is highly improbable in tax disputes that new evidence would emerge



that Zakat Payer was unable to present during consideration of the dispute, given that tax disputes are typically based on financial statements and supporting documents proving the validity of the data mentioned therein before the submission of zakat declarations. Therefore, ZATCA maintained the validity and integrity of its action and called for dismissal of Zakat Payer Appeal and upholding the Primary Department Decision.

On Sunday, 06/11/1443 AH corresponding to 05/06/2022 AD, the Department decided to hold a 10-day e-hearing session, but the period passed without providing any further submissions by litigants.

On Thursday 19/02/1443 AH corresponding to 15/09/2022 AD, the Department, having considered the submissions related to the appeal and the replies thereto and having examined the case papers and documents, established that the case is ripe for adjudication and delivering a decision, and accordingly decided to close the pleading and set the case for adjudication.

Grounds

Upon reviewing Case documents and Appeal Briefs provided by Zakat Payer, the Department found that conditions for hearing the Appeal have been fulfilled in form in accordance with conditions stipulated in relevant laws, regulations and decisions; therefore, the Department decided to accept the Appeal in form for being submitted by a person with capacity and within the legally prescribed period.

On merits, the Department was satisfied that ZATCA assessment for the period from 25/06/2006 AD to 2008 AD was made after the legally prescribed period for making amendments to the Zakat Payer declaration, which is five years from the deadline for submitting annual zakat declaration. It is worth noting that these rules are established to maintain transaction stability and prevent instability of Zakat Payer financial positions in case of lack of a timeframe that ensures maintaining their financial positions. Since this matter does not result in releasing Zakat Payer from its legal obligation if Zakat Payer is already concerned with fulfilling such obligation but rather outlines a procedural issue with relation to ZATCA right to assess Zakat Payer after expiry of statutory period. Therefore, the Department concluded that ZATCA action of making those amendments was invalid. Accordingly, the Department decided to annul ZATCA assessment for the period from 25/06/2006 AD to 2008 AD, accept the Zakat Payer declaration in this regard, and cancel the Appellate Department decision No. (IR-2021-40) related to these items.

Regarding Zakat Payer Appeal on Item (short-term loans for the period 2009 - 2012 AD), Zakat Payer filed its Appeal challenging the Department decision with regard to this item. Zakat Payer claimed that it obtained loan movements along with relevant pages from ledger of these loans, which the Appellate Department refused to consider due to non-submission of this movement. On the other hand, ZATCA maintained the validity and soundness of its action and called for dismissal of Zakat Payer Appeal and upholding decision under appeal. After reviewing documents submitted by Zakat Payer, the Department found that lunar year had not elapsed over the short-term loans for the period (2009 -2012 AD), as they were repaid before the year end. Therefore, the Department decided to accept the Zakat Payer Appeal and annul the Appellate Department decision No. (IR-2021-40) with regard to this matter.

With respect to Zakat Payer Appeal on Item (cost of goods sold for the period 2009-2012 AD), Zakat Payer filed its Appeal challenging the Department decision with regard to this item. Zakat Payer claimed that the discrepancy is due to the reclassification of excess insurance and losses stemmed from damaged goods among other direct costs disclosed in declarations. On the other hand, ZATCA maintained the validity and integrity of its action and called for dismissal of Zakat Payer Appeal and upholding appealed decision. Upon reviewing the Appeal and considering documents contained in Case file, it turned out that the dispute between ZATCA and Zakat Payer revolves around ZATCA action of adding of



the difference between the difference between the amounts disclosed in financial statements and those disclosed in zakat declarations for the relevant year to zakat base. Zakat Payer argued that it submitted the amended declarations in which the cost of sold goods aligns with amounts disclosed in its financial statements. ZATCA failed to provide justification for disregarding the amounts disclosed in Zakat Payer amended declarations. Therefore, the Department decided that zakat assessment shall be made based on the cost of sold goods disclosed in Zakat Payer financial statements and annul the Appellate Department decision No. (IR-2021-40) with regard to this item.

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

Decision

First: In form, accept the Appeal filed by Zakat Payer/ (...) Company, TIN No. (...) against First Appellate Department for Income Tax Violations and Disputes Decision No. (IR-2021-40) issued in Case No. (Z-1508-2018) with relation to zakat assessment for the period (2006 -2012 AD).

Second: On Merits:

1. Cancel ZATCA decision with regard to its assessment for the period from 25/06/2006 AD to 2008 AD, accept Zakat Payer declaration for that period, and cancel the decision issued by First Appellate Department for Income Tax Violations and Disputes with regard to that period, in accordance with grounds and merits mentioned herein.
2. Accept the Zakat Payer Appeal on Item (short-term loans for the period 2009- 2012 AD) and cancel the decision issued by First Appellate Department for Income Tax Violations and Disputes with regard to this item, in accordance with grounds and merits mentioned herein.
3. Accept the Zakat Payer Appeal on Item (Cost of Goods Sold for the years 2009 to 2011) and cancel the decision issued by First Appellate Department for Income Tax Violations and Disputes with regard to this item, in accordance with grounds and merits mentioned herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Decision No.: IR-2022-201

Case No.: Z-28234-2020

Principle No. 314

- In accordance with applicable fatwas, Zakat Payer may not exclude debt from its zakat base unless it can prove that debtor has been deliberately delaying payment or is insolvent.

Principle No. 315

- If Zakat Payer argues it made payments to a subsidiary company at a specific percentage, such percentage of the due amount shall be excluded from zakat base of the subsidiary company.

Facts

The Department convened to consider the Appeal filed on ../..., corresponding to ../../..., by ..., holder of National ID No. (...), in his capacity as Appellant Company attorney under POA No.(...), against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-139) rendered in Case No. (Z-7975-2019) regarding zakat assessment for the year 2017 AD filed by Appellant against Zakat, Tax and Customs Authority (ZATCA), in which the Primary Department decided as follows:

First: In Form:

1. Accept the Case filed by Plaintiff (...)/, C.R. No. (...), with regard to Item (decreasing other expenses by the amount of zakat provision) and Item (disallowing deduction of current accounts receivable of an affiliated company and current accounts receivable of a subsidiary company from Zakat Base).
2. Dismiss the Case filed by Plaintiff with regard to Item (balances of subcontractors) based on the grounds that it was premature.
3. Dismiss the Case filed by Plaintiff with regard to Item (Defendant error in calculating statutory reserve at the beginning of period) based on the grounds that it was premature.
4. Dismiss the Case filed by Plaintiff with regard to Item (adding short-term loans to zakat base) based on the grounds that it was premature.

Second: On Merits:

1. Confirm resolution of the dispute concerning Item (decreasing other expenses by the amount of zakat provision).
2. Dismiss the Case with regard to Item (disallowing deduction of current accounts receivable of an affiliated company and current accounts receivable of a subsidiary company from Zakat Base).

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

Zakat Payer challenged the Primary Department decision subject matter of appeal, claiming the following: With regard to Item (balances of subcontractors), Item (Defendant



error in calculating statutory reserve at the beginning of period), and Item (adding short-term loans to zakat base), Zakat Payer initially challenged zakat assessment for the year 2017 AD, despite the fact that the above-mentioned items had not been adjusted by ZATCA. Thereafter, ZATCA adjusted the above-mentioned items. In addition, Zakat Payer also added that it had attempted to object the specific items, but ZATCA e-system rejected the same due to a previously submitted objection for the same year, and Zakat Payer attached a copy of the documents proving the same. With respect to Item (disallowing deduction of current accounts receivable of an affiliated company and current accounts receivable of a subsidiary company from Zakat Base), Zakat Payer claimed that the amount of (SAR 65,199,829) shall not be included in zakat base, based on its nature, arguing that the amount of (SAR 56,350,169) is an advance payment made by the Company Owner/Eng. ..., to ... Establishment (an affiliated company), who is the Owner of ... Company. It is worth noting that there were accumulated profits, and the Islamic principle allows for deduction of a partner account receivable not exceeding accumulated profits. Also, the amount of (SAR 8,849,653) constitutes the value of investment in ... Company in which Company owns (60%), and both amounts had already been subject to Zakat. Therefore, Zakat Payer called for overturning the Primary Department decision with regard to the appealed items and considering its case on merits with regard to items rejected in form based on the abovementioned grounds.

The Department decided to open pleadings, and ZATCA submitted a Reply on .././..., corresponding to .././..., responding to Zakat Payer Appeal. In its Reply, ZATCA reaffirmed its position presented before the Primary Department. With Letter No.(...) referenced by Zakat Payer, ZATCA stated that such letter did not include any adjustments to new items. ZATCA also issued a new invoice including the due amount after considering Zakat Payer objection and founded that its claims with regard to adding new items is unfounded. With respect to Item (balances of subcontractors), Item (Defendant error in calculating statutory reserve at the beginning of period), and Item (adding short-term loans to zakat base), ZATCA adhered to the validity of the Primary Department, as it was issued in compliance with the provisions of Article (22.1) of Implementing Regulations for Zakat Collection issued in 1438 AH. Concerning Zakat Payer Appeal on Item (disallowing deduction of current accounts receivable of an affiliated company and a subsidiary company from zakat base), ZATCA adhered to its position as previously presented before the Primary Department, as its decision was issued in compliance with the provisions of Article (20.3) of Implementing Regulations for Zakat Collection issued in 1438 AH. Moreover, all new arguments raised by Zakat Payer are not substantially different from those previously raised and addressed by ZATCA. Therefore, ZATCA called for rejection of any further submissions provided by Zakat Payer in accordance with Article (186) of Law of Civil Procedures. Therefore, ZATCA maintained the validity and integrity of its action and called for rejection of Zakat Payer Appeal and confirmation of the Primary Department decision based on the abovementioned grounds.

On, dated .. /.. /..., corresponding to ... /.. /.., the Department decided to hold a 10-day e-pleading session, but the period lapsed without submitting any further submissions litigants.

On, dated .. /.. /..., corresponding to ... /.. /..., and since the General Secretariat of Zakat, Tax and Customs Committees stated that Zakat Payer received Primary Department decision on .. /.. /..., and Zakat Payer filed its Appeal on .. /.. /..., the Department asked Zakat Payer to provide evidence on filing an appeal within the statutory period of 30 days from the date of receiving the Primary Department decision, within (7) days from that date. As a result, Taxpayer submitted some documents.

On... dated.././.. AH, corresponding to.././..., as for Zakat Payer Appeal regarding Item (disallowing deduction of current accounts receivable of an affiliated company and current accounts receivable of a subsidiary company from zakat base), the Department asked



Zakat Payer to file a formal complaint regarding this item, specifying the nature of each disputed amount and the reasons for objection, and submit audited financial statements detailing components of relevant balances. Additionally, the Department asked Zakat Payer to provide all correspondence with the subsidiary company and the affiliated company with regard to these amounts. Moreover, the Department asked Zakat Payer to submit Articles of Association of the subsidiary company side by side with all supporting documents related to the advance payment made to the affiliated company within 15 days from this date. As a result, Taxpayer submitted some documents.

On... dated.../.../.. AH, corresponding to.../.../..., upon reviewing documents submitted by Zakat Payer, the Department found that documents submitted were selective pages from financial statements, which did not provide a comprehensive overview of the disputed amounts, especially Note No. (7), a copy of which was provided, has no corresponding reference in financial statements and is not listed under any other heading or balance in such statement. Therefore, the Department asked Zakat Payer to provide complete audited financial statements, along with a reconciliation between the amount claimed to be deducted by Zakat Payer and the amounts disclosed in statement of financial position. Moreover, the Department asked Zakat Payer to provide the financial statements of both the subsidiary company and the affiliated company, along with a reconciliation of the amounts claimed to be deducted by Zakat Payer, showing recognition of these amounts in financial statements of these companies and proving that they were subject to zakat in these companies. In addition, the Department asked Zakat Payer to provide evidence that Zakat Payer submitted zakat declarations for these two companies based on their actual accounts, rather than using the estimate method, within (7) days from this date.

On .., .. /.../.. corresponding to ... /.../..., having taken cognizance of appeal memorandums and replies thereto, and after reviewing papers and documents included in Case file, the Department decided that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: Regarding Item (balances of subcontractors), Item (Defendant error in calculating statutory reserve at the beginning of period), and Item (adding short-term loans to zakat base), Zakat Payer filed its Appeal objecting to items adjusted by ZATCA, claiming that ZATCA e-system did not accept objection due to filling a previous objection regarding the same year. On the other hand, ZATCA called for dismissing Zakat Payer Appeal and upholding the Primary Department decision. Upon careful consideration of dispute subject matter, the Department found that Zakat Payer filed an objection against zakat assessment for the year 2017 AD. Then, ZATCA amended its assessment regarding such item. Zakat Payer claimed that it has attempted to file an objection to these amendments but was unable to do so through ZATCA e-system due to a previous appeal for the same year. Zakat Payer submitted a screenshot of ZATCA e-system that shows failure to file an objection to such amendments. This Department was satisfied that there is no need for filing a new objection to ZATCA adjustments made to its assessment for the same year, given that Zakat Payer had already filed an initial objection thereto. Therefore, the Department decided to overturn the decision rendered by Second Department for Determination of Income Tax Disputes and Violations in Riyadh and remand the Case for reconsideration on merits with regard to such items.



As for Zakat Payer Appeal on Item (disallowing deduction of current accounts receivable of an affiliated company and current accounts receivable of a subsidiary company from Zakat Base), Zakat Payer filed its Appeal challenging imposition of zakat on this item amount more than once to avoid double taxation.

On the other hand, ZATCA called for dismissing Zakat Payer Appeal and upholding the Primary Department decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, this Department found that the amount of SAR 56,350,169 outlined in advance payments to an affiliated company is an amount payable by a sole proprietorship owned by one of the partners and not an affiliated company of Zakat Payer. Since Zakat Payer did not provide evidence on delay by debtor or prove insolvency. Therefore, according to the applicable fatwas, Zakat Payer is not entitled to deduct this amount from zakat base. As for the amount of SAR 8,849,653 that Zakat Payer argues to outline advance payments to an affiliated company: Since it turns out that Zakat Payer owns (60%) of such company. Therefore, Zakat Payer is entitled to exclude (60%) of the amount payable by the affiliated company from its zakat base. Thereupon, this Department amends Primary Department's decision, by dismissing Zakat Payer's appeal regarding the amount payable by the affiliated company and upholding exclusion of (60%) of the amount payable by the subsidiary from its zakat base.

In light of the above and considering the aforementioned grounds, the Department unanimously decided to as follows:

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (ISZR-2020-139) rendered in Case No. (Z-7975-2019) regarding zakat assessment for 2017.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Balances of Subcontractors) item, overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh and remand the Case to the Department for reconsideration of this item on merits according to reasons and grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Defendant's Error in Calculating Statutory Reserve at the Beginning of Period) item, overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh and remand the Case to the Department for reconsideration of this item on merits according to reasons and grounds stated herein.
3. Accept Zakat Payer's appeal regarding (Adding Short-term Loans to Zakat Base) item, overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh and remand the Case for reconsideration of this item on merits according to reasons and grounds stated herein.



Principle No. 316

- The principal rule regarding investment lands and constructions is that they constitute acquisition assets, and therefore, are not subject to zakat unless there is an intention for trade. In the absence of evidence of active sale transactions related to such assets, as reflected in Zakat Payer's audited financial statements, and in the absence of any evidence that can be relied in disregarding this principle or contradicting Zakat Payer's financial statements, the amounts in question should be deducted from zakat base.

Principle No. 317

- If asset financing is included in zakat base as a positive element, the source of such financing should be excluded from the base if its deduction is disallowed in order to achieve the principle of balance in financial statements.

Facts

The Department convened to consider the Appeal filed on /../.., corresponding to.. /../... by ..., holder of National ID No. (...), in his capacity as Appellant Company's attorney under POA No. (...), against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-168) rendered in Case No. (Z-9672-2019) regarding zakat assessment for 2014 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

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

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

Zakat Payer objects to Primary Department's decision, subject matter of appeal, claiming as follows: Regarding (Other Deductions - Investment Land and Construction) item, Zakat Payer claims that the long-term investments, as per the financial statements certified by a chartered accountant, demonstrate that Company's intention for these investments until December 31, 2016 AD, was for acquisition, rather than selling. This is supported by the fact that no real estate was sold from the establishment in 2010 until 2016, except for a single sale of a farm in 2014, which was an incidental sale and does not serve as a basis for all real estate. Regarding Company's ownership of these real estate, it is exclusively owned by the Company. The reason for not registering such properties in Company's name is to avoid inflating prices in the areas where the Company acquires real estate. The Company's board of directors decided to register the properties in the names of the partners and obtain their waivers to safeguard Company's rights. Regarding (Other Additions to the Base - Additional Capital) item, Zakat Payer claims that the additions during the year consisted of real estate investments contributed by the partners of the Company. Since ZATCA has not allowed the deduction of these real estate investments, Zakat Payer argues that zakat



should not be levied on the year-end balance as the lunar year has not yet passed. Furthermore, Zakat Payer argues that debts should only be included in zakat base to the extent that they correspond to fixed assets deducted from zakat base. Therefore, Zakat Payer requests overturning Primary Department's decision for the aforementioned reasons.

On Tuesday, 29/06/1443 AH corresponding to 01/02/2022 AD, the Department decided holding 10-day e-hearing session. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal, summarized as follows: ZATCA reaffirms its position as previously presented before the Primary Department. Regarding (Disallowing Deduction of Real Estate Investment) item, Zakat Payer has not provided supporting documents for its claim. Therefore, Zakat Payer's objection was dismissed in accordance with the provisions of Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Article 4 of the same Regulations. Regarding (Shareholder's Current Account) item, since Zakat payer has not provided the supporting documents for its claim; therefore, its objection was dismissed in accordance with provisions of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Paragraph (3) of Article (20) of the same Regulations. Therefore, ZATCA insists on validity and correctness of its procedures and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On Sunday, 26/07/1443 AH corresponding to 27/02/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: As for Zakat Payer's appeal regarding (Other Deductions - Investment Land and Construction) item, Zakat Payer's appeal involves objection to adding this item to zakat base on the ground that it is intended for acquisition, rather than sale. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that the principal rule regarding investment lands and constructions is that they constitute acquisition assets, and therefore, are not subject to zakat unless there is an intention for trade. Since there is no active sale transaction related to such assets, as reflected in Zakat Payer's audited financial statements. Since ZATCA has not provided any evidence to deviate from this principal rule or to contradict what Zakat Payer's financial statements clearly reflected. Therefore, this Department finds that Zakat Payer's position is valid and correct. Regarding the registration of real properties in dispute in names of partners, since the financing of such assets was included in zakat base as a taxable element. Therefore, it is necessary to exclude the source of their financing from zakat base if their deduction is not accepted in order to maintain the balance of the accounts. However, ZATCA failed to do so. Therefore, this Department accepts Zakat Payer's appeal, allows deduction of the disputed amounts from its zakat base, accounts Zakat Payer based on its audited financial statements, and overturns Primary Department's decision regarding this item.

Regarding (Other Additions to the Base - Additional Capital) item, the Department finds that Zakat Payer's appeal involves claim that debts should only be added to zakat base



insomuch as the amount of fixed assets deducted from zakat base. On the other hand, ZATCA argued that it insists on correctness and validity of its procedures and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that Zakat Payer has acknowledged in its appeal that the balance of additional capital corresponds investment real properties, and that its argument in the appeal is based on ZATCA procedure outlined in disallowing deduction of investment real properties funded by this account. Since this Department has accepted Zakat Payer's appeal regarding investment real properties based on adding source of its financing to the base. Therefore, the Department dismisses Zakat Payer's appeal regarding the additional capital, and upholds Primary Department's decision regarding this item.

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (ISZR-2020-168) rendered in Case No. (Z-9672-2019) regarding zakat assessment for 2014.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Other Deductions - Investment Lands and Constructions) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.
2. Dismiss Zakat Payer's appeal regarding (Other Additions to the Base - Additional Capital) item, and uphold the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein

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

Similar Decisions

First Appellate Department for Income Tax Violations and Disputes

IR-2022-84

IR-2022-53

IR-2022-85



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-204

Case No.: Z-29933-2020

Principle No. 318

- Zakat Payer should be accounted regarding carried-forward losses based on the amounts declared in its declaration. This ensures that the assessment for the year in question is not left contingent upon the occurrence of unspecified future events. However, ZATCA shall be entitled to claim any zakat variances resulting from determining carried-forward losses once final decisions are rendered regarding their amounts. ZATCA may then adjust the final assessment for each year and ask Zakat Payer to settle any resulting variances.

Facts

The Department convened to consider the Appeal filed on .../.. /... corresponding to/.../..., holder of National ID No. (...), in his capacity as the attorney of Appellant Company under POA No. (...), against First Department for Determination of Income Tax Violations and Disputes in in Dammam Decision No. (IZD-2020-204) rendered in Case No. (Z-2216-2020) regarding zakat assessment for 2018 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

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

On Merits: Dismiss the objection filed by Plaintiff (... Company) to zakat assessment for 2018.

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

Zakat Payer objects to Primary Department's decision, subject matter of appeal, claiming as follows: regarding (Accumulated Losses) item, ZATCA delayed the issuance of zakat assessment and that Zakat Payer desires to approve the adjusted carried-forward losses under zakat assessments issued by ZATCA for (2015, 2016, 2017) and deduct the same from zakat base for 2018 amounting to SAR 4,893,562. In addition, ZATCA stated in its answer uploaded to the General Secretariat of Tax Committees' system that it will observe the same after making assessment for previous years. Moreover, the adjusted carried-forward losses of ZATCA assessment will be deducted. It is also unfair to disallow the Company to deduct losses due to delay in issuing assessments. Therefore, Zakat Payer requests overturning Primary Department's decision, subject matter of appeal, for the aforementioned reasons.

Since the Department decided opening of pleadings, ZATCA submitted an answer dated 18/02/1442 AH corresponding to 05/10/2020 AD wherein replies to Zakat Payer's appeal. The answer is summed up in that ZATCA reiterates its previous position submitted before Primary Department. Moreover, Zakat Payer's arguments do not differ from such arguments previously raised, to which ZATCA has already answered at that time. In addition, ZATCA did not deduct the accumulated losses in accordance with the statement of financial position for 2018, since the carried-forward losses that are deducted are carried-forward losses in accordance with ZATCA assessments according to Paragraph (4) of Article (9) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH.



Accordingly, the accumulated losses deducted from the base are carried-forward losses according to ZATCA assessment for previous years. In addition, ZATCA will observe the same after making assessment for previous years. Moreover, the adjusted carried-forward losses will be deducted according to ZATCA assessments in the case of carried-forward losses, in accordance with the aforementioned legal instructions. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On Tuesday dated 29/06/1443 AH, corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing session. The period elapsed without any additional submissions from either party to the appeal.

On Tuesday, 01/11/1443 AH corresponding to 31/05/2022 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in form for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: As for Zakat Payer's appeal regarding (Accumulated Losses) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in disregarding Zakat Payer's request to recognize the adjusted carried-forward losses pursuant to zakat assessments issued by ZATCA for years preceding the year in question. On the other hand, ZATCA argued that it requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, and since the subject matter of dispute related to determining whether ZATCA would adjust the carried-forward losses was based on a future matter that was not realized at the time of assessment. Given that there is a dispute between the parties in determining that amount, based on a dispute in a number of items affecting it and related to zakat assessment for a previous year(s), which are still subject matter of objection by Zakat Payer until the date of consideration of this year's assessment. Since the established principle is to consider Zakat Payer's declaration. Therefore, it is necessary to account Zakat Payer regarding such retained losses to the amount stipulated in its declaration, so that Zakat Payer's assessment for the year in question shall not be contingent on occurrence of unspecified future matters. ZATCA shall be entitled to ask Zakat Payer for any zakat variances resulting from determining amounts of retained losses to determine their amount after amending the final assessment for each year in which ZATCA asks Zakat Payer to collect variances. Therefore, the Department amends Primary Department's decision regarding the item in question, by calculating assessment on Zakat Payer when determining its zakat base by taking into account the figures reported in its declaration regarding determining deducted amount of retained losses for 2018, with the right of ZATCA to calculate any zakat variances that may result from adjusting balance of retained earnings for 2018 as a result of assessment on Zakat Payer for previous years, and Zakat Payer's right to object to such calculation.

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

Decision



First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-204) rendered in Case No. (Z-2216-2020) regarding Zakat assessment for 2018. Second: On Merits:

Accept Zakat Payer's appeal and amend the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, by deciding to rely on information reported in Zakat Payer's declaration regarding determination of deducted carried-forward losses amount for 2018 according to reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-93

Case No.: Z-30823-2020

Principle No. 319

- Zakat is not due on yields of endowment (Waqf).

Facts

The Department convened to consider the Appeal filed on ../.. /... corresponding to/.. /... by/ ..., holder of National ID No. (...), in his capacity as attorney of Appellant Company under POA No. (...), against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-85) rendered in Case No. (Z-4698-2019) regarding zakat assessment for 2011 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

Dismiss the objection filed by Plaintiff (... Company), TIN (...), to Defendant (ZATCA) decision regarding imposition of zakat on Plaintiff Company for the year in question.

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

Zakat Payer objects to Primary Department's decision, subject matter of appeal, arguing that the Primary Department did not consider assignment of the Company by endower (...), owner of Appellant Company, to waqf on 01/07/1431 AH corresponding to 13/06/2010 AD, i.e., after less than three months following waqf inventory on 13/05/1431 AH. In addition, a signed copy of assignment of waqf was attached to Case file. Thereupon, Zakat Payer argues that the date on which the Company ceased to be subject to zakat is the date of waqf assignment. Therefore, ... Company is not subject to zakat from the date of assignment, i.e., 01/07/1431 AH corresponding to 13/06/2010 AD. Moreover, zakat on trading assets requires the completion of a full year and is only due after completing the same period, unless ZATCA levies zakat on the Company for the period from 01/01/2011 AD to 18/05/2011 AD, despite the lack of a completed full year, violating Sharia provisions and Paragraph (4) of Article (15) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Therefore, Zakat Payer requests overturning Primary Department's decision, subject matter of appeal, for the aforementioned reasons.

Since the Department decided opening of pleadings, ZATCA submitted an answer dated 01/11/1442 AH corresponding to 10/06/2021 AD wherein replies to Zakat Payer's appeal and summarized as follows: ZATCA maintains its position presented before the Primary Department, as its decision aligns with Fatwa No. (26272) dated 30/10/1435 AH, ZATCA Letter No. (1376/16/1437) and Paragraph (1/a) of Article (9) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Since waqf deed was issued on 18/05/2011 AD, the yields are not subject to zakat from the date of waqf deed but only from that date onward. Since ZATCA recognizes waqf for zakat purposes from the date of its documentation with the relevant authorities. In addition, the letter submitted by Zakat Payer to the Primary Department explicitly stated the exclusion of the Company from waqf. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing the Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.



On Tuesday, 29/06/1443 AH corresponding to 01/02/2022 AD, the Department decided holding 10-day e-hearing, but the period lapsed without submitting any addition by parties to the appeal.

On Thursday 30/07/1443 AH corresponding to 03/03/2022 AD, the Department, having considered the submissions related to the appeal and the replies thereto and having examined the case papers and documents, established that the case is ripe for adjudication and delivering a decision, and accordingly decided to close the pleading and set the case for adjudication.

Grounds

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

On Merits: Since Zakat Payer's appeal involves objection to ZATCA procedure outlined in levying zakat on waqf yields. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, and documents included in Case file, the Department found that zakat is not due on waqf yields. Since the Department found that the endowment of funds in dispute was declared on 01/07/1431 AH corresponding to 13/06/2021 AD. Since the Department did not find any requirement for correction or further response in light of ZATCA submissions before this Department. Thereupon, the Department concludes that Zakat Payer is not subject to zakat. Therefore, the Department accepts the appeal and dismisses the primary decision. In view of the foregoing, and in light of stated reasons, the Department unanimously decided as follows:

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (IFR-2020-85) rendered in Case No. (Z-4698-2019) regarding zakat assessment for 2011.

Second: On Merits: Accept Zakat Payer's appeal, and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.

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

Similar Decisions
First Appellate Department for Income Tax
Violations and Disputes
IR-2022-94



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-207

Case No.: Z-33813-2021

Principle No. 320

- When Zakat Payer submits audited financial statements that prove the correction of error for the year, in question, specifically the omission of investments in the financial statements for that year, and ZATCA does not provide any objections to the audited financial statements provided by Zakat Payer, this entitles Zakat Payer to deduct investments from zakat base.

Principle No. 321

- Failure of Primary Department to adjudicate the dispute regarding the contested item leaves the associated claim unresolved on its merits. To ensure Zakat Payer's right to a two-tier litigation process, the Case shall be remanded to the primary department for reconsideration of objection to that item.

Facts

The Department convened to consider the Appeal filed on .../.. /... corresponding to/.. /... by ..., holder of National ID No. (...), in his capacity as attorney of Appellant Company under POA No. (...), against First Department for Determination of Income Tax Violations and Disputes in in Dammam Decision No. (IZD-2020-232) rendered in Case No. (Z-10151-2019) regarding zakat assessment for 2014 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

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

On Merits:

Dismiss the objection filed by Plaintiff (... Company), C.R. No. (...), TIN (...), regarding (Investments for 2014) item according to decision grounds.

Establish resolution of the dispute regarding (Asset Derecognition Losses for 2014) item according to decision grounds.

Establish resolution of the dispute regarding (Import Variances for 2014) item according to decision grounds.

Dismiss the objection filed by Plaintiff (... Company), C.R No. (...), TIN (...), to (Other Capital Contributions for 2014) item according to decision grounds.

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

Zakat Payer objects to Primary Department's decision, claiming as follows: Regarding (Other Capital Contributions) item, fixed assets were financed from profits, cash flows and current account, but the capital contributions were used in Company's operating activities.

In addition, only the current account completed a full lunar year and was used in financing fixed assets in the amount of SAR 4,708,447. Regarding (Short-Term Loans and Overdrafts) item, Zakat Payer claims that a year has not passed on this item and therefore zakat is not due on this item. Regarding (Investment Losses) item, Zakat Payer claims that the



financial statements for 2015 were adjusted, and the error in Note No. (25) was corrected in the financial statements for the following year under the name "Other Expenses and Losses", as it appeared in the comparative year 2014 in a total amount of SAR 3,139,305. Accordingly, such amounts should be approved and deducted from zakat base. Regarding (Investments) item, Zakat Payer claims that such investments are long-term and should be deducted from zakat base. Therefore, Zakat Payer requests overturning Primary Department's decision, subject matter of appeal, for the aforementioned reasons.

On Wednesday, 07/03/1443 AH corresponding to 13/10/2021 AD, the Department decided to hold 10-day e-hearing. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal. In addition, the answer is summed that Zakat Payer's arguments do not differ from such arguments previously raised, to which ZATCA has already answered at that time. Regarding (Investment Losses for 2014) item, the financial statements did not recognize any investment losses in the statement of income, and Zakat Payer did not reissue the adjusted financial statements despite of Zakat Payer's argument that there was an error in violation of Article (1) of the Law of Commercial Books and Paragraphs (698) and (699) of Presentation and Disclosure Standard approved by the Saudi Organization for Chartered and Professional Accountants (SOCPA). Since Zakat Payer acknowledged the error and did not correct it, which indicates his non-compliance with the aforementioned legal provisions. Regarding (Other Capital Contributions for 2014) item, ZATCA found that the capital contributions financed fixed assets. Accordingly, the consideration for financing fixed assets is the amount added to zakat base to correspond the deducted assets that were financed from such contributions from zakat base in accordance with Article (4), (First) of the Implementing Regulations for the Collection of Zakat. Moreover, ZATCA states that its decision aligns with provisions of the Implementing Regulations for the Collection of Zakat and has exercised its authority conferred thereunder. In addition, ZATCA requests dismissing any new documents submitted by Zakat Payer that were not submitted during examination and objection stages. ZATCA also requests dismissing any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On Sunday, 06/11/1443 AH corresponding to 05/06/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: As for Zakat Payer's appeal regarding (Investments) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in disallowing deduction of this item from zakat base, claiming that such investments should be deducted as long-term investments. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, and since Zakat Payer submitted its audited financial statements that prove correcting error in the year in question outlined in not recording investments in the financial statements for the



year in question. Since ZATCA did not file objections against the financial statements submitted by Zakat Payer. Thereupon, Zakat Payer is entitled to deduct investments from its zakat base. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Other Capital Contributions) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in adding the full amount of this item to zakat base, claiming that the amounts that did not complete a full lunar year should be deducted. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, since Zakat Payer argued before Primary Department failure to know the source of that item and reasons for its addition. Since ZATCA had no response to Zakat Payer's argument other than the statement that it found that capital contributions had been used to finance fixed assets. Since ZATCA did not provide evidence that there is a direct relation between that increase and any fixed asset obtained throughout the year in question. Having reviewed Zakat Payer's financial statements for the year in question, the Department did not find that the amount claimed by ZATCA outlines the total capital contributions amounting to SAR 24,772,596. In light of the foregoing, and it was not possible to extract it from any other total amount disclosed in the financial statements, making ZATCA procedure unreasoned in such manner that allows Zakat Payer to submit a reasoned objection thereto. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Investment Losses) item and (Short-Term Loans) item, the Department found that Zakat Payer's appeal involves objection to ZATCA procedure outlined in adding this item to zakat base, and Department's failure to address the objection to such two items. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and Primary Department's decision, the Department found that the Primary Department did not adjudicate the dispute regarding such two items, which makes the litigation related to such two items unresolved on their merits, and to enable Zakat Payer to litigate on two degrees. Therefore, the Department remands this Case regarding (Investment Losses) item and (Short-Term Loans) item to the First Department for Determination of Income Tax Violations and Disputes in Dammam for reconsideration in light of Zakat Payer's objection in this regard.

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Company), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-232) delivered in Case No. (Z-10151-2019) regarding zakat assessment for 2014.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Investments) items, and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
2. Accept the appeal filed by Zakat Payer regarding (Other Capital Contributions) item, and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein



3. **Remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Dammam to consider (Investment Losses) item on merits according to reasons and grounds stated herein.**
4. **Remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Dammam to consider (Short-Term Loans) item on merits according to reasons and grounds stated herein.**



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-231

Case No.: Z-37417-2021

Principle No. 322

- Disallowing deduction of deducting real estate properties from zakat base on the grounds that they are not used in business activity should be balanced by excluding the same amount from total equity according to balance sheet principle, as every asset in the balance sheet has corresponding funding on the liabilities and equity side.

Principle No. 323

- If revenues are not decreased by zakat expenses in zakat declaration, zakat expense should not be added to the net profit.

Principle No. 324

- The discrepancy between amounts in the trial balance and the financial statements does not justify amending Zakat Payer's declaration, as the existence of amounts in the trial balance does not mean that they are final, due to the fact that the trial balance cannot be considered a final financial statement due to its susceptibility to adjustment as per accounting practices.

Principle No. 325

- The accounting treatment for unrealized losses in investments requires recording loss in the statement of income and decreasing investment balance by the amount of loss. Therefore, Zakat Payer is entitled to deduct the loss for zakat calculation purposes corresponding to deducting investment from zakat base, which has already been adjusted by that loss.

Principle No. 326

- Zakat Payer is entitled to deduct investments in shares of Saudi companies from zakat base if it turns out that such shares were not held for trading purposes and there is no evidence on active sale activity related to such shares.

Facts

The Department convened a session to consider Appeal filed on ../../... AH corresponding to ../../... by ..., holder of National ID No. (...), in his capacity as Owner of Appellant Enterprise, against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-281) rendered in Case No. (Z-7745-2019)



regarding zakat assessment for years from 2011 to 2015 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:
formal aspect: Accept the Case in form filed by Plaintiff (... Enterprise), C.R. No. (...), TIN (...).

On Merits:

Establish resolution of the dispute regarding overstated zakat expense for 2011 according to decision grounds.

Establish resolution of the dispute regarding amendments for years preceding 2012 according to decision grounds.

Regarding (Paid Zakat for 2012) item:

A. Establish resolution of the dispute regarding the amount of SAR 10,981 due to the fact that Defendant accepted Plaintiff's stance.

B. Dismiss objection filed by Plaintiff regarding the amount of SAR 62,648.

Dismiss all remaining items subject matter of the Case.

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

Zakat Payer objects to Primary Department's decision, subject matter of appeal, claiming the following: Regarding (Zakat Expense for 2015) item, zakat provision amounted to SAR 157,719 as reflected in the financial statements. In addition, the net profit before zakat provision amounted to SAR 2,495,482. Zakat Payer also states that the financial statements do not reflect the amount of SAR 84,143 added by ZATCA as zakat expense. Regarding (Owner's Credit Current Account for 2015) item, Zakat Payer claims that the balance of owner's credit current account amounted to SAR 48,250,387 at the beginning of year and SAR 47,645,713 at the end of year. In addition, the withdrawals before 19/12/2015 AD amounted to SAR 16,129,418, and the net deposits and withdrawals after 19/12/2015 AD amounted to SAR 19,071,855, respectively. Therefore, the amount that shall be added to zakat base, due to completing a full year, is SAR 31,516,295. Regarding (Creditor Banks Completed a Full Lunar Year for 2015) item, Zakat Payer claims that, based on the statement provided to ZATCA, it turns out that all creditor banks pertain to (...) Bank. In addition, several accounts were opened for control and project purposes. Since all accounts pertain to one bank, and based on the principle of unity in accounting, the debit and credit movements should be calculated for all accounts collectively, and may not be calculated for each account individually. Zakat Payer also points out that the entire balance at the beginning of year was settled. Accordingly, there are not amounts that completed a full year. Regarding (Investments for 2015) item, Zakat Payer claims that the investments at the end of year amounted to SAR 7,903,089 comprising of real estate investments amounting to SAR 7,144,776 and investments in company shares amounting to SAR 758,313. Zakat Payer stated that with respect to real estate investments, ZATCA deducted the value of two real properties related to Enterprise's business, but it did not accept deducting two other real properties in owner's name. In addition, Zakat Payer requests that if these investments are not accepted, the amount should be considered as owner withdrawals, which would decrease owner's credit current account. As for stock investments, there were no sales transactions, indicating that these are long-term investments that should be deductible. Regarding (Unrealized Losses from Investments for 2015) item, Zakat Payer claims that the unrealized losses from stock investments amounted to SAR 2,482,251 and this amount should be deducted from zakat base because the value of investments decreased by the amount of such losses. Regarding (Owner's Credit Current Account for 2014) item, Zakat Payer claims that the account balance was SAR 49,797,930 at the beginning of year, and that the balance at the end of year was SAR 47,645,713. Moreover, the withdrawals before 19/12/2014 AD amounted to SAR 10,614,519, and the net deposits and withdrawals after 19/12/2014 AD amounted to SAR 6,291,624. Therefore, the amount that completed a full year is SAR 39,183,411. Regarding the item



(Creditor Banks for 2014) item, Zakat Payer claims that based on the statement provided to ZATCA, it turns out that all creditor banks pertain to (...) Bank. In addition, several accounts were opened for control and project purposes. Since all accounts pertain to one bank, and based on the principle of unity in accounting, the debit and credit movements should be calculated for all accounts collectively, and may not be calculated for each account individually. Zakat Payer also points out that the entire balance at the beginning of year was settled. Accordingly, there are not amounts that completed a full year. Regarding (Investments for 2014) item, Zakat Payer claims that the investments at the end of year amounted to SAR 8,313,641 comprising of real estate investments amounting to SAR 7,520,818 and investments in company shares amounting to SAR 792,823. Zakat Payer stated that with respect to real estate investments, ZATCA deducted the value of two real properties related to Enterprise's business, but it did not accept deducting two other real properties in owner's name. In addition, Zakat Payer requests that if such investments are not accepted, the amount should be considered as owner withdrawals, which would decrease owner's current account. As for stock investments, there were no sale transactions, indicating that these are long-term investments that should be deductible. Regarding (Unrealized Losses from Investments for 2014) item, Zakat Payer claims that the unrealized losses from stock investments amounted to SAR 1,223,870 and this amount should be deducted from zakat base because the value of investments decreased by the amount of such losses. Regarding (Owner's Credit Current Account for 2013) item, Zakat Payer claims that the account balance was SAR 49,797,930 at the end of year and SAR 48,637,061 at the beginning of year. Moreover, the withdrawals before 19/12/2013 AD and net deposits and withdrawals after 19/12/2013 AD amounted to SAR 6,323,380 and SAR 1,345,850 respectively. Therefore, the amount that should be added to zakat base is SAR 42,313,681. Regarding (Creditor Banks for 2013) item, Zakat Payer claims that based on the statement provided to ZATCA, it turns out that all creditor banks pertain to Riyadh Bank. In addition, several accounts were opened for control and project purposes. Since all accounts pertain to one bank, and based on the principle of unity in accounting, the debit and credit movements should be calculated for all accounts collectively, and may not be calculated for each account individually. Zakat Payer also points out the entire balance at the beginning of year was settled. Therefore, there are not amounts that completed a full year. Regarding (Investments for 2013) item, Zakat Payer claims that the investments at the end of year amounted to SAR 12,071,013 comprising of real estate investments amounting to SAR 11,020,818 and investments in company shares amounting to SAR 1,050,195. Zakat Payer stated that with respect to real estate investments, ZATCA deducted the value of two real properties related to Enterprise's business, but it did not accept deducting two other real properties in owner's name. In addition, Zakat Payer requests that if these investments are not accepted, the amount should be considered as owner withdrawals, which would decrease owner's current account. As for stock investments, there were no sale transactions, indicating that these are long-term investments that should be deductible. Regarding (Unrealized Losses from Investments for 2013) item, Zakat Payer claims that the unrealized losses from stock investments amounted to SAR 966,498 and this amount should be deducted from zakat base because the value of investments decreased by the amount of such losses. Regarding (Owner's Credit Current Account for 2012) item, Zakat Payer claims that owner's credit current account was SAR 39,628,621 at the beginning of year and SAR 41,409,573 at the end of year as reflected in the financial statements. Moreover, the withdrawals, deposits and adjustments to owner's current account and transfers from retained earnings account amounted to SAR 14,842,959, SAR 13,998,235, SAR 2,989,964 and SAR 5,615,640 respectively. Therefore, the amount that should be added to zakat base is SAR 21,795,698. Regarding (Creditor Banks for 2012) item, Zakat Payer claims that based on the statement provided to ZATCA, it turns out that all creditor banks pertain to Riyadh Bank. In addition, several accounts were opened for control



and project purposes. Since all accounts pertain to one bank, and based on the principle of unity in accounting, the debit and credit movements should be calculated for all accounts collectively, and may not be calculated for each account individually. Zakat Payer also points out that the entire balance at the beginning of year was settled. Therefore, there are not amounts that completed a full year. Regarding (Investments for 2012) item, Zakat Payer claims that the investments at the end of year amounted to SAR 12,933,312 comprising of real estate investments amounting to SAR 12,050,817 and investments in company shares amounting to SAR 882,465. Zakat Payer stated that with respect to real estate investments, ZATCA deducted the value of two real properties related to Enterprise's business, but it did not accept deducting two other real properties in owner's name. In addition, Zakat Payer requests that if these investments are not accepted, the amount should be considered as owner withdrawals, which would decrease owner's current account. As for stock investments, there were no sales transactions, indicating that these are long-term investments that should be deductible. Regarding (Unrealized Losses from Investments for 2012) item, Zakat Payer claims that the unrealized losses from stock investments amounted to SAR 1,134,198 and this amount should be deducted from zakat base because the value of investments decreased by the amount of such losses. Regarding (Amendments of Years Preceding 2012) item, Zakat Payer claims that the assessment has not yet been amended based on the decision accepting Enterprise's stance, and that the Enterprise is still being asked to pay zakat on this amount. Regarding (Owner's Credit Current Account for 2011) item, Zakat Payer claims that owner's credit current account and retained earnings was SAR 46,478,417 at the end of year and SAR 43,535,364 at the beginning of year. Moreover, the withdrawals before 19/12/2011 AD amounted to SAR 17,211,445, and net deposits and withdrawals after 19/12/2011 AD amounted to SAR 15,896,604, and profits of the year amounted to SAR 4,257,894. Therefore, the amount that should be added to zakat base is SAR 26,323,919 due to completing a full year. Regarding (Investments for 2011) item, Zakat Payer claims that the investments at the end of year amounted to SAR 12,258,717 comprising of real estate investments amounting to SAR 12,050,817 and investments in company shares amounting to SAR 207,900. Zakat Payer stated that with respect to real estate investments, ZATCA deducted the value of two real properties related to Enterprise's business, but it did not accept deducting two other real properties in owner's name. In addition, Zakat Payer requests that if these investments are not accepted, the amount should be considered as owner withdrawals, which would decrease owner's current account. As for stock investments, there were no sale transactions, indicating that these are long-term investments that should be deductible. Thereupon, Zakat Payer requests overturning Primary Department's decision for the aforementioned reasons.

On Sunday, 29/05/1443 AH corresponding to 02/01/2022 AD, the Department decided holding 10-day e-hearing. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal, by reiterating its previous position presented before Primary Department. Moreover, Zakat Payer's arguments do not differ from such arguments previously raised, to which ZATCA has already answered at that time. Regarding (Owner's Credit Current Account for Years from 2011 to 2015) item, ZATCA insists on Primary Department's decision, as it aligns with ZATCA Circular No. (583/16/1432) dated 29/01/1432 AH regarding zakat calculation of shareholders'/owners' current account. In addition, the dispute between ZATCA and Zakat Payer is document-based, and Zakat Payer has not provided the supporting documents for its claim. Regarding (Real Estate Investments and Stock Investments in Companies for Years from 2011 to 2015) item, ZATCA insists on Primary Department's decision, as it aligns with Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Ministerial Letter No. (4/8676) dated 24/12/1440H. Regarding (Creditor Banks Completed a Full Lunar Year for Years from 2012 to 2015) item, ZATCA insists on Primary



Department's decision, as it aligns with Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Regarding (Unrealized Losses from Investment for Years from 2012 to 2014) item, ZATCA insists on Primary Department's decision, as it aligns with Paragraph (2) of Article (6) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Ministerial Letter No. (4/8676) dated 24/12/1440 AH. In addition, the dispute between ZATCA and Zakat Payer is document-based, and that Zakat Payer has not provided the supporting documents for its claim. Regarding (Zakat Expense for 2015) item, ZATCA insists on Primary Department's decision, as it aligns with the judicial principle "The burden of proof lies with the claimant". In addition, Zakat Payer did not provide the supporting documents its claim. Moreover, ZATCA requests the Department to dismiss any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Civil Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On Wednesday, 17/10/1443 AH corresponding to 18/05/2022 AD, as for Zakat Payer's appeal regarding (Owner's Credit Current Account for years from 2013 to 2015) item, the Department, having taken cognizance of Zakat Payer's appeal, asked Zakat Payer to provide a comprehensive analysis based on general ledger accounts. This analysis should elaborate the amount that completed a full year and reconcile it with the audited financial statements for years from 2013 to 2015. As for Zakat Payer's appeal regarding (Creditor Banks for Years from 2013 to 2015) item, Zakat Payer claims that a full year has not passed on the balance payable to Riyadh Bank. Thereupon, this Department asked Zakat Payer to provide bank statements for years from 2013 to 2015, provided that each statement elaborates the opening balance, amounts paid out of that opening balance, any loans obtained throughout the year and closing balance. within the 15-day deadline.

On Wednesday, 06/11/1443 AH corresponding to 05/06/2022 AD, as for Zakat Payer's appeal regarding (Owner's Credit Current Account for years from 2013 to 2015) item, the Department, having taken cognizance of Zakat Payer's appeal, asked Zakat Payer for the second time to provide a comprehensive analysis based on general ledger accounts. This analysis should elaborate the amount that completed a full year and reconcile it with the audited financial statements for years from 2013 to 2015. As for Zakat Payer's appeal regarding (Creditor Banks for Years from 2013 to 2015) item, Zakat Payer claims that a full year has not passed on the balance payable to Riyadh Bank. Thereupon, this Department asked Zakat Payer to provide bank statements for years from 2013 to 2015, provided that each statement elaborates the opening balance, amounts paid out of that opening balance, any loans obtained throughout the year and closing balance. within the 15-day deadline.

On Thursday 24/11/1443 AH corresponding to 23/06/2022 AD, the Department, having considered the submissions related to the appeal and the replies thereto and having examined the case papers and documents, established that the case is ripe for adjudication and delivering a decision, and accordingly decided to close the pleading and set the case for adjudication.

Grounds

Having taken a look at the case papers and the statement of appeal submitted by the Zakat Payer, the Department found that the formal conditions for considering the appeal were met as per the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is acceptable in form for being submitted by a person with a capacity, and within the period prescribed by law.

On Merits: Having taken cognizance of Case file and ZATCA assessment, the Department found that the assessment was made on 26/07/1439 AH. Thereupon, the assessment for 2011 and 2012 was made after more than five years following the statutory period for ZATCA



entitlement to assess Zakat Payers. The Department found that ZATCA assessment was made after expiry of the statutory period for amendment to Zakat Payer's declaration, which is five years from the deadline for filing Zakat Payer's declaration for each year. It is worth noting that these rules are established to maintain transaction stability and prevent instability of Zakat Payers' financial positions in case of lack of a timeframe that ensures maintaining their financial positions. Since this matter does not result in releasing Zakat Payer from its legal obligation if Zakat Payer is already concerned with fulfilling such obligation but rather outlines a procedural issue with relation to ZATCA entitlement to assess Zakat Payer after expiry of the statutory period. Therefore, the Department concluded that ZATCA procedure outlined in making such amendments was invalid. Accordingly, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision regarding the contested items for 2011 and 2012.

As for Zakat Payer's appeal regarding (Zakat Expense for 2015) item, Zakat Payer's appeal involves objection to ZATCA procedure outlined in adding an amount of SAR 84,143 that is not reflected in the financial statements as zakat expense. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, the Department found that the dispute between the parties involves ZATCA procedure outlined in adding an amount of SAR 84,143 that is not reflected in the financial statements as zakat expense. Having reviewed zakat declaration for the year in question, the Department found that the revenues were not decreased by zakat expense. Therefore, such revenues should not be added to the net profit. In addition, ZATCA argument that zakat expense in the trial balance does not match the financial statements is not valid, as the inclusion of the amount in trial balance does not indicate that it is a final amount due to the fact that the trial balance is not considered a final financial statement, because it is subject to adjustments according to accounting practices. In addition, the existence of this expense does not mean that it is deducted from profit for zakat purposes. Since ZATCA did not provide any evidence to justify disregarding figures reflected in the financial statements. Therefore, the Department accepts Zakat Payer's appeal and overturns the decision rendered the First Department for Determination of Income Tax Disputes and Violations in Dammam regarding this item.

As for Zakat Payer's appeal regarding (Owner's Credit Current Account for 2015) item, Zakat Payer's appeal involves request to limit the addition to zakat base to the amount of SAR 31,516,295, as this is the amount that had completed a full year and excluding otherwise amounts. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, documents included in Case file and Zakat Payer's appeal. Since the dispute is document-based on its merits. Since Zakat Payer did not provide supporting documents for its claim before this Department. Since this Department found that Primary Department's conclusion subject matter of appeal is valid, and that the reasons upon which the decision was based are sufficient to uphold it. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Creditor Banks for 2015) item, Zakat Payer's appeal involves objection to adding this item to zakat base. In addition, Zakat Payer claims that the opening balance was fully paid, and that there are not amounts that completed a full year. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file. Since the dispute is document-based on its merits. Since Zakat Payer did not provide the supporting documents for its claim before this Department with regard to non-



completion of a full year on balance payable to (...) Bank. Since this Department found that Primary Department's conclusion, subject matter of appeal, is valid, and that the reasons upon which the decision was based are sufficient to uphold this decision. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Investments for 2015) item, Zakat Payer's appeal involves objection to adding this item to zakat base by ZATCA. In addition, Zakat Payer claims that there is not any movement on investments, which indicates that they are long-term investments and deductible. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, the Department found that this item comprises real properties and stocks. Since Zakat Payer is accounted based on its statutory accounts, disallowing deduction of real estate from zakat base on the ground that it is not used in business activities must be balanced by excluding the same amount from total equity in accordance with the principle of balance in financial statements. This principle states that every asset in the balance sheet corresponds financing on liability and equity side. Since ZATCA has not proven that the non-deducted real properties are considered trading assets and did not exclude a corresponding amount from equity to reflect these non-deducted assets, Zakat Payer is entitled to deduct these real properties from its zakat base. As for investment in shares of Saudi companies, since it turns out that these shares were not held for trade and there was no evidence of active sale activity. Therefore, Zakat Payer shall be entitled to deduct such investments from its zakat base. Therefore, this Department accepts Zakat Payer's appeal and overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam regarding this item.

As for Zakat Payer's appeal regarding (Unrealized Losses from Investments for 2015) item, Zakat Payer's appeal involves objection to disallowing deduction of this item from zakat base. In addition, Zakat Payer claims that losses shall be deducted from zakat base because investment value decreased by the amount of such losses. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, the Department found that the dispute pertains to unrealized losses resulting from long-term investments in company shares. Since the accounting treatment of unrealized losses in investments requires recognizing loss in the statement of income and decreasing investment balance by the amount of loss. Thereupon, Zakat Payer is entitled to deduct the loss for zakat calculation purposes in return for deducting investment from zakat base decreased by the amount of such loss. Therefore, this Department accepts Zakat Payer's appeal and overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam regarding this item.

As for Zakat Payer's appeal regarding (Owner's Credit Current Account for 2014) item, Zakat Payer's appeal involves claim to limit the addition to zakat base to the amount of SAR 39,183,411, as this is the amount that had completed a full year and excluding otherwise amounts. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, documents included in Case file and Zakat Payer's appeal. Since the dispute is document-based on its merits. Since Zakat Payer did not provide the supporting documents for its claim before this Department. Since this Department found that Primary Department's conclusion, subject matter of appeal, is valid, and that the reasons upon which the decision



was based are sufficient to uphold it. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Creditor Banks for 2014) item, Zakat Payer's appeal involves objection to adding this item to zakat base. In addition, Zakat Payer claims that the opening balance was fully paid, and that there are not amounts that completed a full year. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file. Since the dispute is document-based on its merits. Since Zakat Payer did not provide the supporting documents for its claim before this Department with regard to passage of a full year on balance payable to (...) Bank. Since this Department found that Primary Department's conclusion, subject matter of appeal, is valid, and that the reasons upon which the decision was based are sufficient to uphold it. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Investments for 2014) item, Zakat Payer's appeal involves objection to adding this item to zakat base by ZATCA. In addition, Zakat Payer claims that there is not any movement on investments, which indicates that they are long-term investments and deductible. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, the Department found that this item comprises real properties and stocks. Since Zakat Payer is accounted based on its statutory accounts, disallowing deduction of real properties from zakat base on the ground that they are not used in business activities must be balanced by excluding the same amount from total equity in accordance with the principle of balance in financial statements. This principle states that every asset in the balance sheet corresponds financing on liability and equity side. Since ZATCA has not proven that the non-deducted real properties are considered trading assets and did not exclude a corresponding amount from equity to reflect these non-deducted assets, Zakat Payer is entitled to deduct such real properties from its zakat base. As for investment in shares of Saudi companies, since it turns out that these shares were not held for trade and there was no evidence of active sale activity. Therefore, Zakat Payer shall be entitled to deduct such investments from its zakat base. Therefore, this Department accepts Zakat Payer's appeal and overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam regarding this item.

As for Zakat Payer's appeal regarding (Unrealized Losses from Investments for 2014) item, Zakat Payer's appeal involves objection to disallowing deduction of this item from zakat base. In addition, Zakat Payer claims that losses shall be deducted from zakat base because investment value decreased by the amount of such losses. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, the Department found that the dispute pertains to unrealized losses resulting from long-term investments in company shares. Since the accounting treatment of unrealized losses in investments requires recognizing loss in the statement of income and decreasing investment balance by the amount of loss. Thereupon, Zakat Payer is entitled to deduct the loss for zakat calculation purposes in return for deducting investment from zakat base decreased by the amount of such loss. Therefore, this Department accepts Zakat Payer's appeal and overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam regarding this item.



As for Zakat Payer's appeal regarding (Owner's Credit Current Account for 2013) item, Zakat Payer's appeal involves claim to limit the addition to zakat base to the amount of SAR 42,313,681, as this is the amount that had completed a full year and excluding otherwise amounts. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, documents included in Case file and Zakat Payer's appeal. Since the dispute is document-based on its merits. Since Zakat Payer did not provide the supporting documents for its claim before this Department. Since this Department found that Primary Department's conclusion, subject matter of appeal, is valid, and that the reasons upon which the decision was based are sufficient to uphold it. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Creditor Banks for 2013) item, Zakat Payer's appeal involves objection to adding this item to zakat base. In addition, Zakat Payer claims that the opening balance was fully paid, and that there are not amounts that completed a full year. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file. Since the dispute is document-based on its merits. Since Zakat Payer did not provide the supporting documents for its claim before this Department with regard to passage of a full year on balance payable to (...) Bank. Since this Department found that Primary Department's conclusion, subject matter of appeal, is valid, and that the reasons upon which the decision was based are sufficient to uphold it. Therefore, this Department dismisses Zakat Payer's appeal and upholds Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Investments for 2013) item, Zakat Payer's appeal involves objection to adding this item to zakat base by ZATCA. In addition, Zakat Payer claims that there is not any movement on investments, which indicates that they are long-term investments and deductible. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, the Department found that this item comprises real properties and stocks. Since Zakat Payer is accounted based on its statutory accounts, disallowing deduction of real properties from zakat base on the ground that they are not used in business activities must be balanced by excluding the same amount from total equity in accordance with the principle of balance in financial statements. This principle states that every asset in the balance sheet corresponds financing on liability and equity side. Since ZATCA has not proven that the non-deducted real properties are considered trading assets and did not exclude a corresponding amount from equity to reflect these non-deducted assets, Zakat Payer is entitled to deduct such real properties from its zakat base. As for investment in shares of Saudi companies, since it turns out that these shares were not held for trade and there was no evidence of active sale activity. Therefore, Zakat Payer shall be entitled to deduct such investments from its zakat base. Therefore, this Department accepts Zakat Payer's appeal and overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam regarding this item.

As for Zakat Payer's appeal regarding (Unrealized Losses from Investments for 2013) item, Zakat Payer's appeal involves objection to disallowing deduction of this item from zakat base. In addition, Zakat Payer claims that losses shall be deducted from zakat base because investment value decreased by the mount of such losses. On the other hand, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance



of the subject matter of dispute and documents included in Case file, the Department found that the dispute pertains to unrealized losses resulting from long-term investments in company shares. Since the accounting treatment of unrealized losses in investments requires recognizing loss in the statement of income and decreasing investment balance by the amount of loss. Thereupon, Zakat Payer is entitled to deduct the loss for zakat calculation purposes in return for deducting investment from zakat base decreased by the amount of such loss. Therefore, this Department accepts Zakat Payer's appeal and overturns the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam regarding this item.

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Enterprise), C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No (IZD-2020-281) rendered in Case No. (Z-7745-2019) regarding zakat assessment for years from 2011 to 2015.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding all appealed items for years from 2011 to 2012, and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam regarding such items according to reasons and grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Zakat Expense for 2015) item, and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
3. Dismiss Zakat Payer's appeal regarding (Owner's Credit Current Account for 2015), and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
4. Dismiss Zakat Payer's appeal regarding (Creditor Banks for 2015), and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
5. Accept Zakat Payer's appeal regarding (Investments for 2015), and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
6. Accept Zakat Payer's appeal regarding (Unrealized Losses from Investments for 2015), and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
7. Dismiss Zakat Payer's appeal regarding (Owner's Credit Current Account for 2014), and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
8. Dismiss Zakat Payer's appeal regarding (Creditor Banks for 2014), and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
9. Accept Zakat Payer's appeal regarding (Investments for 2014), and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
10. Accept Zakat Payer's appeal regarding (Unrealized Losses from Investments for 2014), and overturn the decision rendered by the First Department for Determination of



Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.

11. Dismiss Zakat Payer's appeal regarding (Owner's Credit Current Account for 2013), and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
12. Dismiss Zakat Payer's appeal regarding (Creditor Banks for 2013), and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
13. Accept Zakat Payer's appeal regarding (Investments for 2013), and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.
14. Accept Zakat Payer's appeal regarding (Unrealized Losses from Investments for 2013), and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Dammam according to reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-97

Case No.: Z-27058-2020

Principle No. 327

- Zakat Payer's grounds for challenging information relied upon in the financial statements do not undermine this, as Zakat Payer has not proven inaccuracy of such financial statements by any competent authority confirming the alleged forgery. To consider the appeal filed on .././.... corresponding to .././..., by ..., holder of National

Facts

ID No. (...), in its capacity as Owner of Appellant Enterprise against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-89) rendered in Case No. (Z-7798-2019) regarding zakat assessment for years from 1434 to 1436 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

First: formal aspect:

Accept the objection filed by Plaintiff (... Enterprise), C.R. No. (...) in form.

Second: On Merits:

Dismiss the objection filed Plaintiff (... Enterprise) to estimate zakat assessment for years from 1434 to 1436.

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

Zakat Payer objects to Primary Department's decision, subject matter of appeal, claiming that the financial statements, based on which ZATCA made reassessment, were prepared without his knowledge, approval or signature, by such financial statements were approved and provided to the accounting office by a person who was unauthorized to sign and did not have a signature endorsement before the Chamber of Commerce. The person who signed acted in bad faith and took advantage of Zakat Payer's health condition. Therefore, Zakat Payer requests overturning Primary Department's decision, subject matter of appeal, for the aforementioned reasons.

On ..., .././... corresponding to .././..., the Department decided holding 10-day e-hearing session. Therefore, ZATCA submitted an answer wherein replies to Zakat payer's appeal, summarized as follows: ZATCA reiterates its position presented before the Primary Department and bases its procedure on Paragraph (5.A) of Article (13) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH and Paragraph (8.C) of Article (21) of the same Regulations. Moreover, Zakat Payer's arguments do not differ from such arguments previously raised, to which ZATCA has already answered at that time. In addition, ZATCA requests dismissing any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Procedure. Thereupon, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On, dated .. /.. /..., corresponding to ... /.. /..., the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents



included in Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: Since Zakat Payer's appeal involves objection to ZATCA procedure outlined in making reassessment based on the financial statements certified by an unauthorized person. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's Decision. Having taken cognizance of the subject matter of dispute and documents included in Case file, this Department found that Primary Department's conclusion, subject matter of appeal, is valid, and that the reasons upon which the decision was based are sufficient to uphold it. Zakat Payer's grounds for challenging information relied upon in the financial statements do not undermine this, as Zakat Payer has not proven before this Department the inaccuracy of such financial statements by any competent authority confirming the alleged forgery. In addition, Zakat Payer did not challenge such financial statements until after ZATCA assessment decision, which serves as evidence on invalidity of Zakat Payer's argument. As for what Zakat Payer submitted regarding being informed of the decision of the Committee for investigation on violations of CPAs, it pertains to the work of the certified accountant when reviewing the financial statements and does not relate to whether those financial statements were forged by those who prepared them. The committee mentioned does not have jurisdiction over criminal cases related to forgery. Therefore, this Department concludes that Zakat Payer's appeal shall be dismissed and the result reached by Primary Department's Decision shall be upheld.

In light of the above and considering the aforementioned grounds, the Department unanimously decided to as follows:

Decision

First: Accept the appeal in form filed by the Zakat Payer ... Enterprise, C.R. No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-89) rendered in Case No. (Z-7798-2019) regarding zakat assessment for years from 1434 to 1436.

Second: On Merits: Dismiss Zakat Payer's appeal and uphold the decision rendered by the First Department for the Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-146

Case No.: Z-32881-2020

Principle No. 328

- The decisive factor is the figures reflected in Zakat Payer's accounts. This is not undermined by Zakat Payer's claim that such funds do not pertain to the enterprise.

Facts

To consider the appeal filed on .././... AH corresponding to 27/12/2020 AD by ..., holder of National ID No. (...), in his capacity as attorney of Appellant Enterprise under POA No. (...), against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISR-2020-228) rendered in Case No. (Z-5404-2020) regarding zakat assessment for 2016 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

Accept the Case filed by Plaintiff (...), holder of National ID No. (...), owner of (... Enterprise), C.R. No. (...), against Defendant (ZATCA) in form and dismiss it on merits. Dissatisfied with this decision, Zakat Payer (... Enterprise) submitted a statement of appeal summarized as follows:

Zakat Payer objects to Primary Department's decision, subject matter of appeal, claiming as follows: Regarding (Owner's Current Account) item, the balance of owner's current account (additional capital) should be deducted, since this amount was adjusted for the said years due to errors in the financial statements for years from 2014 to 2016. The former management had revalued and recorded assets in the books in exchange for inflating retained earnings and shareholder's current account for 2014. Furthermore, the current account balance has been erroneously inflated. In addition, a detailed statement of owner's current account has been attached, which reflects balances payable by owner's relatives who are not directly involved in any business with the Enterprise. Therefore, their balances constitute a liability of the owner, rather than the Enterprise. Moreover, the credit entries in owner's current account are personal expenses for the owner and his family (i.e., averaging account). Moreover, the increase in credit balance is to finance the operating activities, rather than financing deductible assets (acquisition assets) or sourced from equity. Regarding (Accounts Payable) item, Zakat Payer requests their deduction, arguing that they are balances owed to certain suppliers and will be paid within a short period, and they have not completed a full lunar year. Regarding (Retained Earnings) item, Zakat Payer claims that the retained earnings amounts outline settlements for previous years that have been closed to rectify Enterprise's financial position and accumulated due to a previous accounting error that was corrected in 2016, as Enterprise's former management, at the beginning of 2014 and when preparing financial statements, recorded an entry after revaluing assets that resulted in inflation of both (Fixed Assets) item and (Retained Earnings) item. Accordingly, the entry that was reordered to the opening balances (increase) for 2014 was mistakenly carried forward until 2016. Therefore, the opening balance entries amounting to SAR 79,255,798, which originated from an inflation in fixed assets and projects under construction, were recorded. Thereupon, Appellant requests



deducting retained earnings from zakat base. Therefore, Zakat Payer requests overturning Primary Department's decision, subject matter of appeal, for the aforementioned reasons. On Tuesday, 29/06/1443 AH corresponding to 01/02/2022 AD, the Department decided holding 10-day e-hearing session. Therefore, ZATCA submitted an answer wherein replies to Zakat Payer's appeal, summarized as follows: ZATCA reiterated its position presented before the Primary Department. Regarding (Owner's Current Account) item, the amount added to zakat base was determined by comparing opening and closing balances and adding the lower balance in accordance with Fatwa No. (22665) dated 15/04/1424 AH and Paragraph (2) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. In addition, Zakat Payer did not provide evidence that such balances have not completed a full lunar year. Thereupon, Zakat Payer's objection was dismissed in accordance with Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Regarding (Accounts Payable) item, the balances of this item were added due to the fact that they completed a full lunar year in accordance with Paragraph (5) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Furthermore, Zakat Payer did not provide the supporting documents for its claim. Thereupon, Zakat Payer's objection was dismissed in accordance with Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Regarding (Retained Earnings) item, Zakat Payer was previously asked, during examination stage, to provide the documents related to distribution of profits, and Zakat Payer was contacted more than once, but Zakat Payer did not respond. Accordingly, the retained earnings at the beginning of period were added due to failure to provide the supporting documents in accordance with Paragraph (8) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Moreover, Zakat Payer did not provide the supporting documents for its claim. Thereupon, Zakat Payer's objection was dismissed in accordance with Paragraph (3) of Article (20) of the same regulations. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons. On Sunday, 24/08/1443 AH corresponding to 27/03/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits: As for Zakat Payer's appeal regarding (Current Account) item, the Department found that Zakat Payer's appeal involves objection to adding this item to zakat base, as the whole amount assessed has not completed a full lunar year. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that the document generated from customer's accounts shows that the account balance at the beginning of year was SAR 41,829,745, while the debit transactions amounted to SAR 23,993,695. Given that payments from the current account are made from the opening balance, the remaining opening balance after deducting debit transactions is SAR 17,836,050, which completed a full lunar year. Therefore, this amount shall be added to zakat base, excluding the



remaining amount added by ZATCA. As for the second statement stated by Zakat Payer, the Department found that it outlines Zakat Payer's claims against other parties (debtors). In addition, this item is not considered one of the components of Zakat Payer's current account. Therefore, this item shall not be included in the equation for calculating zakat base. Zakat Payer's claim that such amounts pertain to the Owner of Enterprise and not related to the Enterprise, as the decisive factor is the figures reflected in Zakat Payer's accounts that showed that the amounts referred to in the second statement outline Enterprise's receivables for third parties. Therefore, this Department amends Primary Department's decision by adding amounts that completed a full lunar year amounting to SAR 17,836,050, while excluding remaining amount added by ZATCA from this account.

As for Zakat Payer's appeal regarding (Trade Account Payable) item, the Department found that Zakat Payer's appeal involves objection to adding this item to Zakat base due to non-completion of a full lunar year. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that the opening balance of the accounts comprising this item amounted to SAR 24,609,144, while the debit transaction amounted to SAR 33,123,330, which indicates that the entire opening balance has been paid, in addition to paying amounts ensued throughout the year. Since such accounts are classified as short-term liabilities that are usually paid throughout the next year. Since ZATCA has not provided any evidence that contradicts the analysis provided by Zakat Payer. Therefore, the Department accepts Zakat Payer's appeal regarding this item and overturns Primary Department's decision regarding this item.

As for Zakat Payer's appeal regarding (Retained Earnings) item, the Department found that Zakat Payer's appeal involves objection to adding this item to zakat base, arguing that it outlines a correction of accounting errors occurred in previous years. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismiss Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and documents provided by Zakat payer, the Department found that the opening balance of retained earnings, as per the audited financial statements, has been decreased by correcting errors by the same amount claimed by Zakat Payer. Since this correction has been accompanied by decreasing assets deducted from zakat base, which were affected by error correction, as per the financial statements for the year in question. Therefore, this Department accepts Zakat Payer's appeal and overturns Primary Department's decision regarding this item.

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

Decision

First: Accept the appeal in form filed by Zakat Payer (... Enterprise), C.R. No. (...), TIN (...), against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (ISR-2020-228) rendered in Case No. (Z-5404-2020) regarding zakat assessment for 2016.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Current Account) item, and amend the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, by adding an amount of SAR 17,836,050 that completed a full lunar year, according to reasons and grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Trade Accounts Payable) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein



3. **Accept Zakat Payer's appeal regarding (Retained Earnings) item, and overturn the decision rendered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein**



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-366

Case No.: Z-31546-2020

Principle No. 329

- Modest bonuses, relative to the scale of business activities and customary for companies to incur as employee incentives, are considered deductible expenses.

Facts

To consider the appeal filed on .././... corresponding to .././... by (...), holder of National ID No. (...), in his capacity as Appellant's attorney, under POA No. (...), and the appeal filed on 28/04/1442 AH corresponding to 13/12/2020 AD by ..., against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-161) rendered in Case No. (Z-9301-2019) regarding zakat assessment for years from 2014 to 2016 filed by Zakat Payer against ZATCA, in which the Primary Department ruled as follows:

First: formal aspect: Accept the Case filed by Plaintiff (... Company), C.R. No. (...), In Form.

Second: On Merits:

1. Dismiss the objection filed by Plaintiff (... Company), (Unapproved Rents for Years from 2014 to 2016) item:
2. Dismiss the objection filed by the Plaintiff (... Co.), to (Import Variances for 2014) item, and amend Defendant's decision by accepting Plaintiff's objection to (Import Variances) item (Fixed Price Variances against Euro, Processed Solely in Other Revenues) in the amount of SAR 4,481,408 for 2015 and SAR 5,713,495 for 2016.
3. Dismiss the objection filed by the Plaintiff (... Co.), To (Bonuses for Years from 2014 to 2016) item.
4. Dismiss the objection filed by the Plaintiff (... Co.), to (Salary Variances for Years from 2014 to 2016) item.

Since both parties to the Case dissatisfied with this decision; therefore, both parties submitted a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, the Department found that Zakat Payer's appeal involves the following: Regarding (Unapproved Rents) item, Zakat Payer claims that all rents are supported with the supporting documents that were submitted to ZATCA and Primary Department. Thereupon, such rents meet the conditions for deduction from zakat base. Regarding (Import Variances) item, Zakat Payer claims that there are reasons for such variances outlined in the purchase of fixed assets that were recorded by mistake, internal purchase expenses, shipping charges and price variances. Regarding (Bonuses) item, Zakat Payer claims that the bonuses were paid to employees in recognition of their efforts; hence, they are related to realizing income and fall within the deductible expenses. However, the basis on which ZATCA relied for the unavailability of Penalty and Remuneration Regulations from Labor Office was not provided for in the Implementing Regulations, as it did not stipulate the necessity of accepting bonuses paid in conformity with such bonuses included in Work Organization Regulations. Regarding (Salary Variances) item, Zakat Payer claims that the resulting variances were due to the



existence of allowances and remunerations that were not included in GOSI certificate, as Social Insurance Law disallows adding all allowances paid to employees. Regarding (Previous Year Expenses) item and (Deferred Dividends) item, (Material Error in Reserve for 2015) item, and (Bad Debts) item, Zakat Payer objects to disregarding discussion and consideration of such items on merits by the Primary Department. Therefore, Zakat Payer requests overturning Primary Department's decision regarding the items, subject matter of appeal, for the aforementioned reasons.

Decision was not accepted by ZATCA, so it appealed against the contested decision by virtue of a statement of appeal including the following claims:

As for ZATCA appeal against Primary Department's decision, the Department found that ZATCA appeal involves the following: Regarding (Import Variances) item, the Primary Department amended ZATCA decision without a legal ground, as it introduced amendment without stating reasons for the same. In addition, the legal grounds on which Zakat Payer based its claim before the Primary Department, as stated in its decision, are Circular No. (2030) dated 15/04/1430 AH and Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat, which support ZATCA decision. Having taken cognizance of documents included in Case file, the Department found that Zakat Payer did not provide the supporting documents for import variance or that other revenues reported in its declaration are related to variances in the currency of imports. Therefore, ZATCA insists on validity and correctness of its procedure and requests overturning Primary Department's decision regarding the item, subject matter of appeal, for the aforementioned reasons.

On Sunday, 21/10/1443 AH corresponding to 22/05/2022 AD, the Department decided holding 10-day e-hearing. Therefore, ZATCA submitted an answer wherein insists on validity and correctness of its procedure. Moreover, Zakat Payer's arguments do not differ from such arguments previously raised, to which ZATCA has already answered at that time. Regarding (Unapproved Rents) item, ZATCA decision came in compliance with provisions of Paragraph (1.A) of Article (5) of the Implementing Regulations for the Collection of Zakat of 1438 AH and Paragraph (3) of Article (20) of the same regulations. Regarding (Import Variances) item, ZATCA decision came in compliance with Circular No. (2030) of 1430 AH and Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat of 1438 AH. regarding (Bonuses) item, ZATCA decision came in compliance with the provisions of Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat of 1438 AH. Regarding (Salary Variances) item, ZATCA compared the basic salaries charged to the accounts and included in the trial balances with the salaries included in GOSI certificate, which resulted in rejecting overcharged salaries to those included in GOSI certificate. Furthermore, ZATCA requests the Department to dismiss any new documents provided by Zakat Payer that have not been submitted during examination and objection stages, or any new petitions in accordance with Article (186) of the Law of Civil Procedure. Therefore, ZATCA insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons. Zakat Payer also submitted a Reply to ZATCA Appeal, in which Zakat Payer called for dismissal of ZATCA Appeal and confirmation of the Primary Department decision with regard to the appealed items.

On Wednesday, 18/02/1444 AH corresponding to 14/09/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds





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

On Merits: As for Zakat Payer's appeal regarding (Unapproved Rents) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that this item should be deducted, as it is documented and necessary for carry out the activity that realizes zakatable income. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, and since the dispute is document-based, the Department found that Zakat Payer provided the supporting documents supporting for incurring expense in the amount of SAR 235,000 for 2014, an amount of SAR 335,000 for 2015 and an amount of SAR 755,000 for 2016. Therefore, the Department accepts Zakat Payer's appeal and amends Primary Department's decision by allowing deduction of rent expense to the extent that has been proven by Zakat Payer through documents in the amount of SAR 235,000 for 2014, an amount of SAR 335,000 for 2015 and an amount of SAR 755,000 for 2016.

As for Zakat Payer's appeal regarding (Import Variances) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that the reasons for such variances ensue from the purchase of fixed assets that were recorded by mistake, internal purchase expense, shipping charges and price variances. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, Zakat Payer's appeal and documents included in Case file, the Department found that the dispute document-based. Since Zakat Payer failed to provide this Department with a report prepared by a chartered accountant that elaborates the variance in question. Since Zakat Payer did not provide the supporting documents for its claim. Since this Department found that the conclusion reached by the Primary Department is valid. Therefore, the Department dismisses Zakat Payer's appeal and upholds Primary department's decision.

As for Zakat Payer's appeal regarding (Bonuses) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that this item should be deducted, as it is documented and necessary for carrying out the activity that realizes zakatable income. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, Zakat Payer's appeal and documents included in Case file, the Department found that ZATCA argued that Zakat Payer has failed to provide Work Organization Regulations related to penalties and remunerations approved by the Minister of Labor. Since this Department found that the amount in question is a small amount given the volume of Zakat Payer's business activity. Since such small bonuses are customarily incurred by companies to motivate their employees. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

As for Zakat Payer's appeal regarding (Salary Variances) item, the Department found that Zakat Payer's appeal involves objection to Primary Department's decision regarding this item, as Zakat Payer claims that the variances ensue from allowances and bonuses that were not included in GOSI certificate, as the Social Insurance Law disallows adding all allowances paid to employees. On the other hand, ZATCA argued that it insists on validity and correctness of its procedure and requests dismissing Zakat Payer's appeal and



upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute, the Department found that the dispute is document-based. Since Zakat Payer submitted a report prepared by a chartered accountant that elaborates the variances in question, and in conformity with the audited financial statements. Therefore, the Department accepts Zakat Payer's appeal and overturns Primary Department's decision in this regard.

As for Zakat Payer's appeal regarding (Previous Years Expenses) item, (Deferred Dividends) item, (Material Error in Reserve for 2015) item and (Bad Debts) item, the Department, having taken cognizance of Zakat Payer's appeal regarding the above-mentioned items and documents included in Case file, found that Zakat Payer has objected to such items before the Primary Department. Since the Primary Department did not adjudicate such items, which caused the dispute unresolved on its merits. Since the Primary Department did not exhaust its jurisdiction over adjudicating subject matter of the dispute regarding such items. Therefore, this Department remands the Case, regarding (Previous Years Expenses, Deferred Dividends, Material Error in Reserve for 2015 and Bad Debts) items, to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration on merits.

As for ZATCA appeal regarding (Import Variances) item, the Department found that ZATCA appeal involves objection to Primary Department's decision regarding this item, as ZATCA claims that the Primary Department amended ZATCA procedure without legal ground and the documents on which Zakat Payer based its claim support ZATCA procedure, and that Zakat Payer has failed to provide the supporting documents for import variance or other revenues reported in its declaration that pertain to the variances in currency of imports. On the other hand, Zakat Payer requests dismissing ZATCA appeal and upholding Primary Department's decision. Having taken cognizance of the subject matter of dispute and ZATCA appeal, the Department found that the conclusion reached by the Primary Department is valid, and that the grounds on which it was based were sufficient to uphold the same. Since the Department did not find any requirement for correction or further response before this Department. Therefore, this Department dismisses ZATCA appeal and upholds Primary Department's decision in this regard.

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

Decision

First: Accept appeal in from filed by Taxpayer (... Company), C.R. No. (...), TIN (...), and the appeal filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-161) rendered in Case No. (Z-9301-2019) regarding zakat assessment for years from 2014 to 2016.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Unapproved Rents) item, and amend Primary Department's decision by allowing deduction of rent expense to the extent that has been proven by Zakat Payer through documents in the amount of SAR 235,000 for 2014, an amount of SAR 335,000 for 2015 and an amount of SAR 755,000 for 2016 according to reasons and grounds stated herein.
2. Dismiss Zakat Payer's appeal regarding (Import Variances) item, and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
3. Accept Zakat Payer's appeal regarding (Bonuses) item, and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.



4. Accept Zakat Payer's appeal regarding (Salary Variances) item, and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.
5. Accept Zakat Payer's appeal regarding (Previous Years Expenses) item, and remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration on merits according to reasons and grounds stated herein.
6. Accept Zakat Payer's appeal regarding (Deferred Dividends) item, and remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration on merits according to reasons and grounds stated herein.
7. Accept Zakat Payer's appeal regarding (Material Error in Reserve for 2015) item, and remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration on merits according to reasons and grounds stated herein.
8. Accept Zakat Payer's appeal regarding (Bad Debts) item, and remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Jeddah for consideration on merits according to reasons and grounds stated herein.
9. Dismiss ZATCA appeal regarding (Import Variance) item, and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
in Riyadh

Decision No.: IR-2022-151

Case No.: Z-53629-2021

Principle No. 330

- The fact that a full lunar year has not passed on sukuk, and the lack of evidence of a direct relation between sukuk and assets deducted from zakat base, entails that such sukuk are not added to zakat base.

Principle No. 331

- Deferred capital expenditures are amounts paid by Zakat Payer for future goods or services that are not subject to zakat and do not outline a financial debt on a third party that would result in a financial inflow to Zakat Payer. Accordingly, such expenditures should be deducted from zakat base.

Facts

To consider the appeal filed on ../.. /... AH corresponding to ../.. /... AD by (... Company) and the appeal filed on ../.. /... AH corresponding to ../.. /... AD by ZATCA against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISR-2021-163) rendered in Case No. (Z-10140-2019) regarding zakat assessment for years from 2014 to 2016 filed by Appellant against ZATCA, in which the Primary Department ruled as follows:

First: In Form:

Accept the Case filed by Plaintiff (... Company), C.R. No. (...) against Defendant (ZATCA).

Second: On Merits:

1. Amend Defendant's procedure regarding (Disallowing deduction of subordinated loans for investment in the subsidiary, proportional to the ownership percentage) item as stated in grounds.
2. Dismiss the Case regarding (Levying Zakat on Sukuk for Years from 2014 to 2016) item.
3. Annul Defendant's procedure regarding (Adding Retained Earnings to Zakat Base Instead of Calculating and Deducting Adjusted Carried-Forward Losses from Zakat Base for 2014) item, and dismiss the Case for 2015 and 2016 as stated in grounds.
4. Dismiss the Case regarding (Decreasing adjusted profit by carried-forward losses when determining zakat base if the base is included in the adjusted profit) item.
5. Dismiss the Case regarding (Disallowing Deduction of Deferred Capital Expenditures) item.
6. Dismiss the Case regarding (Calculating Zakat on Investments in Foreign Company "... Company" for the period 2014 to 2016 AD.

Since both parties to the Case dissatisfied with this decision; therefore, both parties submitted a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer's appeal involves: Regarding (Disallowing Deduction of Investment-Supporting Loans for Years from 2014 to 2016) item, Zakat Payer claims that the Primary Department accepted



deduction of 65% of the loan, considering this percentage as having been subject to zakat by the subsidiary company,

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

Zakat Payer objects to the Primary Department's decision in question for upholding ZATCA's decision regarding its Estimated Assessment for the year in question, wherein it affirms that it has submitted approved financial statements and that the amount of capital calculated by ZATCA is incorrect, as it does not have any imports or contracts for the year in question. Zakat Payer concluded by requesting reversal of the Primary Department's decision in question for the stated grounds.

while the foreign partner is responsible for 35% of the supporting loan, which was not subject to zakat. This approach is incorrect because Zakat Payer financed the supporting loan for ... Company by 65%, while the foreign partner financed 35% of the loan. This means that the supporting loan was subject to zakat in subsidiary's accounts by 65%, which outlines the share of ... Company of the total loan. If we accept that Zakat Payer's share of supporting loan was subject to zakat at 65%, then the remaining 35% pertains to the foreign partner and was not subject to zakat, then the same standard must be applied to the foreign partner's share of such loan. This means that Zakat Payer is entitled to 65% of the foreign partner's 35% share of the total supporting loan. Considering that investments in subsidiaries are fully deducted rather than proportional to the share in the subsidiary company's capital, and that what was subject to Zakat in the subsidiary company is the total supporting loan recorded in Zakat Payer's accounts, it is clear that Zakat Payer is entitled to deduct the entire supporting loan, not just 65%, as this amount should be considered as an investment rather than a loan, and to prevent zakat duplication. Regarding (Subjecting Sukuk to Zakat for the years 2014 to 2016) item, Zakat Payer claims that these sukuk do not constitute loans and should not be subject to zakat, even if a full year has passed thereon, particularly since they did not finance any additions to acquisition assets. This is evident from the Company's financial statements, which show that the Company's investments and supporting loans for investment were not financed by these sukuk. Therefore, they were not used to finance acquisition assets. Furthermore, inclusion of these sukuk to zakat base for disputed years contradicts sharia and legal provisions that state that debt prevents zakat, and that adding the same to the base has no justification, knowing that such debts are used to finance working capital. If these sukuk are to be considered as loans, the Company believes that the relevant sharia fatwa, which confirm that zakat is due on the lender and not the borrower, should be applied, provided that the borrower is solvent and not procrastinating, and as long as sukuk were used in trading assets. Accordingly, obligation to pay zakat on that money falls on the lending party, and it is not permissible to impose zakat on the same money twice. With regard to the item (Addition of Retained Earnings to Zakat Base Instead of Calculation of Adjusted Carried-Forward Losses to Be Deducted from Zakat Base for the years 2014 to 2016), Zakat Payer claims that the Department supported Zakat Payer's procedure of deducting accumulated losses for the year 2014 from zakat base, but without specifying the amount. Accordingly, Zakat Payer confirms that value of those losses amounts to SAR (528,467,119) and retains his right to appeal the Department's decision as a precaution in case the value of accumulated losses differs from the amount stated above due to depreciation differences. The Department had mentioned in the fourth section of its decision that the accumulated losses approved by ZATCA amounted to SAR (528,310,274) after excluding effect of depreciation differences. As for the years 2015 and 2016, Zakat Payer does not agree with ZATCA's action of adding retained earnings based on the Company's audited financial statements without taking into consideration the Company's adjusted accumulated losses from previous years as per assessments. Additionally, subjecting the Company's retained



earnings to zakat does not comply with fatwas and religious rulings, as these retained earnings represent the Company's share of profits that have not been received or collected. Therefore, how can the passage of a full year be calculated on funds that the Company has not received? Furthermore, Zakat Payer emphasizes that the adjusted accumulated losses from previous years were approved by ZATCA based on its revised assessment in light of the results of the primary decision issued for the years 2011 to 2013. Regarding the item (Non-Deduction of Adjusted Profit by the Accumulated Losses When Determining Zakat Base if the Base is the Adjusted Profit for the years 2014 to 2016), Zakat Payer claims that according to declarations submitted to ZATCA, the net adjusted profit is higher than zakat base (negative zakat base). Therefore, zakat was calculated based on the net adjusted profit. Given that there are adjusted accumulated losses from previous years, as mentioned in the previous item, the adjusted profit was reduced by these losses in accordance with Circular No. 122/1 of 1414 AH. Moreover, Zakat Payer requests that zakat be calculated based on zakat base, not the adjusted profit, in accordance with fatwas and sharia rulings. The Department also acknowledged existence of accumulated losses of no less than SAR (528,310,247), according to ZATCA's statement. Accordingly, Zakat Payer asserts that the Department made an error, as based on its calculations, there is no zakat base since the base is negative. Therefore, the Company deemed it appropriate to reduce its profits by the accumulated losses, thereby calculating zakat on zakat base, not the adjusted profit. Furthermore, specifically for the year 2014, there is no zakat base for the Company that could be subject to zakat. The Company had profits amounting to SAR (54,644,132) according to its calculations, which cannot be subject to zakat as long as the Company has accumulated losses exceeding those profits. The Company requests an adjustment to zakat assessment by reducing the adjusted profit with the adjusted carryforward losses for the years 2014 to 2016. Regarding the item (Non-Deduction of Deferred Capital Expenses from Zakat Base for the years 2014 to 2016), Zakat Payer argues that these deferred expenses are considered long-term capital expenses that can be deducted from zakat base, as these payments were made by the Company and thus are no longer in its liability before a full year passed thereon. Regarding the Department's view that these payments are included in the financial statements, these expenses are no longer in its liability and may not subject to zakat as long as they are supported by the financial statements. With regard to the item (Calculation of Zakat on the Company's Foreign Investments (...) Co. for the years 2014 to 2016), Zakat Payer claims that ZATCA calculated zakat on its investments in (... UAE-based company, while deducting those foreign investments from zakat base. Zakat Payer asserts that these long-term investments should be deducted from the zakat base, regardless of whether the profits of these investments have already been subject to zakat as the intention behind this investment is to retain it as capital assets for generating returns. Consequently, this investment has been classified as non-current assets in the company's audited financial statements. zakat for such investments is only due on their returns, not the principal. Furthermore, Zakat Payer objects to the zakat base for the foreign company, as ZATCA failed to deduct deferred expenses from the zakat base of the UAE-based company (...Co.) for the years 2014 to 2016. Therefore, Zakat Payer requests to overturn the appealed primary decision for the aforementioned grounds.

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

Regarding ZATCA's appeal on the item (Non-Deduction of Investment-Supporting Loans for the years 2014 to 2016), ZATCA clarifies that it did not deduct these loans from the zakat base because they are utilized funds used in the activities of the invested companies, and they are treated zakat-wise according to how these funds are used. Furthermore, financing current accounts is not considered an investment in the invested companies but rather a financing tool between related parties, where the amounts are paid directly to these companies in the form of advances or loans. According to the regulations of the Ministry



of Commerce, for this balance to be considered additional capital in the invested companies, both companies must document this through an amended Articles of Association as per the Ministry of Commerce regulations. Essentially, the item represents debit current accounts with Zakat Payer, recorded as credit current accounts with the invested companies. Therefore, Zakat treatment for these amounts is similar to receivables and debts, which are not deducted from the zakat base. Moreover, the emergence of these balances in the Appellant Company and its subsidiaries confirms that they are entities with separate legal personalities and independent financial liabilities, even if there is a direct or indirect ownership relationship between them. These transactions were carried out on this basis. These amounts do not represent investments but rather financial transactions between the parties and should not be deducted from the zakat base, regardless of whether the debtor is a related party or not, as the financial liability of the company is independent of the financial liability of related parties. These debts are guaranteed, not owed by a defaulter or insolvent entity, and are collectible. Regarding the item (Addition of retained earnings to the Zakat base instead of deducting the adjusted accumulated losses for the year 2014), ZATCA clarifies that upon reviewing the assessment, it was found that retained earnings were not added to the zakat base for 2014 in the first place. Therefore, ZATCA upholds the validity and correctness of its procedures and requests affirmation of its procedures and dismissal of the primary decision on the items under ZATCA's appeal for the aforementioned grounds.

Since the Department decided to open up court proceedings, ZATCA submitted a reply dated 01/06/1443 AH corresponding to 04/01/2022, in which it responded to Zakat Payer's appeal, maintaining validity of the Primary Department decision on the items under Zakat Payer's appeal. Regarding (Non-Deduction of Investment-Supporting Loans) item, the Primary Department's decision aligns with Article 4.2 of the Implementing Regulations for the Collection of Zakat and in application of Sharia Fatwa No. (2/3077) dated 08/11/1426 AH, as well as Article 8.4 of the Implementing Regulations for the Collection of Zakat. Regarding the item (Subjecting Sukuk to Zakat) item, the Primary Department's decision aligns with Article 4.5 of the Implementing Regulations for the Collection of Zakat. As for the item (Addition of Retained Earnings), the Primary Department's decision aligns with Article 4.8 of the Implementing Regulations for the Collection of Zakat. Zakat Payer failed to provide documents proving distribution or retention of profits to a special account as required by Article 4.11 of the Implementing Regulations for the Collection of Zakat. With regard to (Reduction of Adjusted Profit by Accumulated Losses) item, ZATCA clarified that there were no accumulated losses for the years 2015 and 2016. Zakat Payer's request to apply Circular No. (1/122) of 1414 AH was rejected by ZATCA and affirmed by the Department, as the Implementing Regulations for the Collection of Zakat, which invalidate all previously issued circulars, were applied. Zakat was calculated based on the financial statements in accordance with Article 4.1&2 of the Implementing Regulations for the Collection of Zakat. Zakat Payer's request is only applicable if the base is negative, meaning the base would be the net profit alone. Regarding the item (Non-Deduction of Capital Expenses), the primary department is consistent with Article 4.2 of the Implementing Regulations for the Collection of Zakat, as these expenses are not among the items' deductible from the base. It was noted that they appear in the accounts under current assets, and Zakat Payer did not provide clarification on their nature or whether they qualify as capital expenses. Furthermore, no evidence was provided that would affect the validity of the primary decision. Regarding (Calculation of Zakat on ... Co.) item, the Primary Department's decision aligns with the provisions of Article (4), Item (Second), Paragraph (4/b) of the Implementing Regulations for the Collection of Zakat. Therefore, ZATCA upholds the validity and correctness of its procedures and requests dismissal of Zakat Payer's appeal and affirmation of the primary decision on the items contested by Zakat Payer for the aforementioned grounds.



On Monday, 14/06/1443 AH corresponding to 17/01/2022 AD, the Department decided to hold a 10-day electronic pleading hearing. However, the period elapsed without either party to the appeal submitting any additional arguments.

On Sunday, 05/07/1443 AH corresponding to 06/02/2022, having perused the case file, the Department, regarding (Zakat Calculation on the Company's Foreign Investment for the years 2014 to 2016) item, requested that Zakat Payer provide proof of zakat payment on foreign investments in the investment country, to be submitted within seven (7) days of date. However, Taxpayer failed to submit the requested documents.

On Wednesday, 27/08/1443AH corresponding to 30/03/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

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

On merits, regarding Zakat Payer's appeal concerning the item (Non-Deduction of Investment-Supporting Loans for the years 2014 to 2016) item, Zakat Payer's appeal is based on objection to non-deduction of full amount of supporting loan and deduction of only 65%. Zakat Payer argues that this amount should be considered an investment rather than a loan to prevent double taxation of zakat. However, ZATCA maintains that its procedure is correct and valid, and requests dismissal of Zakat Payer's appeal and upholding of the primary decision. Having carefully considered subject matter of the dispute and examined the case file in its entirety, this Department finds that the decision reached by the Primary Department, issuer of the appealed decision is sound. The grounds upon which that decision was based are sufficient to support it. Since this Department did not observe any matters that deserve correction or commentary in light of the submissions made before it, it concludes that the submissions do not affect the outcome of the decision of the primary Department regarding this matter. Accordingly, the Department has decided to dismiss the appeal and affirm the decision as it relates to this matter.

Zakat Payer's appeal, regarding (Subjecting Sukuk to Zakat for the years 2014 to 2016) item, is based on objection to the inclusion of this item in zakat base, arguing that sukuk did not finance additions of acquisition assets and are therefore not subject to zakat, even if held for a full year. In contrast, ZATCA maintains validity and correctness of its procedure and requests dismissal of Zakat Payer's appeal and upholding of the Primary Department's decision. Having taken cognizance of the dispute and having reviewed the case file, since sukuk subject to dispute were issued in 2014, and thus had not been held for a full year during that period. Furthermore, ZATCA did not establish a direct link between these sukuk and specific assets deducted from the base that would justify their inclusion in zakat base before the completion of the full year. Therefore, it is determined that Zakat Payer is entitled not to have these amounts added to zakat base for the year 2014. As for the years 2015 and 2016, since there is no dispute regarding the completion of full year for the amounts subject of dispute for the years under appeal, and in application of the applicable fatwas on this matter, amounts of these sukuk are to be added to Zakat Payer's zakat base. Therefore, this Department concludes that Zakat Payer's appeal for the year 2014 is accepted, while the appeal for the years 2015 and 2016 is dismissed.

Regarding Zakat Payer's appeal concerning the item of (Addition of Retained Earnings to Zakat Base Instead of Calculation of Adjusted Carried-Forward Losses to Be Deducted



from Zakat Base for the years 2014 to 2016), Zakat Payer's appeal is based on objection to failure to determine the value of carried-forward loss deduction for the year 2014. Zakat Payer also objects to the addition of retained earnings based on audited financial statements without considering the adjusted carried-forward losses from previous years for 2015 and 2016. In contrast, ZATCA maintains the validity and correctness of its procedure and requests dismissal of Zakat Payer's appeal and upholding of the primary decision. Having taken cognizance of subject of the dispute and having reviewed Zakat Payer's appeal, the Department found that as for the year 2014, Zakat Payer requested determination of the amount upheld by the Primary Department. Having perused the Primary Department's decision, It was found that the Department decided to cancel ZATCA's procedure of adding retained earnings to zakat base instead of calculating the adjusted carried-forward losses from the zakat base for the year 2014 only. Upon further examination of both parties' positions on the issue for 2014, it became clear that there was no disagreement regarding the deduction of carried-forward losses for that year. Rather, the dispute concerned the amount of the carried-forward losses deducted for that year. Therefore, the primary decision to cancel ZATCA's procedure related to adding retained earnings to the zakat base for 2014 and to deduct the adjusted carried-forward losses from the zakat base for 2014 does not align with Zakat Payer's objection or ZATCA's response, demonstrating that the decision addressed an issue that was not in dispute. Given the foregoing, this Department concludes to cancel the primary decision regarding the addition of retained earnings to the zakat base for the year 2014 and remands the case back to it to reconsider this item in light of ZATCA's procedure and Zakat Payer's original objection on the matter. As for the years 2015 and 2016, since ZATCA's procedure applied to all zakat payers is the deduction of adjusted losses according to ZATCA's assessments. It was found from Zakat Payer's appeal that there were carried-forward losses, in accordance with ZATCA's assessments, which were not offset by Zakat Payer's profits for the two years in question. Zakat Payer presented an analysis of these amounts in its appeal, while ZATCA did not provide any evidence that could justify deviating from Zakat Payer's analysis of these amounts. Therefore, it is evident that Zakat Payer's position is valid. This does not affect ZATCA's arguments in its response that the remaining profits must be deposited in a special account that Zakat Payer is not allowed to dispose of in order to be considered for zakat. The dispute was not over principle of subjecting retained earnings to zakat, rather, Zakat Payer argued that there were carried-forward losses according to ZATCA's assessment of 2013, which had not been covered by profits in subsequent years. Consequently, this Department concludes to accept Zakat Payer's appeal and overturn the primary decision regarding this item.

Regarding Zakat Payer's appeal concerning the item (Non-Reduction of Adjusted Profit by Carried-Forward Losses If the Base is the ADJUSTED PROFIT for the years 2014 to 2016), Zakat Payer's appeal is based on objection to calculating zakat on the basis of the adjusted net profit. Zakat Payer requests an amendment to the zakat assessment by reducing the adjusted profit by the adjusted carried-forward losses for the years under dispute. In contrast, ZATCA maintains the validity and correctness of its procedure and requests dismissal of Zakat Payer's appeal and upholding of the Primary Department's decision. Having perused subject of the dispute and examined the case file, this Department has accepted Zakat Payer's appeal regarding its right to deduct the adjusted carried-forward losses, as per ZATCA's assessment for the year 2013, which were not offset by profits in the subsequent years. This confirms Zakat Payer's right to determine its zakat base by accounting for both positive and negative elements, without being limited by the adjusted profit. The basis for calculating the zakat base and determining the due amount requires the presence of wealth upon which zakat is owed by the zakat payer. Considering that the calculation of the net zakat base requires the inclusion of accumulated losses and the exclusion of fixed assets, regardless of their financing method, to arrive at Zakat base,



and that this is not affected by whether the net base is less than the adjusted profit, this Department concludes that Zakat Payer's approach to calculating zakat is correct. The net zakat base should be considered without regard to the amount of adjusted profit, as the adjusted profit does not necessarily reflect the existence of the wealth subject to zakat, which is the basis for Zakat Payer's obligation to pay zakat. Therefore, this Department accepts Zakat Payer's appeal and overturn the primary decision in this regard.

Zakat Payer's appeal, regarding (Non-Deduction of Deferred Capital Expenses from Zakat Base for the years 2014 to 2016) item, is based on the fact that these expenses should be considered long-term capital expenses that should be deducted from zakat base. In contrast, ZATCA maintains the validity and correctness of its procedure and requests dismissal of Zakat Payer's appeal and upholding of the primary decision. Having taken cognizance of subject of the dispute and examined the case file, and since deferred capital expenses are amounts paid by Zakat Payer for future goods or services that are not subject to zakat and do not represent a financial debt owed by another party that would result in a financial flow to Zakat Payer, this Department concludes to accept Zakat Payer's appeal and overturn the Primary Department's decision in this regard.

Regarding Zakat Payer's appeal concerning the item (Zakat Calculation on the Company's Foreign (... Co.) Investments For the years 2014 to 2016), Zakat Payer's appeal lies in that these investments should be deducted from zakat base regardless of their zakat status, as profits generated from these investments have already been subjected to zakat. In contrast, ZATCA maintains validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the primary decision be upheld. Having taken cognizance of subject of the dispute and examined documents contained in the case file, since it became clear from Zakat Payer's appeal that ZATCA calculated zakat on the foreign company while deducting that investment from its zakat base. ZATCA did not deduct deferred capital expenses from zakat base of the foreign company. Therefore, this Department concludes that ZATCA's procedure is correct and valid. However, Zakat Payer is entitled to deduct deferred capital expenses from zakat base of its foreign company for the same reasons accepted when calculating its own zakat base.

With regard to ZATCA's appeal concerning the item (Non-Deduction of Investment-Supporting Loans for the years 2014 to 2016) item, since ZATCA's appeal lies in that it did not deduct these loans from zakat base because they are considered income-generating funds, while imposing zakat to these amounts similar to receivables and debts which are not deducted from zakat base. Having carefully considered subject matter of the dispute and examined documents contained in the case file, this Department finds that the decision reached by the Department, issuer of the appealed decision is sound, and that the reasons on which it based its decision were sufficient to support this decision. Since this Department did not observe any matters that deserve correction or commentary in light of the submissions made before it, it concludes that submissions do not affect outcome of the Primary Department's decision regarding this item. Accordingly, the Department decided to dismiss the appeal and uphold the primary decision made in this regard.

Regarding ZATCA's appeal concerning the item (Addition of Retained Earnings to Zakat Base Instead of Calculating and Deducting Adjusted Carried-Forward Losses from Zakat Base of 2014), ZATCA argues that the primary decision lacks clarity regarding cancellation of ZATCA's relevant procedure. ZATCA contends that the assessment did not involve adding retained earnings to zakat base of 2014. It was revealed that, upon reviewing the primary decision, the Department had cancelled ZATCA's procedure of adding retained earnings to zakat base instead of calculating and deducting adjusted carried-forward losses from zakat base for 2014 only. Upon further examination of both parties' positions on dispute over this item of 2014, it became clear that there was no disagreement regarding deduction of carried-forward losses of 2014. Rather, the dispute concerned amount of carried-forward losses deducted for that year. Therefore, the primary decision to cancel



ZATCA's procedure related to adding retained earnings to zakat base for 2014 and to deduct adjusted carried-forward losses from zakat base for 2014 does not align with Zakat Payer's objection or ZATCA's response thereto, demonstrating that the decision addressed an issue that was not in dispute. Given the foregoing, this Department concludes to cancel the primary decision regarding addition of retained earnings to zakat base for 2014 and remands the case back to it to reconsider this item on merits in light of ZATCA's procedure and Zakat Payer's original objection on the matter.

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

Decision

First: Accept the appeal filed by Zakat Payer/ (...) Company, CR No. (.....), TIN (....), in form, and accept the appeal in form filed by ZATCA against decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISR-2021-163), issued in Case No. (Z-10140-2019), related to zakat assessment for the years 2014 to 2016.

Second: On Merits:

1. Dismiss Zakat Payer's appeal regarding the item (Non-Deduction of Investment-Supporting Loans for the years 2014 and 2016) item, and uphold decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with reasons and grounds stated herein.
2. Concerning the item of (Subjecting Sukuk to Zakat for the years 2014 to 2016 item):
 - A. Accept Zakat Payer's appeal regarding this item for the year 2014 and overturn decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with reasons and grounds stated herein.
 - B. Dismiss Zakat Payer's appeal regarding this item for the years 2015 and 2016 and uphold decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with reasons and grounds stated herein.
3. Regarding Zakat Payer's appeal on the item of (Addition of Retained Earnings to Zakat Base Instead of Calculating and Deducting Adjusted Carried-Forward Losses from Zakat Base for the years 2014 to 2016) and ZATCA's appeal on the same item for the year 2014:
 - A. Cancel the primary decision regarding this item with regard to zakat assessment of the year 2014 and to remand the case to the Department for reconsideration of this item in merits in light of ZATCA's procedure and Zakat Payer's original objection, in accordance with reasons and grounds stated herein.
 - B. Accept Zakat Payer's appeal regarding this item of (Addition of Retained Earnings to Zakat Base Instead of Calculating and Deducting Adjusted Carried-Forward Losses from Zakat Base for the years 2015 to 2016) and overturn decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with reasons and grounds stated herein.
4. Accept Zakat Payer's appeal regarding the item (No Reduction of Adjusted Profit by Carried-Forward Losses When Determining Zakat Base, If the Base is the Adjusted Profit for the years 2014 and 2016), and overturn decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with reasons and grounds stated herein.
5. Accept Zakat Payer's appeal regarding the item (Non-Deduction of Deferred Capital Expenses from Zakat Base for the years 2014 and 2016), and overturn decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with reasons and grounds stated herein.



6. Dismiss Zakat Payer's appeal regarding the item of Calculating Zakat on Zakat Payer's Share in the Foreign Company (... Co.), while affirming Zakat Payer's right to deduct its share of deferred capital expenses from zakat base for the years 2014 to 2016, in accordance with reasons and grounds stated herein.
7. Dismiss ZATCA's appeal regarding the item (Non-Deduction of Investment-Supporting Loans for the years 2014 and 2016), and uphold decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with reasons and grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-179

Case No.: Z-30968-2020

Principle No. 332

- Failure to prove that lands are intended for trading, and failure to exclude the financing corresponding to this deduction, entails Zakat Payer's right to deduct lands from his Zakat container.

The Department convened its session to consider the Appeal filed on 06/04/1442 AH,

Facts

corresponding to 19/11/2020 AD by (...), holder of national ID No. (...), in his capacity as the Appellant Company's Manager under its articles of association, against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No (ISZR-2020-200) issued in Case No. (Z-5089-2020) in connection with zakat assessment for 2018, in the Case filed by the Appellant against ZATCA, in which the Primary Department ruled as follows:

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

Second: On Merits:

1. Confirm resolution of dispute regarding Import Difference item.
2. Confirm resolution of dispute regarding Salary Difference item.
3. Dismiss the Case with respect to deduction of land value item.

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

Zakat payer objects to the appealed decision issued by the Primary Department. Regarding the item (Land Deduction for 2018), Zakat payer claims that lands are used for business purposes and are generating income. It has attached the sales contract and a detailed account statement for related parties, which shows that value of the land has been added to the current account. Therefore, Zakat payer requests that value of the land be deducted from zakat base or that the partners' current account be reduced by the same amount. Based on these reasons, Zakat payer requests to overturn the appealed primary decision.

On Tuesday, 29/06/1443 AH, corresponding to 01/02/2022 AD, the Department decided to hold a 10-day remote litigation hearing. Therefore, ZATCA submitted a Reply in response to Zakat payer's appeal, reaffirming its previously stated position before the Primary Department. Regarding the item (Land Deduction for 2018), ZATCA also stated that Zakat payer submitted a copy of the waiver of 55 vacant land plots owned by one of the partners (Company Manager) in favor of the Company. However, it is unclear whether the land deeds are in the Company's name or the partner's name. Zakat payer has not provided evidence to link the land to the Company's business of selling clothes and shoes. In addition, ZATCA emphasizes that to deduct the value of fixed assets, they must be used in the business, as per Article (4.II.1) of the Implementing Regulations for the Collection of Zakat. As for the partners' current accounts, they have been included in zakat base according to Article (4.I.2) of the Implementing Regulations for the Collection of Zakat.



Furthermore, ZATCA requests that no new documents not submitted during the examination and objection phase be accepted. ZATCA requests the Department not to accept any new requests from Zakat payer based on Article (186) of the Civil Procedure Law. Therefore, ZATCA maintains validity and correctness of its procedures and requests that Zakat payer's appeal be dismissed and the primary decision be upheld based on the aforementioned reasons.

On Saturday, 22/09/1443 AH corresponding to 23/04/2022 AD, upon reviewing Appeal memoranda and replies thereto, and after examining documents contained in the Case file, the Department decided that the Case was ready for adjudication and issuance of a decision, and therefore decided to close pleadings and set a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On merits, Regarding Zakat payer's appeal concerning the item (Land Deduction for 2018), Zakat payer's appeal centers on its objection to the appealed primary decision upholding ZATCA's action of including these lands in Zakat base. Zakat payer claims that these lands should be deducted as they are used for business purposes. However, ZATCA has maintained the correctness and validity of its procedures and requests to dismiss Zakat payer's appeal and uphold the primary decision. Having carefully considered subject matter of the dispute and examined documents contained in the Case file, and given that non-acceptance of deducting disputed lands from Zakat payer's base necessitates exclusion of the corresponding financing in accordance with the principle of budgetary balance. Given that ZATCA has not proven that these lands are intended for trading, and did not exclude the financing corresponding to this deduction, this Department decides to accept Zakat payer's appeal, and rules that Zakat payer is entitled to deduct lands from its Zakat base, and to overturn the appealed primary decision.

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

Decision

First: Accept Appeal in form filed by Zakat Payer (..... Company), C.R No. (...), TIN (...), against Second Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (ISZR-2020-200) issued in Case No. (Z-5089-2020) in connection with zakat assessment for 2018.

Second: On Merits:

Accept Zakat payer's appeal regarding the item (Land Deduction for 2018), and overturn the decision issued by Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-230

Case No.: Z-27527-2020

Principle No. 333

- Calculation of net base entails exclusion of fixed assets, regardless of how they are financed to be added to zakat base, without being affected by whether net of that base is less than the adjusted profit.

Facts

The Department convened to consider appeal filed on .././....AH, corresponding to .././....AD, by, holding National ID No. (...), in his capacity as attorney of Appellant Company under POA No. (...), and Appeal filed on .././....AH, corresponding to .././....AD from ZATCA against the First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-148) delivered in Case No. (Z-8005-2019) related to zakat assessment of 2014, filed by Appellant against ZATCA. Primary Department's decision ruled as follows:

Accept Case filed by Plaintiff/ (.... Company), TIN No. (...), in form.

On Merits:

1. Proof that dispute in the item "Import Difference of 2014" was settled.
2. Dismiss the Plaintiff's objection to the item "Long-Term Loans Against Assets of 2014"
3. Dismiss the Plaintiff's objection to the item "Short-Term Loans of 2014"
4. Proof that dispute in the item "Unapproved Expenses of 2014" was settled.
5. Accept Plaintiff's objection to the item "Fixed Assets within Ownership Limits of 2014"

Since both parties to the Case dissatisfied with this decision; therefore, both parties submitted a statement of appeal summarized as follows:

With regard to Zakat Payer's appeal against the Primary Department's decision, his appeal lies in the following: With regard to the item (Long-Term Loans against Assets of 2014), Zakat Payer claims that the Primary Department has concluded that long-term loans finance acquisition assets without regard to the Company's activity and financing of purchase operations, and since part of these loans are used to finance purchases, in addition to the fact that asset additions for this year is partly financed by cash flows and partners' current accounts, and these added amounts have not completed a full year. With regard to the item (Short-Term Loans of 2014), Zakat Payer claims that short-term loans are credit facilities issued to finance the company's activity and are issued on short periods, and these added amounts have not completed a full year. With regard to the item (Non-Commercial Creditors), Zakat Payer claims that ZATCA has indicated that financing of asset additions and capital projects of 2013 was done from the amount of loan, and also from the current account, which was included in the positive base in full, and since the total additions during the year are less than loans added to the base to cover this item, and accordingly he requests to cancel the adjustment to base by adding the balance of non-commercial creditors, since that amount is the balance of transactions with (...) Company, which is a company that falls under the related parties item, where one of partners is a partner therein, and its relationship to the company is a commercial relationship, not a



financing relationship, and all movement of debit or credit transactions during the year has not completed a full year, and the Company's statement of account is attached. Therefore, Zakat Payer requests that the Primary Department's decision on items subject of appeal be overturned for the above stated reasons.

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

With regard to the item (Fixed Assets within Ownership Limits of 2014), ZATCA explains that contents of Fatwa No. (23408) dated 18/11/1426 AH, response to the fourth question, is considered supportive of ZATCA's procedure, as the net profit for the year subject of zakat assessment is not determined until after the accounts are closed at the end of the fiscal year. It cannot be said that purchase of fixed assets during the year was made from the net profits that have not yet been realized and are not actually determined until end of the year. Taking adjusted net profit for zakat purposes as a minimum is due to the fact that subjecting yield (profit) to zakat is a valid jurisprudential opinion for Zakat upon exploited items, and a decision was issued by International Islamic Fiqh Academy in its second session, and Shariah Fatwa referred to above in the fourth question applies precisely if the cash available to the company was exploited in fixed assets or acquisition assets and balance of profits would decrease in return for that. Furthermore, ZATCA added that if the Department decides to uphold the appealed decision, it shall have the right to reassess Zakat Payer by adding sources of financing that were not added to meet what is deducted from projects under implementation. Sources of financing must be added to meet deductions from the base until zakat equation becomes valid, or evidence that sources of financing for these projects were done without financing from banks must be provided. From an accounting perspective, profits (gains) are defined as an increase in rights of capital holders that generate either from an increase in current assets or a decrease in current liabilities, i.e., an increase in net current assets whenever that entity is developing and vice versa. In addition, restrictive interpretation of determining the zakat base will lead to withholding due zakat from its banks as the total negative elements deducted from the base was greater than the positive elements, even if the company was profitable. This leads to the fact that some major Zakat Payers from joint-stock companies, such as banks, hotels, real estate companies, transport companies and some industrial companies are not subject to zakat, although their funds are growing at clear rates, because the negative elements of base are greater than the positive elements, despite achieving large profits, on the one hand. On the other, according to accounting principles on which the financial statements are prepared, purchase of fixed assets is not considered a revenue expense charged to the income statement. Accordingly, profits of the year will not decrease with any purchase of fixed assets during the year, and profits of entire year appear in the statement of financial position on which zakat assessment is based. Financing of fixed assets purchase is of a cash or on credit and is not of a net accounting profit of the year, as disposition of profit according to accounting is limited to distributing profits to shareholders, increasing capital, forming reserves or covering losses carried forward from previous years. Zakat base, when determined, relies on financial statements prepared on accrual basis and base components of assets shown on those statements, including the profits recorded under this principle. Therefore, it is not inconceivable that entries are made from asset account to the profits account. Accordingly, it cannot be said that profits were used to purchase fixed assets or acquisition assets. In fact, its balance is not affected by decrease in the amount of sums used to purchase fixed assets, because profit balances are only affected by the accounting entries that are made on them, such as distribution to shareholders, replenishing reserves, increasing capital, and covering losses carried forward from previous years. Therefore, it is not appropriate to say that these fixed assets and their equivalents are offset by the accounting profits of the year. On the other hand, ZATCA explains that the company took the same action that ZATCA took, as in accordance with



Note No. 14 of the financial statements notes, as well as the zakat declaration submitted by the company, it was found that it imposed zakat on the adjusted net profit, considering it a zakat base, because the base was negative, so how can the company object to a procedure it took? ZATCA also clarifies that if your esteemed Department decides to uphold the appealed decision, it is entitled to re-assess the Plaintiff by adding funding sources that were not added to meet deductions from the projects in progress. Funding sources must be added to meet deductions from the base until zakat equation is completed, or evidence is submitted that the funding sources for these projects were obtained through means other than funding from banks. Furthermore, the Plaintiff did not provide ZATCA with any evidence that it used its net profits that must be subject to zakat in financing of assets or investments before the completion of a full year. In its annexed memorandum, Plaintiff also stated that these projects were financed through base elements without any documentary proof, which must be refuted, as it is an allegation without any substantiation. Therefore, ZATCA adheres to validity and soundness of its procedure, and requests that its procedure be upheld and that the Primary Department's decision on item subject to ZATCA's appeal be overturned for the reasons stated above.

Since the Department decided to open up court proceedings, Zakat Payer submitted a replication dated 10/09/1442 AH, corresponding to 21/04/2021 AD, in response of ZATCA's appeal, in which it contained that the Primary Department had established that the dispute in adjustment of profits had settled and that zakat had become on the base, not on net profits, because the base was larger than profits. Therefore, deduction of fixed and rented assets was made in accordance with the law. Carrying out this procedure, the Primary Department applied the law and shariah law. Therefore, Zakat Payer requests that ZATCA's appeal be dismissed and the Primary Department's decision on item subject of ZATCA's appeal be upheld.

On Monday, 22/10/1443 AH, corresponding to 23/05/2022 AD, the Department decided to convene a 10-day electronic pleading hearing. ZATCA submitted a replication in response of Zakat Payer's appeal, in which it adheres to validity and soundness of its procedure. Moreover, ZATCA bases its rejection of objection on Note No. 12 in the financial statements that such loans are for establishment of the factory, in addition to verifying passage of a year on these loans, as they are included among base elements in the submitted declaration. With regard to the item (Short-Term Loans for Disputed Years), Zakat Payer's objection to this item was rejected, as no explanatory statements are provided regarding movement of these loans, which confirms that a year has not passed thereon. Therefore, balances of the above items were subject to zakat at the beginning or end of the period, whichever is less, due to Zakat Payer's failure to cooperate in submitting the detailed transaction for each account payable separately. It was found that the account statement is inconsistent with balances in the financial statements. Therefore, ZATCA added the balances that have passed a year to zakat base in accordance with the financial statements that are in the company's liability, in application of Sharia Fatwas No. (2384/2) dated 30/10/1406 AH, No. (18497), dated 18/11/1408 AH, No. (22665), dated 15/01/1424 AH, No. (23408) of 1426 AH, which is considered in Islamic jurisprudence in adding funds benefited from others that have passed a year in zakat base, as well as short-term loans if used in fixed assets must be added to the base to offset deduction of fixed assets, and therefore these loans must be added to zakat base even if the lender is a related party to the borrower. This opinion is supported by the text of Fatwa No. (3077/2) dated 08/11/1426 AH. Therefore, ZATCA added balances included in the financial statements after comparing the balance at the beginning and end of the period and adding whichever is less. This was confirmed by Article Four of Clause One of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. 2082 dated 01/06/1438 AH. Since the Department issuing the decision has established that Plaintiff did not submit the necessary legal documents supporting what it requested, and considering that the burden



of proof falls on Plaintiff based on the jurisprudential rule that: “Onus of proof lies with the plaintiff”, and based on what is stipulated in Article 20.3 of the aforementioned Implementing Regulations for the Collection of Zakat. ZATCA requests the Department not to accept any new documents that were not submitted during the examination and objection phases. It also requests the Department not to accept any new requests from Zakat Payer based on Article 186 of the Law of Procedure Before Sharia Courts. Therefore, ZATCA adheres to validity and soundness of its procedures and requests that Zakat Payer’s appeal be dismissed and that the Primary Department’s decision on items subject of Zakat Payer’s appeal be upheld for the reasons stated above.

On Thursday, 24/11/1443 AH, corresponding to 06/01/2022 AD, upon reviewing appeal notes and replies thereto, examining all papers and documents contained in Case file, the Department decided that the Case was ready for adjudication and delivery of a decision on its merits. Accordingly, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On merits, with regard to Zakat Payer’s appeal regarding the items (Long-Term Loans Against Assets of 2014) and (Short-Term Loans of 2014), and since Zakat Payer’s appeal lies in objection to the Primary Department’s upholding of ZATCA’s procedure of subjecting entire amount of these two items to zakat, as he claims that a year has not passed on them, while ZATCA argued that it upholds validity and soundness of its procedure and requests that Zakat Payer’s appeal be dismissed and that the Primary Department’s decision be upheld. Having considered subject of the case, having examined papers contained in the case file, and having reviewed the audited cash flow statement submitted by Zakat Payer to the Department, it was found that the net cash flow (after deducting cash flow obtained from the excluded assets) used by Zakat Payer to finance additions of fixed assets amounted to SAR (17666329), while the total cash amount available to Zakat Payer at the beginning of the year is SAR (3022953), and the realized cash flow is SAR (2729165), indicating a difference in the amounts required to finance added assets during the year by an amount of SAR (11914211). Since it is clear from movement of notes payable, short-term loans, and long-term loans in the cash flow statement that Zakat Payer received during the year an amount of SAR (14752823), that is, in excess of his need to finance the added assets in the amount of SAR 2838612. Therefore, the Department decided to reject Zakat Payer’s appeal on the Long-Term Loans item, and to amend the Primary Department’s decision with regard to short-term loans by deciding to exclude an amount of SAR (2838612) from the total amount of short-term loans that ZATCA added to his zakat base amounting to SAR (2953533) because a year has not passed thereon or was used to finance the deducted assets.

With regard to Zakat Payer’s appeal on the item (Non-Commercial Creditors), since Zakat Payer’s appeal lies in the fact that the total additions during the year are less than loans added to the base to cover that item, while ZATCA argued that it adheres to validity and soundness of its procedure and requested that Zakat Payer’s appeal be dismissed and the Primary Department’s decision be upheld. Having considered subject of the case, having examined papers contained in the case file, and having reviewed the Primary decision, it was found that this decision did not decide on the item "Non-Commercial Creditors" and did not discuss Zakat Payer’s objection to this item, which shows that the dispute is not concluded on its merits. Therefore, the Department did not exhaust its jurisdiction to



adjudicate on subject of the dispute, and to enable Zakat Payer to litigate on two degrees. Accordingly, this Department concluded to return the case to First Department for Determination of Income Tax Violations and Disputes, to consider subject of this item.

With regard to Zakat Payer's appeal on the item (Import Differences), and having examined papers contained in the case file, and since this Department has established that the dispute regarding this item has settled by upholding Zakat Payer's point of view, this Department concludes to dismiss this appeal.

With regard to ZATCA's appeal on the item (Fixed Assets within Ownership Limits of 2014), and since ZATCA's appeal lies in objection to the Primary Department's acceptance of Zakat Payer's objection to this item, claiming that taking adjusted net profit for zakat purposes as a minimum is due to the fact that subjecting yield (profit) to zakat is a valid jurisprudential opinion for zakat on exploited items, while Zakat Payer argued that he requests that ZATCA's appeal be dismissed and the Primary Department's decision be upheld. Having considered subject of the case, having examined papers contained in the case file, and since basis for calculating the zakat base and identifying the receivable requires presence of the money on which zakat is due on Zakat Payer. Since calculation of net base requires exclusion of fixed assets, regardless of how they are financed to reach zakat base without being affected by whether the net base is less than the adjusted profit. Accordingly, the Department concludes to reject ZATCA's procedure regarding consideration of adjusted profit as the base. Since the Department did not notice any grounds that requires correction or comment in the light of ZATCA's indication of its right to reassess Zakat Payer. Therefore, the Department Chamber concludes to reject ZATCA's appeal and uphold the Primary Department's decision in this regard.

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

Decision

First: Accept appeal in form filed by Zakat Payer/..... Company, CR No. (.....), TIN (.....), and appeal filed by ZATCA against the First Department for the Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-148) delivered in Case No. (Z-8005-2019) related to zakat assessment of 2014.

Second: On Merits:

1. Dismiss Zakat Payer's appeal regarding the item (Import Differences) according to the grounds and reasons stated in this decision.
2. Dismiss Zakat Payer's appeal regarding the item (long-Term Loans against Assets of 2014), and uphold the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in accordance with the grounds and reasons stated in this decision.
3. Amend the First Department for Determination of Income Tax Violations and Disputes in Dammam decision on the item (Short-Term Loans of 2014) by excluding the amount of SAR (2838612) from the total amount of short-term loans added by ZATCA to Zakat Payer's zakat base because a year has not passed thereon or used to finance deducted assets, in accordance with reasons and grounds set forth in this decision.
4. Accept Zakat Payer's appeal regarding the item (Non-Commercial Creditors), return the case to the First Department for the Determination of Income Tax Violations and Disputes in Dammam for consideration of this item on merits, in accordance with reasons and grounds set forth in this decision.
5. Dismiss ZATCA's appeal regarding the item (Fixed Assets within Ownership Limits of 2014), and uphold the First Department for Determination of Income Tax Violations and Disputes in Dammam decision, in accordance with reasons and grounds set forth in this decision.





Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-195

Case No.: Z-30437-2020

Principle No. 334

- Dividends are not added to zakat base if it is proven that they are distributed and transferred to accounts separate from Zakat Payer's account.

Principle No. 335

- Sales returns are part of business nature, and are processed by reducing sales and adjusting cost of sales by value of returned goods.

Principle No. 336

- Absence of a link between existence of sales returns and corresponding effect of such returns on cost of sales would result in invalidity of Zakat Payer's request to indicate returns recorded in terms of calculating, unless there is a problem with accounting proof of corresponding and adjusted amounts of the general effect of returns on Zakat Payer's profit.

Principle No. 337

- Failure of ZATCA to provide an analysis of its amendments to depreciation tables prepared by Zakat Payer, showing errors made by Zakat Payer and how those errors could be corrected so as to raise a reasoned objection to its procedure, would result in cancellation of ZATCA's action on the value of fixed assets deducted from zakat base.

Principle No. 338

- If Zakat Payer submits documents supporting write-off of debt subject of dispute and submits evidence of debt's cancellation, bad debts shall be considered as deductible expenses.

The Department convened to consider the Appeal filed on ../../.. AH, corresponding to

Facts

../../... AD, by (...), holder of National ID No. (...), in his capacity as the Appellant Company's legal Representative under its Articles of Association, and the appeal filed by ZATCA on 27/03/1442 AH, corresponding to 12/11/2020 AD against Decision No. (IZJ-2020-124) issued by First Department for Determination of Income Tax Violations and Disputes in Jeddah in Case No. (Z-7739-2019) in connection with zakat assessment for 1437 AH, filed by Appellant against ZATCA, in which the Primary Department ruled as follows: First: formal aspect: Accept the Case filed by the Plaintiff (..... Company), C.R. No. (...), in form.

Second: On Merits:



1. Dismiss the objection filed by the Plaintiff (... Co.), Regarding item (Gifts and Gratuities).
2. Accept the objection filed by the Plaintiff (... Co.), and, cancel the Defendant's decision regarding item (Bad Debts).
3. Accept the objection filed by the Plaintiff (... Co.), and, cancel the Defendant's decision regarding item (Increased Sales Return Difference).
4. Accept the objection filed by the Plaintiff (... Co.), and, cancel the Defendant's decision regarding item (Adjusted Net Profit)
5. Accept the objection filed by the Plaintiff (... Co.), and, cancel the Defendant's decision regarding item (Dividends).
6. Dismiss the objection filed by the Plaintiff (... Co.), Regarding item (Partners' Current Account).
7. Accept the objection filed by the Plaintiff (... Co.), And, Cancel the Defendant's decision regarding item (Fixed Assets).
8. Dismiss the objection filed by the Plaintiff (... Co.), Regarding item (Other Credit Balances).

Since both parties to the Case dissatisfied with this decision; therefore, both parties submitted a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer's appeal involves: With respect to item (partners' current accounts), Zakat Payer objects to inclusion of this item in Zakat base. Zakat Payer claims that the Company's objection was to the specific amount added to the base by ZATCA, not to the inclusion of the partners' current accounts account itself. Zakat Payer states that the opening balance of the partners' current accounts was SAR (86,611,870.93) and the closing balance according to the financial statements was SAR (56,780,594.37). However, ZATCA added an amount of SAR (67,301,623), whereas the correct procedure would be to add either the opening or closing balance, whichever is lower, which is what the Company did by adding SAR (56,780,594.37). Therefore, Zakat Payer requests to overturn the primary decision on this specific item due to the aforementioned reasons. ZATCA also appealed the decision, submitting a statement of appeal that can be summed up as follows:

Regarding ZATCA's appeal against item (Bad debts for 1437 AH), ZATCA clarifies that Article (5.3) of the Implementing Regulations for the Collection of Zakat stipulates several conditions for considering bad debts as deductible expenses, including: 1. Zakat Payer provides a certificate from its chartered accountant indicating writing off the debts from the books pursuant to a decision by the authorized person. 2. Debts must not be owed by parties related to Zakat Payer. However, Zakat Payer has not provided supporting documents to prove that these two conditions have been met. Furthermore, the Primary Department's reliance on a circular that was addressed by the Implementing Regulations for Zakat Collection of 1438 AH regarding the issue of bad debts is misplaced, as there is a statutory provision in these Regulations that addresses this matter. Regarding the item (dividends distributions for 1437 AH), ZATCA clarifies that it has not reviewed the supporting documents, namely the written authorization mentioned in the Primary Department's decision, pursuant to which the Company's dividends were transferred to some of the partners' children. ZATCA emphasizes that it is not permissible to rely on documents that it has not reviewed, based on Article (29) of Tax Dispute and Violation Committee Procedures, issued by Royal Order No. (26040) dated 21/04/1441 AH. Regarding the item (Increased Sales Return Difference for 1437 AH), ZATCA clarifies that it has reviewed the audited financial statements submitted by Zakat Payer and found sales returns amounting to SAR (48,162,868), related to sales returns in Taif and Hail, with the following details: Sales returns from Taif amounting to SAR (48,122,663) and sales returns from Hail amounting to (SAR 40,205), totaling SAR (48,162,868). When Zakat Payer was asked about the reason for such a high amount of sales returns at the end of the year, it did



not provide any supporting documents. Therefore, ZATCA adjusted this amount by comparing the sales returns for 1437 AH with the ending inventory and adding the difference to the adjustments to net adjusted profit, in accordance with Article (20.3) of the Implementing Regulations for the Collection of Zakat. With respect to the item (Fixed Assets for 1437 AH), the Primary Department's conclusion that ZATCA's circulars gave Zakat Payer the option to choose the depreciation method they wanted to use is incorrect; because ZATCA's actions are based on Circular No. (9/2574) dated 14/05/1426 AH and Circular No. (9/1724) dated 24/03/1427 AH, and Article (16) of the Tax Law. As such, ZATCA maintains the validity and correctness of its procedures and requests that its procedures be upheld and that the Primary Department's decision on the items appealed by ZATCA be overturned due to the aforementioned reasons.

On Tuesday, 29/06/1443 AH, corresponding to 01/02/2022 AD, the Department decided to hold a 10-day electronic pleading. Consequently, ZATCA submitted a Reply addressing Zakat Payer's appeal. In summary, ZATCA affirmed the correctness of the Primary Department's decision supporting ZATCA's actions on the items appealed by Zakat Payer. With respect to the item (partners' current accounts), ZATCA maintains its adherence to the Primary Department's decision, as it is consistent with the provisions of the decision regarding the treatment of Zakat Payer's current account in individual establishments and partners in companies issued on 03/07/1412 AH. Therefore, ZATCA maintains the validity and correctness of its procedures and requests that Zakat payer's appeal be dismissed and the Primary Department's decision on the items appealed by Zakat payer be upheld for the aforementioned reasons. In addition, Zakat Payer submitted an answer summarized in that Zakat Payer requests dismissing ZATCA appeal and upholding Primary Department's decision regarding the items subject matter of ZATCA appeal.

On Wednesday, 22/10/1443 AH corresponding to 23/05/2022 AD, having perused the appeal memoranda and responses thereto, and having examined documents and papers contained in the Case file, the Department decided that the case was ready for adjudication and issuance of decision on its merits. Accordingly, the Department decided to close the pleadings and schedule the case for adjudication.

Grounds

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

On merits, regarding Zakat payer's appeal concerning item (Partners' Current Account), Zakat Payer's appeal centers on its objection to the primary decision upholding ZATCA's action of adding this item to zakat base. Zakat Payer claims that its objection was to the specific amount added to the base by ZATCA, not to the inclusion of the partners' current accounts in the base itself. However, ZATCA has maintained the correctness and validity of its procedure and requests to dismiss Zakat Payer's appeal and uphold the primary decision. Having carefully considered subject of the dispute and examined the documents of the Case file, and noting that the closing balance is the lower balance, and therefore the amount that a year has passed thereon is the closing balance amounting to SAR (56,780,594.37). Furthermore, the Department has not observed anything that requires correction or further response based on what ZATCA presented before it, Therefore, this Department decides to accept Zakat Payer's appeal and overturn Primary Department's decision regarding this particular item.

Regarding ZATCA's appeal concerning item (Bad Debts for 1437 AH), ZATCA's appeal centers on Primary Department 's acceptance of Zakat Payer's objection to this item. ZATCA claims that Zakat Payer has failed to provide supporting documents required by



the Implementing Regulations for the Collection of Zakat to consider bad debts as deductible expenses. However, Zakat Payer requests to dismiss ZATCA's appeal and uphold primary decision. Having carefully considered subject of the dispute and examined the documents of the Case file, and given that Zakat Payer has provided supporting documents to write off the disputed debts and has provided evidence of the write-off of the debt amounting to SAR (5,162.40), and since this Department has ascertained the correctness of the conclusion reached by the Primary Department, and that the reasons upon which it based its decision are sufficient to support this decision, this Department decides to reject ZATCA's appeal and uphold the primary decision regarding this particular item.

Regarding ZATCA's appeal concerning item (Dividends of 1437 AH), ZATCA's appeal centers on Primary Department 's acceptance of Zakat Payer's objection to this item. ZATCA claims it did not review the written authorization mentioned in the primary decision, which was used as a basis for transferring Company's dividends to some of the partners' children. However, Zakat Payer requests to dismiss ZATCA's appeal and uphold primary decision. Having carefully considered the subject of the dispute and examined the documents of the Case file, and given that distributed dividends are not included in zakat base if it is proven that they have been distributed and transferred to accounts separate from Zakat Payer's account, and since Zakat Payer has provided documents supporting the distribution of these profits, this Department decides to reject ZATCA's appeal and uphold the primary decision regarding this particular item.

Regarding ZATCA's appeal concerning item (Dividends of 1437 AH), ZATCA's appeal centers on Primary Department's acceptance of Zakat Payer's objection to this item. ZATCA claims that after reviewing the audited financial statements submitted by Zakat Payer, it became evident that there were sales returns for which Zakat Payer did not provide any documentation explaining the reasons. Therefore, ZATCA adjusted this amount by comparing the sales returns to the ending inventory and added the difference to the adjustments to net income. However, Zakat Payer requests to dismiss ZATCA's appeal and uphold primary decision. Having considered subject matter of the dispute and having examined documents contained in the Case file, the Department found that ZATCA's basis for adding this amount to Zakat Payer's zakat base was the presence of a sales return amount in the trial balance and ZATCA's request for Zakat Payer to explain reasons for these returns. Considering that sales returns are a normal part of business operations and are accounted for by reducing sales and adjusting the cost of goods sold by the value of returned goods, and given that ZATCA has not linked the existence of sales returns to the corresponding impact on the cost of goods sold, there is no justification for ZATCA to require Zakat Payer to explain the reasons for the sales returns that have been recorded in the accounts, unless there is an issue with the accounting evidence for the corresponding amounts that adjust the overall impact of the returns on zakat Payer's profit. Therefore, this Department decides to reject ZATCA's appeal and uphold the primary decision regarding this particular item.

Regarding ZATCA's appeal concerning item (Fixed Assets for 1437 AH), ZATCA's appeal centers on Primary Department 's acceptance of Zakat Payer's objection to this item. ZATCA claims that the assertion that ZATCA's circulars granted Zakat Payer the discretion to apply the depreciation method of its choice is incorrect, as ZATCA has, through the relevant circulars, mandated the application of the depreciation method specified in Article (17) of the Income Tax Law. However, Zakat Payer requests to dismiss ZATCA's appeal and uphold primary decision. Having carefully considered subject of the dispute and examined the documents of the Case file, and upon reviewing ZATCA's appeal, it has become apparent that ZATCA has presented reasons that differ from those it presented to the Primary Department. While ZATCA argued before the Primary Department that it had applied the Implementing Regulations for the Collection of Zakat,



it now argues before this Department that it had applied ZATCA's circulars related to the application of certain procedural provisions and accounting standards contained in the Tax Law to Zakat Payers. Such an argument does not undermine the outcome of the Primary Department's decision, which was based on the argument presented before it. Furthermore, ZATCA, in its appeal, has not provided an analysis of the modifications it made to the depreciation tables prepared by Zakat Payer, demonstrating the errors made by Zakat Payer and how these errors were corrected, which would allow for a reasoned objection to its procedure. Therefore, this Department decides to reject ZATCA's appeal and uphold the primary decision regarding this particular item.

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

Decision

First: Accept appeal in from filed by Taxpayer (... Company), C.R. No. (...), TIN (...), and the appeal filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-124) issued in Case No. (Z-7739-2019) , in connection with zakat assessment for 1437 AH.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding item (Partners' Current Account for 1437 AH), and overturn decision of First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with grounds and reasons mentioned herein.
2. Dismiss ZATCA's appeal regarding item (Bad Debts for 1437 AH), and uphold decision of First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with grounds and reasons mentioned herein.
3. Dismiss ZATCA's appeal regarding item (Dividend for 1437 AH), and uphold decision of First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with grounds and reasons mentioned herein.
4. Dismiss ZATCA's appeal regarding item (Increased Sales Return Difference for 1437 AH), and uphold decision of First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with grounds and reasons mentioned herein.
5. Dismiss the appeal filed by ZATCA regarding the item (Fixed Assets for 1437 AH) and uphold the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds and reasons mentioned therein.

Similar Decisions

First Appellate Department for Income Tax
Violations and Disputes
IR-2022-197



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes in Riyadh

Decision No.: IR-2022-198

Case No.: Z-31160-2020

Principle No. 339

- Fixed assets and the like are acquisition assets that assist in current and future production regardless of their source of financing. Limit of modified profit base, if the base is less than that profit, has no legal or statutory basis, which entails Zakat Payer being entitled to deduct net fixed assets and acquisition investments without a certain

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limitation.

The Department convened a session to consider the Appeal filed on .././../, corresponding to .././../, by (...), holder of National ID No. (...), in his capacity as Appellant Company's attorney under POA No. (...), against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-141) rendered in Case No. (Z-182-2018) regarding zakat assessment for 2005 and 2006 filed by Appellant against ZATCA. Primary Department's decision states:

First: Lack of Department's jurisdiction to consider the Case filed by Plaintiff (... Company), (TIN No.) against Defendant (ZATCA) regarding the enforcement of Appellate Committee for Zakat and Tax Objections Decision No. (1628) of 1438 AH.

Second: Dismiss objection filed by Plaintiff (... Company), (TIN No.) against Defendant (ZATCA) decision regarding (Calculation of Adjusted Profit as Zakat Base) item subject matter of the Case.

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

Zakat Payer objects to Primary Department's decision subject matter of appeal, claiming that regarding (Debts on Silos for 2005 and 2006) item, Zakat Payer requests applying Appeal Committee for Tax Violations and Disputes Decision No. (1628) for 1438 which ruled in favor of Zakat Payer in deducting this item, but it was inadvertently overlooked in its wording the two years in question subject matter of the Case. Regarding (Calculation of Adjusted Profits as Zakat Base) item, ZATCA applied the Implementing Regulations for the Collection of Zakat issued on 01/06/1438 AH retroactively, in addition to failure to apply the answer of the fourth question of Council of Senior Scholars Fatwa No. (23408) dated 18/11/1426 AH. In addition, Zakat Payer requests deducting full fixed assets and for the company to be assessed based on zakat base, rather than adjusted profit. Therefore, Zakat Payer requests overturning Appeals Committee's decision subject matter of appeal for the aforementioned reasons.

On Tuesday, 29/06/1443 AH corresponding to 01/02/2022 AD, the Department decided holding remote litigation session for (10) days. Therefore, ZATCA submitted a reply wherein replies to Zakat Payer's appeal, by reiterating its previous position presented before Primary Department. In addition, ZATCA claims the following: Regarding (Debts on Silos for 2005 and 2006) item, ZATCA insists on Primary Department's decision,



regardless of its consideration in accordance with Article 76.1 of the Law of Civil Procedure. Regarding (Calculation of Adjusted Profit as Zakat Base) item, ZATCA deducts fixed assets in limit of equities in accordance with Circular No. (1/8443/2) dated 08/08/1392 AH. Moreover, Zakat Payer's reliance on Fatwa No. (23408) dated 18/11/1426 AH supports ZATCA procedure because the net profit for the relevant year can only be determined after closing accounts at the end of fiscal year. In addition, using adjusted net profit for the purpose of determining zakat base as a minimum threshold is supported by the fact that subjecting revenue to zakat is a recognized Islamic jurisprudential opinion regarding zakat on productive assets. This was confirmed by the decision of the International Islamic Fiqh Academy in its second session, and Fatwa cited by Zakat Payer is precisely applicable if the available cash in the Company was invested in fixed assets or acquisition assets, which would lower profit balance as a result. Furthermore, according to accounting principles, the purchase of fixed assets is not considered an expense that is charged to income statement. Moreover, zakat is religiously imposed on capital. However, in some cases, zakat base is limited according to Sharia provisions to the yield of capital and its proceeds due to the nature of business activity. This is also confirmed by Article (4), Paragraph (9.I) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. In addition, ZATCA requests the Department not to accept any new documents that were not submitted throughout examination and objection stage, and requests the Department to dismiss any new petitions submitted by Zakat Payer in accordance with Article (186) of the Law of Civil Procedure. Therefore, ZATCA insists on accuracy and correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision for the aforementioned reasons.

On Saturday, 20/10/1443 AH corresponding to 21/05/2022 AD, upon reviewing Appeal memoranda and replies thereto, and after examining documents contained in the Case file, the Department decided that the Case was ready for adjudication and issuance of a decision, and therefore decided to close pleadings and set a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

On Merits, with regard to Zakat Payer's appeal regarding (Debts on Silos for 2005 and 2006), Zakat Payer's appeal lies in objection to ZATCA's procedure in overlooking enforcement of Appeal Committee for Tax Violations and Disputes Decision No. (1628), which upheld Zakat Payer to deduct this item, which inadvertently omitted in its wording the two years subject of dispute. On the other hand, ZATCA insists on accuracy and correctness of its procedure and requests dismissing Zakat Payer's appeal. Having taken cognizance of subject matter of the dispute and Zakat Payer's appeal, the Department found, upon referring to the previous Appellate Committee's decision, that the Committee had discussed the dispute and mentioned the years 2005 and 2006. In addition, the Committee based its decision on notes to the financial statements for such two years. Therefore, this Department concludes that the previous Committee had adjudicated the dispute. The omission of those years in its wording is considered a clerical error. Thereupon, this Department corrects such error by confirming that the previous Appellate Committee's decision accepted Zakat Payer's appeal regarding this item for 2005 and 2006. As for Zakat Payer's appeal regarding (Calculation of Adjusted Profit as Zakat Base) item, Zakat Payer's appeal involves objection to Primary Department's decision that upheld ZATCA procedure outlined in deducting full fixed assets and imposing zakat on adjusted profit, rather than zakat base. On the other hand, ZATCA insists on accuracy and



correctness of its procedure and requests dismissing Zakat Payer's appeal and upholding Primary Department's decision. Having taken cognizance of subject matter of the dispute, and considering that the standard procedure for calculating zakat base for Zakat Payer involves adding positive elements to zakat base, such as capital, equity, annual profits and other sources of funding, while deducting negative elements from zakat base, such as fixed assets, long-term investments, annual losses and carried forward losses. Since fixed assets and equivalents are considered capital assets that help in current and future production, regardless of their source of funding, the limitation of zakat base by the adjusted profit, if the base is lower than that profit, has no legitimate or legal ground. Therefore, Zakat Payer is entitled to deduct the net fixed assets and capital investments without being restricted by any specific limit. As such, this Department concludes to accept Zakat Payer's appeal regarding not considering adjusted net profit as zakat base and overturn the Primary Department's decision regarding this item.

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

Decision

First: Accept Appeal in form filed by Zakat Payer (..... Company), C.R No. (....), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-141) rendered in Case No. (Z-182-2018) regarding zakat assessment for 2005 and 2006.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Debts on Silos for 2005 and 2006) item and correct the decision rendered by Appellate Department for Income Tax Violations and Disputes, by confirming that the decision includes acceptance of Zakat Payer's appeal regarding this item for 2005 and 2006 according to reasons and grounds stated herein.
2. Accept Zakat Payer's appeal regarding (Calculation of Adjusted Profit as Zakat Base) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh according to reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-208

Case No.: Z-29888-2020

Principle No. 340

- As long as Zakat Payer has calculated zakat on his share in foreign investments, he is entitled to deduct loans provided to subsidiaries according to his investment rate therein.

Principle No. 341

- Application of fatwas on debt to Zakat Payer requires considering whether a year has passed thereon or whether they are used to finance assets deducted from the base. Requirement of perfect ownership is not related to the extent to which debts are included in Zakat Payer's zakat

Facts

base.

The Department convened to consider appeal filed on ../../..., corresponding to ../../..., by, holding National ID No. (...), in his capacity as attorney of Appellant Company under POA No. (...) against the First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-209) delivered in Case No. (Z-8068-2019) related to zakat assessment for 2016, filed by Appellant against ZATCA. Primary Department's decision ruled as follows:

formal aspect: Accept the case filed by the Plaintiff/ Company, under C.R. No. (...) in form.

On Merits:

1. Dismiss the objection regarding Long-Term Advances in the amount of SAR (43,045,793).
2. Dismiss the objection regarding Commercial and Other Creditors and Advance Payments item for 2016.
3. Dismiss the objection regarding Foreign Investments item in Company (Qatar) in the amount of SAR (7,017,468) and Company (Oman) in the amount of SAR (890,489).
4. Establish that the dispute with respect to the item of Spare Parts Inventory (inventory provision) has ended.

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

Zakat Payer objects to appealed decision of Primary Department, claiming that, with regard to the item (Deduction of Long-Term Advances from Zakat Base for 2016 in the Amount of SAR (43,045,793)), zakat additional obligation was calculated on long-term advances which are considered to be an investment in a foreign subsidiary company. In confirmation of the foregoing, additional zakat was paid in the amount of SAR (225,555). Moreover, long-term advances provided to company are in nature an investment in



property rights, as he has a share of (49%), and was invested to purchase fixed assets for income generation. According SOCPA regulations, long-term advances are classified as investments, which must be deducted from the base. With regard to the item (Commercial Creditors, Other Creditors, and Advance Payments From Customers), Zakat Payer claims that these amounts are due to suppliers and zakat is not due thereon for not fulfilling the condition of ownership. With regard to the item (Foreign Investments), Zakat Payer claims that audited financial statements of investee companies were submitted, and zakat was paid on the same in the amount of SAR (277,463). Zakat Payer also provided evidence of paying zakat by virtue of a bank notice. Therefore, Zakat Payer claims to overturn appealed decision of Primary Department for the foregoing reasons.

On Tuesday, 29/06/1443 AH corresponding to 01/02/2022 AD, the Department decided to convene a 10-day electronic pleading hearing. ZATCA submitted a replication in which it responded to Zakat Payer's appeal, including that, with regard to item (Deduction of Long-Term Advances From Zakat Base), ZATCA upholds Primary Department's decision, as it is consistent with provisions of Article (4), paragraph (4.B), of the Implementing Regulations for the Collection of Zakat and Fatwa No. (3077/22) of 1426 AH. With regard to the item (Deduction of Investments), ZATCA upholds Primary Department's decision, as it is consistent with provisions of Article (4), paragraph (4.B), of the Implementing Regulations for the Collection of Zakat, and with regard to the item (Commercial Creditors, Other Creditors and Advance Payments), ZATCA upholds Primary Department's decision, as it is consistent with provisions of Article (4.5) of the Implementing Regulations for the Collection of Zakat. ZATCA requires that no new requests from the taxpayer be accepted based on Article 186 of the Law of Procedure Before Sharia Courts. Therefore, ZATCA upholds validity and soundness of its procedure and request that Zakat Payer's appeal be dismissed and Primary Department's decision be upheld for the above reasons.

On Tuesday, 08/11/1443 AH corresponding to 07/06/2022 AD, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having taken a look at the case papers and the statement of appeal submitted by the Zakat Payer, the Department found that the formal conditions for considering the appeal were met as per the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is acceptable in form for being submitted by a person with a capacity, and within the period prescribed by law.

On merits, with regard to Zakat Payer's appeal regarding the item (Deduction of Long-Term Advances From Zakat Base), and since Zakat Payer's appeal lies in objection to the Primary decision having upheld ZATCA's decision of adding this item to zakat base, and claims that the same must be deducted because they are long-term investments and must be classified as an investment, while ZATCA argued that it adheres to validity and soundness of its decision and requested that Zakat Payer's appeal be dismissed and the Primary Department's decision be upheld. Having examined subject of the dispute, having perused contents of case file, and since it is established that Zakat Payer calculated zakat on his share of foreign investments, he has the right to deduct loans provided to subsidiaries according to percentage of the investment therein. Therefore, the Department decides to accept Zakat Payer's appeal and overturn the Primary Department's decision regarding this item.

With regard to Zakat Payer's appeal regarding the item (Commercial Creditors, Other Creditors and Advance Payments From Customers), and since Zakat Payer's appeal lies in



objection to the Primary decision's upholding of ZATCA's decision of adding this item to zakat base, and claims that the same must be deducted because it did not satisfy the requirement of ownership, while ZATCA argued that it adheres to validity and soundness of its decision and requested that Zakat Payer's appeal be dismissed and the Primary Department's decision be upheld. Having examined subject of the dispute, having perused contents of case file, and since credit balances, regardless of their type, are considered a part of zakat base whenever a year has passed thereon. Since ZATCA added the lower balance after comparing balance at the beginning and end of the period, as an indication of the fact that a year has passed on balance added to the base. Since Zakat Payer did not submit evidence to the contrary of ZATCA's findings, thus ZATCA's procedure to add the disputed amounts is valid. This does not affect Zakat Payer's argument regarding lack of complete ownership of these amounts, since application of fatwas regarding debts of Zakat Payer requires considering the passage of a year thereon or using the same to finance assets that are deducted from the base. Condition of complete ownership has no relation to the extent of including debts in zakat base of Zakat Payer. Therefore, the Department concludes to dismiss Zakat Payer's appeal and uphold the Primary Department's decision regarding this item.

With regard to Zakat Payer's appeal on the item (Foreign Investments), since Zakat Payer's appeal lies in objection to Primary Department's upholding of ZATCA's procedure of adding this item to zakat base, and claims payment of resulting zakat, while ZATCA argued that it adheres to validity and soundness of its procedure and requested that Zakat Payer's appeal be dismissed and that the Primary Department's decision be upheld. Having examined subject of the dispute, having perused contents of case file, and since investment in foreign facilities is considered one of the items deducted from the zakat base, provided that proof of paying zakat thereon is provided in the country of investment. Since Zakat Payer has provided proof of paying zakat on investments in foreign companies, the Department concludes to accept Zakat Payer's appeal and overturn the Primary Department's decision regarding this item.

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

Decision

First: Accept the appeal in form filed by Zakat Payer/ Company, under CR. No. (.....) TIN No. (.....), against the First Department for Determination of Income Tax Violations and Disputes in Dammam Decision No. (IZD-2020-209) delivered in Case No. (Z-8068-2019) in connection with Zakat assessment for 2016.

Second: On Merits:

1. Accept Zakat Payer's appeal regarding (Long-Term Advances), and reverse decision of the First Department for the Determination of Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated in this decision.
2. Dismiss Zakat Payer's appeal regarding the item (Commercial Creditors, Other Creditors and Advance Payments), and uphold decision of the First Department to Adjudicate Income Tax Violations and Disputes in Dammam according to the grounds and reasons stated in this decision.
3. Accept Zakat Payer's appeal regarding the item (Foreign Investments), overturn First Department for the Determination of Income Tax Violations and Disputes in Dammam Decision, and return the case to the same Department for consideration on merits, in accordance with reasons and grounds set forth in this decision.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No.: IR-2022-209

Case No.: Z-31451-2020

Principle No. 342

- Zakat Payer may submit audited financial statements as evidence supporting its claim, which is not affected by the preparation of those financial statements at a date subsequent to the date of submitting Declaration.

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as the Owner of the Appellant Institution (“Zakat Payer”), against Decision No. (IZD-2020-179) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in Case No. (Z-10278-2019) in connection with Zakat Assessment of 1439 AH, filed by Zakat Payer against Zakat, Tax, and Customs Authority (“ZATCA”). The appealed decision ruled as follows:

First: Accept Plaintiff’s (Mr., holder of National ID No.) Case in form.

Second: Dismiss Plaintiff’s (Mr., holder of National ID No.) objection to item (Estimated Assessment of 1439 AH).

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

Zakat Payer objects to the Primary Department’s decision in question for upholding ZATCA’s decision regarding its Estimated Assessment for the year in question, wherein it affirms that it has submitted approved financial statements and that the amount of capital calculated by ZATCA is incorrect, as it does not have any imports or contracts for the year in question. Zakat Payer concluded by requesting reversal of the Primary Department’s decision in question for the stated grounds.

On Tuesday, 29/06/1443 AH, corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing session, wherein ZATCA submitted a Rejoinder to Zakat Payer’s appeal, a summary of which included that it adheres to the validity and soundness of its procedure and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. ZATCA added that Zakat Payer submits its Declarations on the basis the estimated method and pays the Zakat due accordingly, and that the financial statements on which Zakat Payer requests to be charged were prepared on a date subsequent to the date of the prescribed statutory period for submitting Zakat Declarations. Accordingly, ZATCA has exercised its right to make the Assessment on an estimated basis in pursuant to Articles (13) and (20.3) of Implementing Regulations for the Collection of Zakat. Also, Zakat Payer has been charged based on VAT sales, pursuant to Articles (13) of the same Implementing Regulations.

ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Zakat Payer’s appeal be dismissed and its procedure be upheld for the stated grounds.

On Thursday, 16/07/1443 AH, corresponding to 17/02/2022 AD, the Department, having taken cognizance of documents included in Case file, has requested ZATCA to submit the



Assessment Notification to Zakat Payer dated 28/07/1440 AH, along with Zakat Payer's financial statements and the certified public accountant's report thereto within seven (7) days from this date; in which ZATCA submitted a number of documents.

On Wednesday, 09/11/1443 AH, corresponding to 08/06/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Accordingly, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On Merits: As for Zakat Payer's appeal regarding ZATCA's Assessment, which includes its objection to the Primary Department's decision for upholding ZATCA's decision in disregarding the financial statements submitted by Zakat Payer and making the Assessment at estimated basis, while ZATCA argued that it adhered to the validity and soundness of its procedure and requested that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that, since the amounts included in ZATCA's Estimated Assessment exceeded those included in Zakat Payer's Declaration submitted to ZATCA; and since the said Estimated Assessment was not based on a field examination conducted on Zakat Payer; and since Zakat Payer has submitted audited financial statements; thus, it has the right to submit the same as evidence supporting its claim pursuant to Article (20) of the Implementing Regulations for the Collection of Zakat, which is not affected by ZATCA's claim that those financial statements were prepared on a date subsequent to the date of submitting Declaration, as Zakat Payer submitted the financial statements as evidence of the validity of the expenses that it claimed to have incurred in realizing revenues on which ZATCA made its Estimated Assessment; and since it is established that audited financial statements are presumed valid and sound unless proven otherwise, and since ZATCA has not claimed invalidity of those financial statements, nor has provided evidence that refutes the same; Therefore, the Department satisfies to abolish ZATCA's Estimated Assessment by entitling Zakat Payer to calculate its Zakat Base as per its Declarations, and reverse the appealed decision as to conclusion it had in this regard.

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

Decision

First: Accept Zakat Payer's (..... Institution, C.R No., TIN No.), appeal against Decision No. (IZD-2020-179) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in Case No. (Z-10278-2019) in connection with Zakat Assessment of 1439 AH, in form.

Second: **On Merits:** Accept Zakat Payer's appeal, reverse the appealed decision, and abolish ZATCA's Estimated Assessment, for the grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes in Riyadh

Decision No.: IR-2022-216

Case No.: Z-29556-2020

Appeal Committee for Tax Violations and Disputes

Principle No. 343

- Zakat Payer's submission of a document proving the loss of its regular books as a result of a fire at its premises without the existence of any negligence or deliberate from Zakat Payer to destroy those documents results in its entitlement to pay Zakat according to the financial statements on which ZATCA relied when making its Assessment.

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as Appellant's ("Zakat Payer") Attorney, under POA No., against Decision No. (IFR-2020-96) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (Z-6884-2019) in connection with Zakat Assessment of 2013 AD, filed by Zakat Payer against Zakat, Tax, and Customs Authority ("ZATCA"). The appealed decision ruled as follows:

Dismiss Plaintiff's (..... Company, TIN No.) objection to Defendant's (ZATCA) decision regarding Zakat Assessment of 2013.

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

Zakat Payer objects to the Primary Department's decision in question for upholding ZATCA's decision regarding its Estimated Assessment for the year in question, wherein it affirms that the Zakat due must be calculated as per the financial statements issued by (..... Office) and also the Implementing Regulations for the Collection of Zakat issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH. In addition, Zakat Payer has acknowledged during the field examination of the absence of regular documents and books, due to a fire breaking out at Zakat Payer's factory (a statement of the General Directorate of Civil Defense is attached herein) and that the data on the electronic devices was retrieved by specialists and submitted to the field examination official at ZATCA. Moreover, calculating Zakat according to the positive items that are in ZATCA's favor and disregarding items that are in Zakat Payer's favor is considered a violation of Sharia and the Implementing Regulations for the Collection of Zakat, as it would have been fair to deduct items that are in Zakat Payer's favor, especially since the financial statements are unified. Accordingly, Zakat Payer requests recalculation of Zakat according to all items included in the financial statements on which ZATCA relied to make its Assessment, as well as according to Implementing Regulations for the Collection of Zakat, and demonstrates its readiness to submit all documents. Zakat Payer concluded by requesting reversal of the Primary Department's decision in question for the stated grounds.

On Monday, 22/10/1443 AH, corresponding to 23/05/2022 AD, the Department decided to hold a 10-day e-hearing session, wherein ZATCA submitted a Rejoinder to Zakat Payer's appeal, a summary of which included that it adheres to its view presented before the Primary Department and that Zakat Payer has acknowledged during the field examination



of the absence of an accounting system for years 2010 – 2015. Then, ZATCA, through the data available thereto, found that the financial statements for years 2010 – 2015 differed from those submitted to ZATCA during the field examination that were issued by (..... Office), which showed a fundamental difference in the values of Zakat Payer's assets, liabilities, and business outcomes that were mentioned in these statements and those submitted to ZATCA during the field examination. ZATCA added that the last paragraph of its notice explaining the field examination findings explained that it has verified Zakat Payer's responsibility for issuing those financial statements, which necessitates the calculation of Zakat dues on Zakat Payer in light of the existence of financial statements differing from those submitted by Zakat Payer to ZATCA.

Also, ZATCA, having reviewed Note No. (21) to the reissued financial statements of 2015 from (..... Office), found that the base year (the opening year of 2015, i.e., the opening balances of 2014) was amended due to the exclusion of an activity that does not pertain to Zakat Payer. Accordingly, since the Primary Department has established that the financial statements for the years in question were incorrect, and since the multiplicity of Zakat Payer's financial statements naturally results in lack of conviction and reliance on the aforementioned financial statements, it is not known which financial statements are more correct than the other, which indicates validity of ZATCA's procedure for making an Assessment using the estimated method and relying on the data available thereto based on the provisions of Article (13.8) of the Implementing Regulations for the Collection of Zakat of 1438 AH.

Moreover, if this Department is satisfied to calculate the Zakat according to the financial statements, ZATCA requests that the Department's decision be included with an indication of ZATCA's making the Assessment according to the financial statements without contradicting the principle of statute of limitations.

Furthermore, ZATCA requests the Department to dismiss any new documents from Zakat Payer that have not been submitted during the examination and objection stages, or any new petitions based on Article (186) of Law of Civil Procedure. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Zakat Payer's appeal be dismissed and its procedure be upheld for the stated grounds.

On Thursday, 10/11/1443 AH, corresponding to 09/06/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On Merits: As for Zakat Payer's appeal regarding ZATCA's Assessment, which includes its objection to the Primary Department's decision for upholding ZATCA's decision in calculating Zakat according to the positive items that are in ZATCA's favor and disregarding items that are in Zakat Payer's favor, while ZATCA argued that it adhered to the validity and soundness of its procedure and requested that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that, since ZATCA made its Assessment according to Zakat Payer's financial statements of and the certified accountant's audit; and since ZATCA has adopted the positive items that are in its favor



and disregarded those in Zakat Payer's favor when calculating the Zakat Base according to those financial statements; and since it is practically inconceivable, according to the nature of Zakat Payer's activity and capital, to complete the work without the existence of operating assets; and since ZATCA based its Assessment on those financial statements with no evidence of any challenge to those audited financial statements, which determines the soundness of Zakat Payer's argument; and since the aforementioned is not affected by ZATCA's claim of absence of regular documents and books as stated in the minutes of the field examination regarding the, as Zakat Payer submitted evidence of the loss of those documents as a result of a fire at its premises; and since the Department did not find any negligence or deliberate from Zakat Payer to destroy those documents, which determines that Zakat Payer is entitled to pay Zakat according to the financial statements on which ZATCA relied when making its Assessment; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed decision as to conclusion it had in this regard.

Decision

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

First: Accept Zakat Payer's (..... Company, C.R No., TIN No.,) appeal, against Decision No. (IFR-2020-96) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (Z-6884-2019) in connection with Zakat Assessment of 2013 AD, in form.

Second: On Merits:

Accept Zakat Payer's appeal and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, for the grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes in Riyadh

Decision No. IR-2022-249

Case No. Z-26288-2020

Principle No. 344

- Zakat Payer's claim of incorrectness and exaggeration of the new information is not accepted, as long as it has not provided evidence of rectification of these financial statements after claiming of the existence of errors included therein.

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as the Owner of the Appellant Institution ("Zakat Payer"), against Decision No. (ISZR-2020-116) delivered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (Z-3243-2019) in connection with Zakat Assessment of 2017 AD, filed by Zakat Payer against Zakat, Tax, and Customs Authority ("ZATCA"). The appealed decision ruled as follows:

Accept Plaintiff's (Mr., holder of National ID No., the Owner of, C.R No.) case in form and dismiss the same on its merits.

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

Zakat Payer objects to the Primary Department's decision in question, claiming that the errors in preparing the budgets were not deliberate but rather were the result of ignorance of ZATCA's requirements. In addition, Zakat Payer is not in dispute with ZATCA to raise a revised Assessment according to the financial statements but rather on the differences that emerged as a result of its procedure. Zakat Payer concluded by requesting reversal of the Primary Department's decision in question for the stated grounds.

On Sunday, 21/10/1443 AH, corresponding to 22/05/2022 AD, the Department decided to hold a 10-day e-hearing session, in which ZATCA submitted a Rejoinder to Zakat Payer's appeal, a summary of which included that it adheres to its view presented before the Primary Department, and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. ZATCA added that Zakat Payer was among those who submitted Estimated Declarations and paid the Zakat due accordingly, wherein it later found that Zakat Payer had financial statements in a QAWAEM Platform; consequently, ZATCA amended Zakat Payer's Declaration based on the data and information contained in the financial statements, which were completely different from those to which Zakat Payer had paid the Zakat due accordingly. As a result, ZATCA amended the Estimated Declaration by adopting the accounts as stated in the budgets in application of Articles (21.8/C) and (20.3) of Implementing Regulations for the Collection of Zakat of 1438 AH.

Furthermore, ZATCA requests the Department to dismiss any new documents from Zakat Payer that have not been submitted during the examination and objection stages, or any new petitions based on Article (186) of Law of Civil Procedure.



ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Zakat Payer's appeal be dismissed and its procedure be upheld for the stated grounds.

On Tuesday, 08/11/1443 AH, corresponding to 07/06/2022 AD, the First Appellate Department for Income Tax Violations and Disputes has convened to consider the appeal filed against the Primary Department's decision delivered in Case No. (Z-3243-2019) filed by Zakat Payer against ZATCA, wherein Zakat Payer contended that some items mentioned in the financial statements deposited at QAWAEM Platform are invalid. Therefore, the Department has requested Zakat Payer to submit revised audited financial statements proving its claim within thirty (30) days from this date. Accordingly, Zakat Payer submitted a number of documents.

On Tuesday, 20/12/1443 AH, corresponding to 19/07/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On Merits: As for Zakat Payer's appeal regarding ZATCA's Assessment, which includes its objection to the Primary Department's decision for upholding ZATCA in revising the Zakat Assessment, wherein Zakat Payer claimed that the errors contained in its Declaration were not deliberate but rather were the result of ignorance of ZATCA's requirements, and that it was not in dispute with ZATCA to raise a revised Assessment based on the financial statements but rather on the differences that emerged as a result of its procedure, while ZATCA argued that it adhered to the validity and soundness of its procedure and requested that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of documents included in Case file, found that, since ZATCA's Assessment was based on the financial statements that were deposited at QAWAEM Platform, which are financial statements audited by a certified public accountant; and since Zakat Payer's claims regarding the invalidity of some items contained in those financial statements are considered unsubstantiated statements by Zakat Payer that have no valid evidence due to its failure to submit amended audited financial statements supporting its claims; and since the audited financial statements included data and since would affect the Zakat Assessment, which renders ZATCA's decision in revising the Assessment sound and valid; and since the aforementioned is not affected by Zakat Payer's claim of incorrectness and exaggeration of the new information, since it failed to provide evidence of rectification of these financial statements after claiming of the existence of errors included therein, despite the lapse of several years during which many financial statements were prepared; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision as to conclusions it had in this regard.

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

Decision



First: Accept Zakat Payer's (..... Institution, C.R No., TIN No.) appeal, against Decision No. (ISZR-2020-116) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (Z-3243-2019) in connection with Zakat Assessment of 2017 AD, in form.

Second: On Merits:

Dismiss Zakat Payer's appeal and uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, for the grounds stated herein.



Principle No. 345

- The trial balances are merely internal drafts for the purpose of preparing the financial statements that do not amount to be used as evidence against the audited financial statements.

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as the Owner of the Appellant Institution (“Zakat Payer”), against Decision No. (ISZR-2020-86) delivered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (Z-4583-2019) in connection with Zakat Assessment of 2013 and 2014 AD, filed by Zakat Payer against Zakat, Tax, and Customs Authority (“ZATCA”). The appealed decision ruled as follows:

Accept Plaintiff’s (..... Institution, C.R No.) case in form and dismiss the same on its merits.

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

Zakat Payer objects to the Primary Department’s decision in question, claiming that ZATCA based its Assessment on financial statements that do not reflect the actual financial position of Zakat Payer due to some issues that were found within the Financial and Administrative Departments, which necessitated a re-evaluation of the financial position and the adoption of adjusted trial balances that reflect the actual financial position. Accordingly, Zakat Payer requests abolishment of ZATCA’s Assessment and issuance of an amended one. Zakat Payer concluded by requesting reversal of the Primary Department’s decision in question for the stated grounds.

On Sunday 21/10/1443 AH, corresponding to 22/05/2022 AD, the Department decided to hold a 10-day e-hearing session, in which ZATCA submitted a Rejoinder to Zakat Payer’s appeal, a summary of which included that it adheres to its view presented before the Primary Department, and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. ZATCA added that the Assessment was made based on the results of the financial statements discovered on QAWAEM Platform, and that its decision came in compliance with the provisions of Articles (21.8) and (13) of Implementing Regulations for the Collection of Zakat of 1438 AH. In addition, ZATCA requests the Department to dismiss any new petitions from Zakat Payer based on Article (186) of Law of Civil Procedure. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Zakat Payer’s appeal be dismissed and the Primary Department’s decision in question be upheld for the stated grounds.

On Thursday, 05/02/1444 AH, corresponding to 01/09/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its



merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On Merits: As for Zakat Payer's appeal regarding its objection to the Primary Department's decision in question, claiming that ZATCA has made the Assessment based on financial statements that do not reflect the reality and true nature of its activity, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since the basis of Zakat Payer's appeal was that the audited financial statements do not reflect the actual financial position, and that it rectified the same and submitted valid trial balances; and since the trial balances are merely internal drafts for the purpose of preparing the financial statements that do not amount to be used as evidence against the audited financial statements; and since Zakat Payer has failed to provide evidence of the re-issuance of the financial statements and their audit by a licensed auditor; and since this Department found that the conclusion reached by the Primary Department was sound and valid; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision as to conclusions it had in this regard.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision

First: Accept Zakat Payer's (..... Institution, C.R No., TIN No.) appeal against Decision No. (ISZR-2020-86) delivered by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh in Case No. (Z-4583-2019) in connection with Zakat Assessment of 2013 and 2014 AD, in form.

Second: **On** **Merits:**
Dismiss Zakat Payer's appeal and uphold the Decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, for the grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-233

Case No. Z-28856-2020

Principle No. 346

- The financial liability of the Institution is inseparable from the liability of its owner, as the Zakat due is considered a personal debt on the owner of the Institution during the years subject to Assessment, which determines ZATCA's ineligibility to claim Zakat from Zakat Payer, to whom ownership of the Institution has been transferred, for the years preceding the transfer of its ownership to Zakat Payer.

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as the Owner of the Appellant Institution ("Zakat Payer"), against Decision No. (IZD-2020-202) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in Case No. (Z-10316-2019) in connection with Zakat Assessment of 2011 and 2012 AD, filed by Zakat Payer against Zakat, Tax, and Customs Authority ("ZATCA"). The appealed decision ruled as follows:

Dismiss Plaintiff's (Mr., holder of National ID No., the Owner of Institution, C.R No.) case in form for failure to object to Defendant's decision regarding Zakat Assessment of 2011 and 2012 AD.

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

Zakat Payer objects to the Primary Department's decision in question, claiming that ZATCA, when it made its Assessment did not prove Zakat Payer's receipt of that Assessment by virtue of a notification, as is the case now. In addition, the person who owned the Institution "Zakat Payer" has passed away, and Zakat Payer would like to ascertain the amounts of Zakat due to clear his conscience by considering his Case on merits. Zakat Payer concluded by requesting reversal of the Primary Department's decision in question for the stated grounds.

On Monday, 22/10/1443 AH, corresponding to 23/05/2022 AD, the Department decided to hold a 10-day e-hearing session, in which ZATCA submitted a Rejoinder to Zakat Payer's appeal, a summary of which included that it adheres to its view presented before the Primary Department, and that the appealed decision must be final since the amount in dispute does not exceed (SAR 50,000) pursuant to Article (42.1) of Tax Dispute and Violation Committee Procedures. ZATCA added that Zakat Payer did not file his objection within the prescribed statutory period in accordance with Article (22) of Implementing Regulations for the Collection of Zakat of 1438 AH. In addition, ZATCA requests the Department to dismiss any new petitions from Zakat Payer based on Article (186) of Law of Civil Procedure. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Zakat Payer's appeal be dismissed and the Primary Department's decision in question be upheld for the stated grounds.

On Sunday, 27/11/1443 AH, corresponding to 26/06/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents



included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

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

On Merits: As for Zakat Payer's appeal regarding his objection to the Primary Department's decision in question for dismissing its Case in form, claiming that he was not the owner of the Institution, when ZATCA made its Assessment, which was the reason why he did not file his objection within the prescribed statutory period, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of the subject of dispute and documents included in Case file, found that, since ZATCA's Assessment was made on Mr., and that the ownership of the Institution was transferred to Mr. after the years in question as stated in the commercial registration of the Institution, while ZATCA's Assessment was issued in the name of its previous owner; and since the financial liability of the Institution is inseparable from the liability of its owner, as the Zakat due is considered a personal debt on the owner of the Institution during the years subject to Assessment, which determines ZATCA's ineligibility to claim Zakat Payer (Mr.) of Zakat due on the Institution for the years preceding the transfer of its ownership to Zakat Payer; and since the aforementioned is not affected by Zakat Payer's failure to file his objection before ZATCA initially, as he was not subject to Zakat for years subject to Assessment; hence, Zakat Payer's claim is not related to Zakat Assessment thereon; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed decision by deciding ZATCA's ineligibility to claim Zakat Payer (Mr.) of Zakat due on the Institution for the years preceding the transfer of its ownership to Zakat Payer.

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

Decision

First: Accept Zakat Payer's (..... Institution, C.R No., TIN No.) appeal against Decision No. (IZD-2020-202) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in Case No. (Z-10316-2019) in connection with Zakat Assessment of 2011 and 2012 AD, in form.

Second: On Merits: Accept Zakat Payer's appeal and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam, for the grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-263

Case No. I-26747-2020

Principle No. 347

- The general rule for real estate is that they are not for trading unless intended for profit and trading

Principle No. 348

- The interest shall be deducted when calculating the Zakat profit, and the non-addition of the debt arising from the unpaid obligations is considered double deduction from Zakat Base

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as the Legal Representative of the Appellant Company (“Zakat Payer”), by virtue of its Articles of Association, against Decision No. (IFR-2020-52) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (Z-8376-2019) in connection with Zakat Assessment of 2014 AD, filed by Zakat Payer against Zakat, Tax, and Customs Authority (“ZATCA”). The appealed decision ruled as follows:

First: Dismiss Plaintiff’s (..... Company, C.R No., TIN No.) objection to Defendant’s “ZATCA” decision regarding item (Long-Term Investments) in question.

Second: Dismiss Plaintiff’s (..... Company, C.R No., TIN No.) objection to Defendant’s “ZATCA” decision regarding item (Credit Interest) in question.

III. Establish resolution of dispute between Plaintiff (..... Company, C.R No., TIN No.) and Defendant “ZATCA” on item (Non-Deductible Other Expenses) in question.

Fourth: Establish resolution of dispute between Plaintiff (..... Company, C.R No., TIN No.) and Defendant “ZATCA” on item (Zakat Provision) in question.

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

Zakat Payer objects to the Primary Department’s decision in question regarding the following items:

1. Item (Deduction of Long-Term Investments from Zakat Base of 2014):

Zakat Payer clarifies that these investments represent the cost of (..... Project) established on Plot No. (2), (37/A), and (37/B) of Layout No. (C/1611) located in District, with the aim of leasing this project and benefiting from its returns in the long term. This project consists of fifty-four (54) villas, a club, and a ballroom. Due to the changes that occurred in the real estate market in general and the residential sector in particular, they affected the progress of the project and Zakat Payer’s inability to complete



the same due to the lack of liquidity from the partners and the failure to obtain additional financing to complete the Project.

In addition, since a loan was previously obtained against the project land (mortgage contract), and since the failure of payment of obligations has made the land subject to disposal by the bank, Zakat Payer had to find alternatives avoid its loss from selling the project at auction or any method the bank deems fit to meet Zakat Payer's obligations.

In 2016, an agreement was reached with a buyer (..... Company) to pay Zakat Payer's obligations to the lending bank and the obligations of the project contractors, as the sale was for an amount of (SAR 131,700,600) and it was paid and recorded in Zakat Payer's financial statements. Accordingly, Zakat Payer's intention since the beginning of the project in 2013 was to acquire the land for investing, developing, and building residential units for rental, with no portion of the project land being sold during 2014 and 2015.

Moreover, the reason for the decrease in the land area during 2014 is due to the expropriation of a portion thereto with an area of (676 m²) for the High Commission for the Development of Riyadh (currently known as Royal Commission for Riyadh City "RCRC"), and not a sale transaction.

2. Item (Addition of Credit Interest to Zakat Base):

Zakat Payer clarifies that the interest did not finance any investment, as the land of (..... Project) was purchased for an amount of (SAR 60,000,000), representing the full amount of the loan without the interest due as shown in the cashflow statement of 2013. Accordingly, those interest did not enter into the financing of investment in the purchase of the land of (..... Project), as it is considered an expense and a burden on Zakat Payer and is not considered fund that is benefited from or can be disposed of. Zakat Payer concluded by requesting reversal of the Primary Department's decision in question for the stated grounds.

Since the Department decided opening of pleadings, ZATCA submitted a Rejoinder on 09/12/1442 AH, corresponding to 18/07/2021 AD, to Zakat Payer's statement of appeal, wherein it stated that it adheres to its view presented before the Primary Department. ZATCA added that, with regard to item (Long-Term Investments), its decision came in compliance with Articles (4/Second/4-A-C) of Implementing Regulations for the Collection of Zakat. With regard to item (Credit Interest), it adheres to its view presented, as its decision came in compliance with Articles (4.5) and (20.3) of Implementing Regulations for the Collection of Zakat. In addition, claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. Moreover, ZATCA requests the Department to dismiss any new petitions from Zakat Payer based on Article (186) of Law of Civil Procedure. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Zakat Payer's appeal be dismissed and the Primary Department's decision in question be upheld for the stated grounds.

On Sunday, 21/10/1443 AH, corresponding to 22/05/2022 AD, the Department decided to hold a 10-day e-hearing session. The period elapsed without any additional submissions from either party to Appeal.

On Sunday, 25/12/1443 AH, corresponding to 24/07/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Zakat Payer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and decisions.



Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits: As for Zakat Payer's appeal regarding item (Deduction of Long-Term Investments from Zakat Base of 2014), which includes its objection to the Primary Department's decision for upholding ZATCA in rejecting to deduct the item in question from Zakat Base, wherein Zakat Payer claimed that these investments were for the purpose of acquisition and that no transaction was carried out thereon during the year in question, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of Zakat Payer's appeal and documents included in Case file, found that, since the general rule for real estate is that they are not for trading unless intended for profit and trading; and since it was not clear that the said land was offered for sale in the year in question; and since Zakat Payer has proved that the reason for the decrease in the area of the land in 2014 was not the result of a sale transaction on that land but rather due to the decrease in its value; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Addition of Credit Interest to Zakat Base), which includes its objection to the Primary Department's decision for upholding ZATCA in rejecting to deduct the item in question from Zakat Base, wherein Zakat Payer claimed that these investments were not used to finance any investment during the year in question, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld. The Department, having taken cognizance of Zakat Payer's appeal and documents included in Case file, found that, since the item in question represents an element of Zakat Base as one of the obligations; and since the interest is deducted when calculating the Zakat profit; thus, the failure to add the debt arising from the unpaid obligations is considered double deduction from Zakat Base; and since Zakat Payer has failed to provide proof of payment of those obligations before their completion of the Zakat Year transferred; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision as to conclusion it had in this regard.

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

Decision

First: Accept Zakat Payer's (..... Company, C.R No., TIN No.) appeal against Decision No. (IFR-2020-52) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (Z-8376-2019) in connection with Zakat Assessment of 2014 AD, in form.

Second: On Merits:

Accept Zakat Payer's appeal on item (Deduction of Long-Term Investments from Zakat Base of 2014) and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, for the grounds stated herein.

Dismiss Zakat Payer's appeal on item (Addition of Credit Interest to Zakat Base) and uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, for the grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-282

Case No. Z-28950-2020

Principle No. 349

- Zakat Payer's request to have its accounts audited by more than one certified accountant for the same year without any reference in the subsequent financial statements to the reasons for adjustment of balances reflected in the previous financial statements, is considered evidence of its intention to come up with a predetermined financial position or financial performance that is not reflected in the actual economic transactions and figures reflected in commercial books.

Principle No. 350

- The preparation of more than one set of financial statements for the same year with different financial data, is considered a valid reason for disregarding the same if the subsequent financial statements do not include objective reasons for amending the previous ones.

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as Appellant Company's ("Zakat Payer") Attorney, under POA No., and the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Zakat, Tax, and Customs Authority ("ZATCA"), against Decision No. (IZJ-2020-118) delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in Case No. (Z-131-2018) in connection with Zakat Assessment of 2008 – 2013 AD, filed by Zakat Payer against ZATCA. The appealed decision ruled as follows:

First: In Form:

Accept Plaintiff's (....., Company, C.R. No.) case.

Second: On Merits:

- (1) Dismiss Plaintiff's (..... Company, C.R. No.) objection to item (Field Examination Procedures of 2008 – 2013).
- (2) Amend Defendant's decision on item (Approval of Financial Statements of 2008 – 2013 as per Precedence of Preparation Date) as follows: a) For 2008 of (..... Company); b) For 2009 of (..... Office); c) For 2010 of (..... Office); d) For 2011 of (..... Company); e) For 2012 of (..... Company); and f) For 2013 of (..... Company).
- (3) Amend Defendant's decision on item (Addition of Opening or Closing Credit Balances, Whichever is Less, to Zakat Base of 2008 – 2013 as per Precedence of Preparation Date) as follows: a) For 2008 of (..... Company); b) For 2009 of (..... Office); c) For 2010 of (..... Office); d) For 2011 of (..... Company); e) For 2012 of (..... Company); and f) For 2013 of (..... Company).
- (4) Amend Defendant's decision on item (Addition of Net Accounting Profit to Zakat Base of 2008 – 2013 as per Precedence of Preparation Date) as follows: a) For 2008 of (..... Company); b) For 2009 of (..... Office); c) For 2010 of (..... Office); d)



- For 2011 of (..... Company); e) For 2012 of (..... Company); and f) For 2013 of (..... Company).
- (5) Dismiss Plaintiff's objection to item (Investment Value Provision of 2008).
 - (6) Amend Defendant's decision on item (Addition of Opening Balance "After Deduction of Used Portion Throughout the Year" to Zakat Base of 2008 – 2013 as per Precedence of Preparation Date) as follows: a) For 2008 of (..... Company); b) For 2009 of (..... Office); c) For 2010 of (..... Office); d) For 2011 of (..... Company); e) For 2012 of (..... Company); and f) For 2013 of (..... Company).
 - (7) Dismiss the Plaintiff's objection to item (Provision for Doubtful Debt of 2012 and 2013).
 - (8) Dismiss Plaintiff's objection to item (Zakat Provision of 2013).
 - (9) Amend Defendant's decision on item (Addition of Opening Statutory Reserve to Zakat Base of 2008 – 2013 as per Precedence of Preparation Date) as follows: a) For 2008 of (..... Company); b) For 2009 of (..... Office); c) For 2010 of (..... Office); d) For 2011 of (..... Company); e) For 2012 of (..... Company); and f) For 2013 of (..... Company).
 - (10) Amend Defendant's decision on item (Addition of Opening Retained Earnings to Zakat Base of 2008 – 2012 as per Precedence of Preparation Date) as follows: a) For 2008 of (..... Company); b) For 2009 of (..... Office); c) For 2010 of (..... Office); d) For 2011 of (..... Company); and e) For 2012 of (..... Company).
 - (11) Amend Defendant's decision on item (Addition of Opening or Closing Balances of Payables and Accruals, Whichever is Less, to Zakat Base of 2008 – 2013 as per Precedence of Preparation Date) as follows: a) For 2008 of (..... Company); b) For 2009 of (..... Office); c) For 2010 of (..... Office); d) For 2011 of (..... Company); e) For 2012 of (..... Company); and f) For 2013 of (..... Company).
 - (12) Dismiss Plaintiff's objection to item (Creditor Banks of 2013).
 - (13) Amend Defendant's decision on item (Addition of Overstated Amounts for Completed Business to Zakat Base of 2008 and 2009 as per Precedence of Preparation Date by Certified Accounting Offices) as follows: a) For 2008 of (..... Company); and b) For 2009 of (..... Office).
 - (14) Amend Defendant's decision on item (Addition of Short-Term Loans to Zakat Base of 2008 – 2012 as per Precedence of Preparation Date) as follows:
 - a) For 2008 of (..... Company); b) For 2009 of (..... Office); c) For 2010 of (..... Office); d) For 2011 of (..... Company); and e) For 2012 of (..... Company).
 - (15) Amend Defendant's decision on item (Addition of Long-Term Loans to Zakat Base of 2008 and 2009 as per Precedence of Preparation Date by Certified Accounting Offices) as follows: a) For 2008 of (..... Company); and b) For 2009 of (..... Office).
 - (16) Amend Defendant's decision on item (Addition of Investments to Zakat Base of 2008 – 2010 as per Precedence of Preparation Date) as follows: a) For 2008 of (..... Company); b) For 2009 of (..... Office); and c) For 2010 of (..... Office).
 - (17) Amend Defendant's decision on item (Addition of Fixed Assets to Zakat Base of 2009 – 2013 as per Precedence of Preparation Date) as follows: a) For 2009 of (..... Office); b) For 2010 of (..... Office); c) For 2011 of (..... Company); d) For 2012 of (..... Company); and e) For 2013 of (..... Company).
 - (18) Dismiss Plaintiff's objection to item (Advance Payments of 2013).
 - (19) Dismiss Plaintiff's objection to item (Related Parties of 2013).
 - (20) Dismiss Plaintiff's objection to item (Accrued Expenses of 2013).

Since both parties were dissatisfied with this decision; they submitted a statement of appeal summarized as follows:

As for Zakat Payer's appeal against the Primary Department's decision in question regarding item (Approval of Financial Statements of 2008 – 2013 issued by "..... Office"), Zakat Payer asserts that the requirements for administrative decision in question



are not met due to invalidity of the grounds upon which it was issued, which was ZATCA's claim that the financial statements audited by (..... Office "Certified Accountants") were incorrect.

In addition, the Primary Department's acceptance of the financial statements prepared by (..... Office) for 2009 and 2010 as per the precedence of their issuance dates is evidence of its acknowledgment that these financial statements were unquestionable, valid, correct, and reflect the actual financial position of Zakat Payer. Moreover, the financial statements prepared by (..... Office) were the actual and valid financial statements due to their certification by governmental third parties, such as Ministry of Finance, by matching the following: 1. Contract interim invoices provided to the Ministry with those attached to the financial statements; 2. Statements received from the General Organization for Social Insurance ("GOSI") with those recognized in the financial statements as expenses related to wages and salaries; 3. Bank balances with those mentioned in the financial statements; and 4. Financial statements prepared under the requirements of Saudi Companies Law with audited financial statements prepared by (..... Office "Certified Accountants") licensed in accordance with the Law of Certified Public Accountants. Also, the Primary Department based its decision on the precedence of financial statement issuance dates, which is incorrect pursuant to the accounting principles and financial statement preparation standards, and violates the principle of equality between legal positions, as the financial statements reflect the financial position at a specific period, showing balances as of that date, which then become the opening balances for the subsequent fiscal year. The differences in the financial statements are the result of adjusting one side of estimation equation to modify Zakat Payer's outcomes for bank financing purposes, without causing accounting errors or concealment. Furthermore, the Primary Department's decision resulted in liabilities on Zakat Payer, as the Primary Department disregarded that 70% of the Company "Zakat Payer" was purchased by new owners unrelated to the years in question but still subject to Zakat obligations. Zakat Payer concluded by requesting reversal of Primary Department's decision on the item in question for the stated grounds. As for ZATCA's appeal against the Primary Department's decision, it primarily claims to dismiss the Case for Res Judicata; an argument raised before the Primary Department that was disregarded. Its appeal also including the following:

1. Item (Financial Statements of 2008 – 2013 as per Precedence of Preparation Date):
ZATCA requests reversal of Primary Department's decision on approving the financial statements in question for non-conformity of the opening and closing balances, as ZATCA clarifies that the financial statements should be prepared based on applicable accounting standards and principles, most importantly previous and subsequent financial events, which indicates that any financial event that occurred at the end of the period shall be consistent with the same financial event that occurred at the beginning of the period for the upcoming year. However, the Primary Department decided to amend ZATCA's decision on the grounds that all financial statements were prepared after auditing and matching Zakat Payer's accounts and documents, and that such matching was approved by Company "Zakat Payer" Management. Accordingly, it approved these financial statements as per precedence of their preparation date. In addition, the grounds upon which the Primary Department decision was rendered were ambiguous, as it ruled to add items (Overstated Amounts for Completed Business of 2008 and 2009), (Short-Term Loans of 2008 – 2012), and (Long-Term Loans of 2008 and 2009) to Zakat Base according to the financial statements it had approved. However, it did not determine whether balances should be recognized, as it concluded to reverse ZATCA's decision and recognize the amounts reflected in the financial statements it had approved.
2. Item (Addition of Investments to Zakat Base of 2008 – 2010):
ZATCA states that the investments are not added to Zakat Base but rather deducted.



Accordingly, the wording of the Primary Department's decision was inconsistent with the calculation mechanism of Zakat Base, which in turn established that such a decision is flawed. In addition, the Primary Department based its decision on the audited financial statements as per the precedence of their preparation date; however, it did not establish that the conditions set forth in Ministerial Decision No. (1005) of 28/04/1428 AH were met. Moreover, the Primary Department has ruled to add the item in question as reflected in the financial statements for 2011 – 2013; however, these financial statements did not include the item in question, which necessitates amending the Primary Department's decision by deducting the item in question rather than adding the same and determining the balance.

3. Item (Addition of Fixed Assets of 2009 – 2013):

As clarified in the above item, the fixed assets are not added to Zakat Base but rather deducted. Accordingly, the wording of the Primary Department's decision was inconsistent with the calculation mechanism of Zakat Base, which in turn established that such a decision is flawed. In addition, the Primary Department based its decision on a ministerial decision issued with regard to investments, not fixed assets. Moreover, the balance should have been determined if it was unclear, which determines that Primary Department's decision is ambiguous and flawed. Moreover, the Primary Department did not ask Zakat Payer to prove the validity of its objection, nor did it provide any documents to that effect. Zakat Payer also requested the Primary Department to dismiss any new documents that were not previously provided thereto. However, the Primary Department concluded to reverse ZATCA's decision and add fixed assets to Zakat Base as reflected in the financial statement and based on the precedence of their preparation date. Furthermore, ZATCA requests the Department to dismiss any new documents that have not previously been submitted during the examination and objection stages. ZATCA concluded by requesting ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that the Primary Department's decision in question be dismissed for the stated grounds.

Since the Department decided opening of pleadings, ZATCA submitted a Rejoinder on 21/09/1442 AH, corresponding to 02/05/2021 AD, a summary of which included that it argued of inadmissibility of the Case in form due to Zakat Payer's failure to pay or provide the financial security, which is a prerequisite for hearing its Case pursuant to Article (23.3/D) of the Implementing Regulations for the Collection of Zakat of 1438 AH. ZATCA added that, having taken cognizance of Case documents, it found that Zakat Payer did not submit the statement of appeal brief. As a result, ZATCA was unable to identify Zakat Payer's requests nor the contested items subject of its appeal. In addition, ZATCA requests dismissal of Zakat Payer's appeal for failure to file the Case in accordance with Article (41) of the Law of Civil Procedure and Article (8) of Tax Dispute and Violation Committee Procedures. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Zakat Payer's appeal be dismissed and the Primary Department's decision be upheld for the stated grounds.

Zakat Payer also submitted a Reply to ZATCA's appeal, a summary of which included its request to dismiss ZATCA's appeal on its merits, uphold appealed decision on the items subject of ZATCA's appeal, and abolish ZATCA's Assessment.

On Sunday, 01/02/1444 AH corresponding to 28/08/2022 AD, the Department decided holding 10-day e-hearing, wherein ZATCA submitted a Reply, a summary of which included that it adheres to the validity and soundness of its procedure and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. It also included its response regarding the following:

1. Item (Field Examination Procedures of 2008 – 2013):

ZATCA states that there is no defect or error in field examination procedures, or



irregularities by examination team members. Accordingly, there no evidence that the examination process has been compromised. ZATCA also maintains validity of the Primary Department's decision since it came in compliance with Articles (21.1) and (21.4) of the Implementing Regulations for the Collection of Zakat of 1438 AH, as the Primary Department, according to the inspection reports and documents submitted, found that there was no defect in the performed examination procedures, which in turn endorsed validity of ZATCA decision.

2. Items (Approval of Financial Statements of 2008 – 2013), (Opening or Closing Credit Balances, Whichever is Less, to Zakat Base of 2008 – 2013), (Net Accounting Profit of 2008 – 2013), (Addition of Opening Balance “After Deduction of Used Portion Throughout the Year” to Zakat Base of 2008 – 2013), (Addition of Opening Statutory Reserve to Zakat Base of 2008 – 2013), (Retained of 2008 – 2012), (Balances of Payables and Accruals of 2008 – 2013), (Overstated Amounts for Completed Business to Zakat Base of 2008 and 2009), (Short-Term Loans of 2008 – 2012), (Long-Term Loans of 2008 and 2009), (Investments of 2008 – 2010), and (Fixed Assets to Zakat Base of 2009 – 2013):

ZATCA filed its appeal regarding these items under a statement of appeal dated 10/11/2020 AD, and to avoid repetition and save the Department's time, ZATCA refers to that statement of appeal.

3. Item (Investment Value Provision of 2008):

ZATCA maintains validity of the Primary Department's decision since it came in compliance with ZATCA Circular No. (02/8443/02) of 18/08/1392 AH and Articles (5.1) and (6.2) of the Implementing Regulations for the Collection of Zakat of 1438 AH. ZATCA added that, since Zakat Payer did not submit any new documents in its statement of appeal regarding the item in question, ZATCA adheres to the validity and soundness of its procedure.

4. Items (Provision for Doubtful Debt of 2012 and 2013) and (Zakat Provision of 2013):

ZATCA maintains validity of the Primary Department's decision since it came in compliance with Articles (4.9) and (6.6) of the Implementing Regulations for the Collection of Zakat of 1438 AH, ZATCA added that, since Zakat Payer did not submit any new documents in its statement of appeal regarding the item in question, ZATCA adheres to the validity and soundness of its procedure.

5. Item (Creditor Banks of 2013):

ZATCA maintains validity of the Primary Department's decision since it came in compliance with Fatwa No. (2384/02) of 1406 AH, Fatwa No. (22665) of 15/04/1424 AH, and Article (4.5) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. ZATCA added that loans constitute a part of Zakat Base components regardless of their type, source, or purpose, provided that their balances complete the Zakat Year in accordance with the aforementioned Fatwas and Article. Accordingly, ZATCA adheres to the validity and soundness of its procedure, as well as the conclusion reached in the Primary Department's decision.

6. Item (Advance Payments of 2013):

ZATCA maintains validity of the Primary Department's decision since it came in compliance with Fatwa No. (23408) of 18/11/1426 AH, Fatwa No. (22384) of 30/03/1406 AH, and Article (4.4) of the Implementing Regulations for the Collection of Zakat of 1438 AH. ZATCA added that, since Zakat Payer did not provide any supporting documents for its claim, nor the supporting documents for the non-completion of Zakat Year, ZATCA adheres to the validity and soundness of its procedure, as well as the conclusion reached in the Primary Department's decision.

7. Item (Related Parties of 2013):

ZATCA maintains validity of the Primary Department's decision since it came in compliance with Fatwa No. (2384/02) of 1406 AH and Article (4.5/First) of the Implementing Regulations for the Collection of Zakat of 1438 AH. ZATCA added that,



since Zakat Payer did not provide any supporting documents for its claim, ZATCA adheres to the validity and soundness of its procedure, as well as the conclusion reached in the Primary Department's decision.

8. Item (Accrued Expenses of 2013):

ZATCA maintains validity of the Primary Department's decision since it came in compliance with Articles (5.1) and (6.5) of the Implementing Regulations for the Collection Zakat of 1438 AH, and Fatwa No. (02/3077) of 08/11/1426 AH.

ZATCA added that, since Zakat Payer did not provide any supporting documents for its claim, ZATCA adheres to the validity and soundness of its procedure, as well as the conclusion reached in the Primary Department's decision.

Furthermore, ZATCA requests the Department to dismiss any new documents from Zakat Payer that have not been presented, either before ZATCA or the Primary Department, or any new petitions based on Article (186) of Law of Civil Procedure. ZATCA concluded by adhering to the validity and soundness of its procedure and requested that Zakat Payer's appeal be dismissed on the items subject of its appeal and the Department's decision be upheld for the stated grounds.

On Tuesday, 03/02/1444 AH corresponding to 30/08/2022 AD, the Department, having taken cognizance of appeal memorandums, replies thereto and documents included Case file, found that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

The Department, having taken cognizance of Case documents and statement of appeals submitted by Zakat Payer and ZATCA, found that conditions for hearing appeal have been met in form as stipulated in the relevant laws, regulations, and resolutions. Therefore, both appeals are accepted in form for being filed by parties having capacity and within the statutory period.

On Merits:

As for ZATCA appeal regarding the formal aspect, the Department, having taken cognizance of ZATCA Appeal, found that it includes considering Zakat Payer's objection to Zakat Assessment of 2008, in which the appealed decision has previously been rendered; and since ZATCA has issued a Duplicated Assessment for the same year after the appealed decision was rendered; and since a final judgment was rendered for the same year in question; Therefore, that decision acquires the force of *res judicata*, which determines non-eligibility of ZATCA to make an Assessment for the year in question; and since this Department decided that ZATCA Assessment for that year was time-barred; thus, its Amended Assessment shall be disregarded after this Department rendered a decision concerning prescription of ZATCA Second Assessment that was the subject matter of the Primary Department's decision; Therefore, the Department satisfies to dismiss ZATCA appeal on the item in question.

As for Zakat Payer's appeal regarding (Approval of Financial Statements of 2009 – 2013 issued by “..... Office”), which includes its objection to the Primary Department's decision regarding the same, wherein Zakat Payer claimed that the bases upon which the administrative decision was issued were not met due to invalidity of grounds in ZATCA claim that the financial statements were incorrect, despite being accepted by the Primary Department according to the precedence of their issuance dates, which determines that the financial statements are true and valid, reflecting the actual financial position of Zakat Payer, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld. The Department, having taken cognizance of Zakat Payer's appeal and the financial statements, found that:

With regard to years “2009 – 2010;” Since ZATCA's Assessment of 2009 – 2010 was made



after the lapse of the prescribed statutory period to amend Zakat Payer's Declaration, which is five (5) years from the final date set for submission of Zakat Declaration by Zakat Payer for each year; and since these rules are established to maintain the stability of transactions and prevent instability of Zakat Payers' positions in case of absence of a timeframe that ensures maintaining their financial positions not jeopardized; and since this matter does not result in releasing Zakat Payer from its legal obligation if it is already concerned with meeting such obligation, but rather represents a procedural issue with relation to ZATCA right to make a revised Assessments after the lapse of the prescribed statutory period; Therefore, the Department satisfies to decide invalidity of ZATCA's procedure for making those amendments, and by extension, to accept Zakat Payer's appeal and reverse the appealed decision as to conclusions it had in this regard.

With regard to years "2011 – 2013;" Since Zakat Payer requested to have its accounts audited by more than one certified accountant for the same year without any reference in the subsequent financial statements to the reasons for adjustment of balances reflected in the previous financial statements, which is considered evidence of its intention to come up with a predetermined financial position or financial performance that is not reflected in the actual economic transactions and figures reflected in commercial books; and since the preparation of more than one set of financial statements for the same year with different financial data, is considered a valid reason for disregarding the same if the subsequent financial statements do not include objective reasons for amending the previous ones; and since recognizing different amounts in various financial statements could be attributed to invalidity of presentation of financial statements or incompleteness of accounting books; and since ZATCA did not disregard Zakat Payer's financial statements; and since the Primary Department decided to consider financial statements based on precedence of their auditing; and since the grounds adopted by the Primary Department were justified in terms of the inclusion of information reflecting Zakat Payer's financial position and business outcomes in the oldest financial statements; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision as to conclusions it had in this regard.

As for ZATCA's appeal regarding Items Nos. (3), (4), (6), (9), (10), (11), (13), (14) and (15) based on precedence of financial statement preparation dates by certified accounting offices, which includes its objection to the Primary Department's decision for amending ZATCA's "Defendant" decision regarding the same, wherein ZATCA claimed that the opening and closing balances are not matched, as the financial statements are prepared based on applicable accounting standards and principles, most importantly previous and subsequent financial events, while Zakat Payer argued that it requests that ZATCA's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of the subject matter of dispute, ZATCA's appeal, and documents included in Case file, found that:

With regard to the financial statements; Since ZATCA appeal was based on the appealed decision by approving sets of the financial statements of each year by their precedence; and since this Department upheld the appealed decision; Therefore, the Department satisfies to dismiss ZATCA's appeal and amend its Assessment in accordance with the financial statements recognized by the appealed decision and upheld by this Department for the years that are not time-barred.

With regard to ZATCA's claims that the appealed decision was ambiguous for the balance of short-term loans of 2011 and 2012; Since this Department has upheld the appealed decision regarding the Assessment made in accordance with Zakat Payer's financial statements for the years preceding to such two years, which determines that there is no requirement for determining balance, as the dispute was not related to such balance, but rather the source of information related to the item in question; Therefore, the Department satisfies to disregard ZATCA's appeal.



As for ZATCA's appeal regarding item (Addition of Investments to Zakat Base of 2008 – 2010), which includes its objection to the Primary Department's decision regarding the same, wherein ZATCA claimed that the investments are not added to Zakat Base but rather deducted; thus, the wording of the Primary Department's decision is inconsistent with the calculation mechanism of Zakat Base, rendering such decision flawed, and that the Primary Department ruled to add the item in question as reflected in the financial statements for 2011 – 2013; however, these financial statements did not include the item in question, which necessitates amending the Primary Department's decision by deducting the item in question rather than adding the same and determining the balance, while Zakat Payer argued that it requests that ZATCA's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of ZATCA's appeal, the appealed decision, and documents included in Case file, found that, since it has decided that the statutory period for ZATCA's right to make the Assessment was lapsed and accepted Zakat Payer's Declaration; Therefore, the Department satisfies to dismiss ZATCA's appeal on the item in question; and since ZATCA's claim regarding the appealed decision's addition of years that were not included in the item in question, was merely an additional explanation for the wording of the appealed decision and did not affect its merits, as its wording referred to the years in question and such additional explanation was related to determining financial statements that should be used upon making Zakat Assessment; Therefore, the Department satisfies to decide that such error did not affect the wording of Primary Department's decision.

As for ZATCA's appeal regarding item (Addition of Fixed Assets to Zakat Base of 2009 – 2013), which includes its objection to the Primary Department's decision regarding the same, wherein ZATCA claimed that fixed assets are not added to Zakat Base but rather deducted; thus, the wording of the Primary Department's decision is inconsistent with the calculation mechanism of Zakat Base, rendering such decision flawed, while Zakat Payer argued that it requests that ZATCA's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of taken cognizance of the subject matter of dispute, ZATCA's appeal, and documents included in Case file, found that:

With regard to years "2009 – 2010;" The Department has decided that the statutory period for ZATCA's right to make the Assessment was lapsed and accepted Zakat Payer's Declaration;

With regard to years "2011 – 2013;" Since ZATCA appeal was based on the appealed decision by approving sets of the financial statements of each year by their precedence; and since this Department upheld the appealed decision; Therefore, the Department satisfies to dismiss ZATCA's appeal and amend its Assessment in accordance with the financial statements recognized by the appealed decision and upheld by this Department for the years in question; and since the conclusion reached in the appealed decision was not affected by ZATCA's claim regarding the appealed decision's error for inferencing to the ministerial decision issued with relation to investments, which decided to amend ZATCA's Assessment to align with the financial statements adopted by this Department decided for making Zakat Assessment.

Decision

First:

Accept Zakat Payer's (..... Company, C.R No., TIN No.) appeal and ZATCA's appeal against Decision No. (IZJ-2020-118) delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah in Case No. (Z-131-2018) in connection with Zakat Assessment of 2008 – 2013, in form.



Second: On Merits:

1. Dismiss ZATCA's appeal regarding the peremptory defense related to dismissing the Case for res judicata, and uphold the Decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, for the grounds stated herein.
2. As for item (Approval of Financial Statements of 2009 – 2013 issued by “..... Office”):
 - A. Accept Zakat Payer's appeal for years 2009 and 2010, and reverse the Decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, for the grounds stated herein.
 - B. Dismiss Zakat Payer's appeal for years 2011 – 2013, and uphold the Decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, for the grounds stated herein.
3. Dismiss ZATCA's appeal regarding the Primary Department's decision in amending ZATCA's “Defendant” decision for Items Nos. (3), (4), (6), (9), (10), (11), (13), (14) and (15) based on precedence of financial statement preparation dates by certified accounting offices, and amend its Assessment in accordance with the financial statements recognized by the appealed decision and upheld by this Department for the years that are not time-barred, for the grounds stated herein.
4. Disregard ZATCA's appeal on the ambiguity in the appealed decision for the balance of short-term loans of 2011 and 2012, for the grounds stated herein.
5. Dismiss ZATCA's appeal on item (Addition of Investments to Zakat Base of 2008 – 2010), accept Zakat Payer's Declaration, and reverse the Decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, for the grounds stated herein.
6. As for item (Addition of Fixed Assets to Zakat Base of 2009 – 2013):
 - A. Dismiss ZATCA's appeal for years 2009 and 2010, and accept Zakat Payer's Declaration, for the grounds stated herein.
 - B. Dismiss ZATCA's appeal for years 2011 – 2013, and amend its Assessment in accordance with the financial statements recognized by the appealed decision and upheld by this Department for years 2011 – 2013, for the grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-305

Case No. Z-26390-2020

Principle No. 351

- Zakat is imposed on capital and realized revenues. However, Zakat Payer's failure to provide proof of payment of Zakat on these foreign investments results in subjection of these funds to Zakat.

Principle No. 352

- Determining the adjusted net profit to be the Zakat Base is groundless of any fact or law since the profits generating from the revenues may not exist at the end of the Zakat Year when they are disbursed by Zakat Payer to purchase a deductible asset from Zakat Base.

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as Appellant Company's ("Zakat Payer") Attorney, under POA No., and the appeal filed on 02/03/1442 AH, corresponding to 18/10/2020 AD, by Zakat, Tax, and Customs Authority ("ZATCA"), against Decision No. (IZD-2020-136) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in Case No. (Z-9110-2019) in connection with Zakat Assessment of 2005 – 2007 AD, filed by Zakat Payer against ZATCA. The appealed decision ruled as follows:

First: In Form:

- Accept Plaintiff's case.

On Merits:

- Dismiss Plaintiff's objection to item (Revenues Realized Outside the Kingdom of 2005 – 2007).
- Abolish Defendant's decision regarding item (Calculation of Zakat on Adjusted Profit).
- Establish resolution of dispute on item (Material Error).
- Establish resolution of dispute on item (Ex-Accruals).

Since both parties were dissatisfied with this decision; they submitted a statement of appeal summarized as follows:

As for Zakat Payer's appeal against the Primary Department's decision in question regarding item (Revenues Realized Outside the Kingdom of 2005 – 2007), wherein it requests not to subject profits generated from business carried out outside the Kingdom to Zakat pursuant to the "Tax Territorial Principle," and that the request for exemption of those profits was on the basis of the actual revenues and costs of 2005 – 2007. Zakat Payer concluded by requesting reversal of the Primary Department's decision in question for the stated grounds.



As for ZATCA's appeal against the Primary Department's decision in question regarding item (Calculation of Zakat on Adjusted Profit), wherein it clarifies that it has deducted the fixed assets within the limits of equity rights in application of Article (4) of Implementing Regulations for Collection of Zakat issued by Ministerial Decision (2082) of 01/06/1438 AH. Moreover, Fatwa No. (23408) supports its decision, as the net profit for the two years subject to Zakat Assessment is not determined until after the accounts are closed at the end of the fiscal year, and it cannot be argued that the purchase of fixed assets during the year was made from the net profits that will not be generated nor be actually determined except after the end of the year. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting reversal of the Primary Department's decision in question for the stated grounds.

Since the Department decided opening of pleadings, ZATCA submitted a Rejoinder on 09/01/1443 AH, corresponding to 17/08/2021 AD, to Zakat Payer's statement of appeal, a summary of which included that it adheres to the validity of the appealed decision in accordance with the grounds and the legal requirement, and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. ZATCA added that Zakat Payer's request to exclude the revenues realized outside the kingdom from being subjected to tax in application of the Territorial Principle applies only to Tax Cases, not Zakat Cases, as is the Case under appeal, but rather the Ministerial Decision No. (393) of 06/08/1370 AH applies to Zakat Payer. Moreover, ZATCA requests the Department to dismiss any new petitions from Zakat Payer that have not been submitted during the examination and objection stages. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Zakat Payer's appeal be dismissed and the Primary Department's decision in question be upheld for the stated grounds.

On Thursday, 10/11/1443 AH, corresponding to 09/06/2022 AD, the Department, having taken cognizance of Case file, and since the Primary Department's decision stated that ZATCA's Assessment for years in question was on 03/06/1439 AH, while ZATCA's Letter addressed to the General Secretariat regarding Zakat Payer's objection stated that ZATCA's Primary Assessment was on 20/02/1432 AH, and that the other Assessment was on 16/03/1434 AH; the Department has requested ZATCA to provide a clarification regarding these Multiple Assessments, and which Assessment relates to Zakat Payer's objection before the Primary Department for years 2005 – 2007, along with the Assessment Notification in question within seven (7) days of this date. ZATCA submitted a Reply, a summary of which included that it had issued its Decision No. (06/8275/03) of 20/12/1432 AH of Assessment of 2005 – 2007. Then, Zakat Payer submitted its objection to the said Assessment under No. (3759) of 18/04/1432 AH. ZATCA, having examined Zakat Payer objection, issued a decision to partially accept some of the contested items by virtue of an Amended Assessment Notification No. (02/2059) of 16/03/1434 AH, which is the Assessment in question (a copy is attached herein). As for the Primary Department's statement that Plaintiff "Zakat Payer" was informed of Assessment decision on 03/06/1439 AH, ZATCA affirms that it was not sure of the validity of the Primary Department's conclusion regarding the issuance of an Assessment on the said date. In addition, neither Zakat Payer nor ZATCA had been previously raised or argued such a plea before the Primary Department. Accordingly, ZATCA requests to inquire from the Primary Department regarding its conclusion of the existence of Assessment decision on 03/06/1439 AH, especially since it has considered the case and issued a decision in light of the Amended Assessment Notification No. (02/2059) of 16/03/1434 AH as stated in Items (Third) and (Fourth) of its decision in question. Furthermore, ZATCA attached the Amended Assessment Notification No. (02/2059) of 16/03/1434 AH.

On Sunday, 27/11/1443 AH, corresponding to 26/06/2022 AD, the Department, having taken cognizance of the appealed decision, found that there was a material error related to



the date of issuance of ZATCA's decision regarding the Revised Assessment and Zakat Payer's objection thereto, as ZATCA's decision was issued on 16/03/1434 AH, and Zakat Payer's objection thereto was on 15/05/1434 AH, which determines invalidity of the Primary Department's conclusion that the said decision was issued on 03/06/1439 AH, and Zakat Payer's objection thereto was on 26/07/1439 AH; Therefore, and based on the provisions of Article (38) of Tax Dispute and Violation Committee Procedures, the Department has decided to remand the appealed decision to the First Department for Determination of Income Tax Violations and Disputes in Dammam for rectification and notification of the same to parties to Case, and to reintroduce the Case to this Department to complete its consideration.

On Sunday, 21/10/1443 AH, corresponding to 22/05/2022 AD, the Department decided to hold a 10-day e-hearing session. The period elapsed without any additional submissions from either party to the appeal.

On Monday, 09/02/1444 AH, corresponding to 05/09/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

The Department, having taken cognizance of Case documents and statements of appeal submitted by Zakat Payer and ZATCA, found that conditions for hearing appeal have been met in form as stipulated in the relevant laws, regulations, and resolutions. Therefore, both appeals are accepted in form for being filed by parties having capacity and within the statutory period.

On Merits:

The Department, having taken cognizance of Case documents and statements of appeal, found that, since ZATCA's Assessment of 2005 was made after the lapse of the prescribed statutory period to amend Zakat Payer's Declaration, which is five (5) years from the final date set for submission of Zakat Declaration by Zakat Payer for each year; and since these rules are established to maintain the stability of transactions and prevent instability of Zakat Payers' positions in case of absence of a timeframe that ensures maintaining their financial positions not jeopardized; and since this matter does not result in releasing Zakat Payer from its legal obligation if it is already concerned with meeting such obligation, but rather represents a procedural issue with relation to ZATCA's right to raise revised Assessments after the lapse of the prescribed statutory period; Therefore, the Department satisfies to decide invalidity of ZATCA's procedure for making those amendments and by extension, to abolish ZATCA's Assessment of 2005 and calculate Zakat based on Zakat Declaration submitted by Zakat Payer for that year, and reverse the appealed decision as to conclusions it had in this regard.

As for Zakat Payer's appeal regarding item (Revenues Realized Outside the Kingdom), which includes its objection to the Primary Department's decision regarding the same, wherein Zakat Payer claimed that the profits generated from business carried out outside the Kingdom are not subject to Zakat pursuant to the "Tax Territorial Principle," while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of subject of dispute, statements of appeal, and documents included in Case file, found that, since Zakat Payer is a Saudi company engaged in the activity of providing catering and maintenance services for residential complexes and maintaining and installing electrical and mechanical equipment, through that activity it generates revenues for carrying out business outside the Kingdom; and since Zakat is imposed on capital and realized revenues; and since the Law has not has



stipulated any provisions exempting these foreign investments from Zakat; and since Zakat Payer has failed to provide proof of payment of Zakat on these foreign investments; Therefore, the Department satisfies to subject these funds in question to Zakat; and since the aforementioned is not affected by Zakat Payer reliance on the Tax Territorial Principle regarding the tax and the neutral territorial zones, as that matter is regulated by Income Tax Law; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision as to conclusions it had in this regard.

As for ZATCA's appeal regarding item (Assessment on Adjusted Profit of 2006 and 2007), which includes its objection to the Primary Department's decision regarding the same, wherein ZATCA claimed that it had deducted the fixed assets within the limits of equity rights in application of Article (4) of Implementing Regulations for Collection of Zakat of 1438 AH.

The Department, having taken cognizance of subject of dispute, statements of appeal, and documents included in Case file, found that, since ZATCA's approach in calculating Zakat Base on the grounds it had reached in determining the adjusted net profit is inconsistent with the Sharia rules, as Zakat Payer pays the Zakat on the funds it has at the time the Zakat becomes due; and since the amount that ZATCA has determined by making its Assessment to arrive the adjusted net profit to represent the Zakat Base is inconsistent with reality, as the basis in obligating the Zakat is the net profit as an element of Zakat Base; thus, the amount of Zakat Base is the result of matching the positive elements with the negative ones to determine the Zakat due for that amount, whether it is less or higher than the adjusted net profit; hence, determining the adjusted net profit to be the Zakat Base is groundless of any fact or law since the profits generating from the revenues may not exist at the end of the Zakat Year when they are disbursed by Zakat Payer to purchase a deductible asset from Zakat Base, as the criterion is the existence of an amount resulting from ZATCA's method in calculating Zakat Base as a general or fixed principle for processing Assessments without resorting to the method of determining the adjusted profit when the Zakat Base is less than the adjusted net profit; Accordingly, there is no legal basis that requires the adjusted net profit to be subject to the consideration that it is the Zakat Base on which the Zakat due is calculated in the manner claimed by ZATCA; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed decision as to conclusions it had in this regard.

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

First: Accept Zakat Payer's (..... Company, C.R No., TIN No.) appeal and ZATCA's appeal against Decision No. (IZD-2020-136) delivered by the First Department for Determination of Income Tax Violations and Disputes in Dammam, in Case No. (Z-9110-2019) in connection with Zakat Assessment of 2005 – 2007 AD, in form.

Second: On Merits:

1. Abolish ZATCA's Assessment of 2005 and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam as to conclusions it had in this regard, by calculating Zakat as per Zakat Payer's Declaration for that year, for the grounds stated herein.
2. Dismiss Zakat Payer's appeal on item (Revenues Realized Outside the Kingdom) and uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam, for the grounds stated herein.
3. Dismiss Zakat Payer's appeal on item (Assessment on Adjusted Profit of 2006 and 2007) and uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Dammam, for the grounds stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-322

Case No. ZW-27608-2020

Principle No. 353

- Zakat Payer is held accountable as per its regular accounts and financial statements, the accounts receivable shall be implicitly added to Zakat Base and shall not be deducted therefrom.

Facts

The Department convened to consider the appeal filed on .../.../... AH, corresponding to .../.../... AD, by Mr., holder of National ID No., in his capacity as Appellant Company's ("Zakat Payer") Attorney, under POA No., and the appeal filed on .../.../... AH, corresponding to .../.../... AD, against Decision No. (IZJ-2020-108) delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in Case No. (Z-161-2018) in connection with Zakat Assessment of 2009 – 2013 AD, filed by Zakat Payer against Zakat, Tax, and Customs Authority ("ZATCA"). The appealed decision ruled as follows:

First: In Form:

Accept Plaintiff's (....., C.R. No.) case.

Second: On Merits:

1. Dismiss Plaintiff's objection to item (Sale Differences from Accounts Receivable of 2009).
2. Dismiss Plaintiff's objection to item (Offshore Procurement of 2010).
3. Dismiss Plaintiff's objection to item (Salary and Wage Differences Not Registered with GOSI of 2011 – 2013).
4. Accept Plaintiff's objection to item (Contracts with Government Agencies of 2011 – 2013).
5. Dismiss Plaintiff's objection to item (Related Parties of 2009 – 2013).

Since both parties were dissatisfied with this decision; they submitted a statement of appeal summarized as follows:

As for Zakat Payer's appeal against the Primary Department's decision in question, it included the following:

1. Item (Sale Differences from Accounts Receivable of 2009):

Zakat Payer claims that ZATCA has considered that the debtors' balance is equivalent to sales and then carried over the difference to net profits, which is an incorrect Assessment, as sales may be deferred or cash, and that the accounts receivable is an accumulative account that may contain balances from previous years and cannot be equivalent to the sales account that expresses deferred sales during the year in question only.

2. Item (Offshore Procurement of 2010):

Zakat Payer claims that these differences are the result of classifying internal procurement as imports, as the amount charged to the accounts as offshore procurement exceeds that included in Customs Declaration by (SAR 942,062). In addition, the wording of the appealed decision is also flawed, as the Primary Department stated in its decision that



Zakat Payer registered the offshore procurement at a lower value. Consequently, it had to subject the difference to estimated profits by (15.5%).

3. Item (Salary and Wage Differences Not Registered with GOSI of 2011 – 2013):

Zakat Payer claims that GOSI certificate included only the basic salary and housing allowance, while there are other amounts that are considered wages in accordance with the Labor Law.

4. Item (Related Parties of 2009 – 2013):

Zakat Payer claims that these amounts were incurred by the creditor company and represent incorporation and miscellaneous expenses. Zakat Payer concluded by requesting that the appealed decision be reversed on items in question for the stated grounds.

As for ZATCA's appeal against the Primary Department's decision in question regarding item (Contracts with Government Agencies of 2011 – 2013), it stated that the Primary Department's decision was incorrect by abolishing ZATCA's procedure regarding the item in question, as government contracts are received by ZATCA through a shared database of Government Agencies contracting with enterprises, as the Primary Department stated in the grounds of its decision the following: "Although Plaintiff has submitted a contract follow-up statement showing all contracts entered into with Government Agencies, it did not include the remaining revenues from service agreement and contracts or their numbers, nor the information on which the Assessment was made." ZATCA clarifies that the Primary Department should have requested Zakat Payer to provide a proof of absence of these contracts from the Government Agencies contracted with, as these contracts were entered into with the Ministry of Health. In addition, the Primary Department's decision statement of ZATCA's failure to provide clarification for these contracts was incorrect, as that clarification submitted by ZATCA was essentially valid and sound. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that the appealed decision be reversed on item in question for the stated grounds.

On Sunday, 21/10/1443 AH, corresponding to 22/05/2022 AD, the Department decided to hold a 10-day e-hearing session, in which ZATCA submitted a Rejoinder to Zakat Payer's appeal, a summary of which included that it adheres to the validity and soundness of its procedure and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. It also included its response regarding the following:

1. Item (Sale Differences from Accounts Receivable of 2009):

ZATCA stated that its procedure came in compliance with the provisions of Articles (20.3), (5.1), and (6.2) of Implementing Regulations for the Collection of Zakat of 1438 AH.

2. Item (Offshore Procurement of 2010):

ZATCA stated that its procedure came in compliance with the provisions of Articles (5.1/A), (6.2), and (20.3) of Implementing Regulations for the Collection of Zakat of 1438 AH, and Circular No. (2030) of 1430 AH.

3. Item (Salary and Wage Differences Not Registered with GOSI of 2011 – 2013):

ZATCA stated that its procedure came in compliance with the provisions of Articles (5.1) and (6.2) of Implementing Regulations for the Collection of Zakat of 1438 AH.

4. Item (Related Parties of 2009 – 2013):

ZATCA stated that its procedure came in compliance with the provisions of Article (4.5) of Implementing Regulations for the Collection of Zakat of 1438 AH, and Fatwa No. (22665) of 1424 AH and Fatwa No. (02/3077) of 1426 AH.

Furthermore, ZATCA requests the Department to dismiss any new documents from Zakat Payer that have not been submitted during the examination and objection stages, or any new petitions based on Article (186) of Law of Civil Procedure. Based on the foregoing, ZATCA adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld for the stated grounds. Zakat Payer also submitted a Reply to ZATCA's appeal, a summary of which included its



request to dismiss ZATCA's appeal and uphold appealed decision on the item subject of ZATCA's appeal.

On Tuesday, 04/01/1444 AH, corresponding to 02/08/2022 AD, the Department, regarding Zakat Payer's appeal on item (Related Parties of 2009 – 2013), has requested Zakat Payer to submit the accounts' activity statement from its accounting system, including the opening balance for each party and the activity that took place during the year, and the closing balance, along with a certificate of conformity to clarify which of those accounts have completed the Zakat Year, for accounts of the related parties and for each year in question, within fifteen (15) days from this date.

The Department also requested Zakat Payer to provide a detailed statement of the amounts included in ZATCA's appeal regarding Zakat Payer's contracts with the Ministry of Health for years 2011, 2012, and 2013, clarifying the amount in the database on which ZATCA based its appeal and its mechanism of processing amounts included in Zakat Payer's books, along with contracts entered into with the Ministry of Health and relevant purchase orders of amounts on which ZATCA appeals, within fifteen (15) days from this date.

On Thursday, 12/02/1444 AH, corresponding to 08/09/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

The Department, having taken cognizance of Case documents and statement of appeals submitted by Zakat Payer and ZATCA, found that conditions for hearing appeal have been met in form as stipulated in the relevant laws, regulations, and resolutions. Therefore, both appeals are accepted in form for being filed by parties having capacity and within the statutory period.

On Merits:

As for Zakat Payer's appeal regarding item (Sale Differences from Accounts Receivable of 2009), which includes its objection to the Primary Department's decision regarding the same, wherein Zakat Payer claimed that ZATCA considered that the debtors' balance is equivalent to sales and then carried over the difference to net profits, which is an incorrect Assessment, as sales may be deferred or cash, and that the accounts receivable is an accumulative account that may contain balances from previous years, which is contrary to the sales account that expresses deferred sales during the year only, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of Zakat Payer's appeal and documents included in Case file, found that, since ZATCA's addition of the difference amount between the accounts receivable and sales to Zakat Base as deferred sales is not supported by any accounting principle or physical evidence; and since Zakat Payer is held accountable as per its regular accounts and financial statements, the accounts receivable shall be implicitly added to Zakat Base and shall be not be deducted therefrom, which renders invalidity of ZATCA's procedure; and since the aforementioned is not affected by the Primary Department's statement regarding the existence of a mistake in the documents submitted, as the dispute between the parties is related to the basis of processing, not the supporting documents; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Offshore Procurement of 2010), which includes its objection to the Primary Department's decision regarding the same, wherein Zakat Payer claimed that these differences are the result of classifying internal procurement as



imports, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld. The Department, having taken cognizance of Zakat Payer's appeal and documents included in Case file, and having referred to the conclusion reached in the appealed decision on clarification of differences mentioned in the item in question, found that, since Zakat Payer has submitted a statement of offshore procurement, internal procurement, and procurement expenses; and since the presumption of the existence of amounts that are not included in Zakat Payer's Declaration represents the differences of the offshore procurement according to Customs Declaration, is an uncertain presumption in the light of the circumstances surrounding the method of calculating and classifying those differences by Zakat Payer upon submitting its Zakat Declaration, wherein it added the offshore procurement as imports; and since all regular and necessary expenses required for carrying out the activity may be deducted if they represent an actual expense supported by documents or other evidence; and since Zakat Payer has submitted documents supporting its claim on the reasons for these differences, which represent expenses related to Zakat Payer's activity; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed decision as to conclusion it had in this regard.

As for Zakat Payer's appeal regarding item (Salary and wage differences not registered with GOSI of 2011 to 2013), which includes its objection to the Primary Department's decision regarding the same, wherein Zakat Payer claimed that GOSI certificate did not include all salary and wage expenses, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of Zakat Payer's appeal and documents included in Case file, found that, since Zakat Payer has submitted GOSI certificate for years in question, along with a settlement of the differences between salaries and wages charged to the accounts and those included in GOSI certificate with which the certified public accountant report is attached; and since all regular and necessary expenses related to the activity, whether paid or due, may be deducted if they represent an actual expense supported by documents or other evidence; and since Zakat Payer has submitted documents supporting its claim on the reasons for these differences, which represent expenses related to Zakat Payer's activity; Therefore, the Department satisfies to accept Zakat Payer's appeal and reverse the appealed decision.

As for ZATCA's appeal regarding item (Contracts with Government Agencies of 2011 – 2013), which includes its objection to the Primary Department's decision in question, wherein ZATCA claimed that it receives the government contracts through a shared database of Government Agencies contracting with enterprises, while Zakat Payer argued that it requests that ZATCA's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of ZATCA's appeal and documents included in Case file, found that, since the subject of dispute is related to documents; and since Zakat Payer has failed to submit documents supporting its claim, the purchase orders referred to in its appeal, or the accounts' activity statement from its accounting system, which renders validity of ZATCA's procedure; Therefore, the Department satisfies to accept ZATCA's appeal and reverse the appealed.

As for Zakat Payer's appeal regarding item (Related parties of 2009 – 2013), which includes its objection to the Primary Department's decision regarding the same, wherein Zakat Payer claimed that these amounts were incurred by the creditor company and represent incorporation and miscellaneous expenses, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Zakat Payer's appeal be dismissed and the appealed decision be upheld.

The Department, having taken cognizance of Zakat Payer's appeal and documents included in Case file, found that, since the amounts stated in the audited financial



statements differed from the amounts included in the account statement submitted by Zakat Payer; and since Zakat Payer has failed to provide evidence that refutes the amounts included in the audited financial statements; Therefore, the Department satisfies to dismiss Zakat Payer's appeal and uphold the appealed.

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

Decision

First:

Accept Zakat Payer's (..... Company, C.R No., TIN No.) appeal and ZATCA's appeal against Decision No. (IZJ-2020-108) delivered by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in Case No. (Z-161-2018) in connection with Zakat Assessment of 2009 – 2013 AD, in form.

Second: On Merits:

1. Accept Zakat Payer's appeal on item (Sale Differences from Accounts Receivable of 2009) and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah for the grounds stated herein.
2. Accept Zakat Payer's appeal on item (Offshore Procurement of 2010) and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah for the grounds stated herein.
3. Accept Zakat Payer's appeal on item (Salary and Wage Differences Not Registered with GOSI of 2011 – 2013) and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah for the grounds stated herein.
4. Accept ZATCA's appeal on item (Contracts with Government Agencies of 2011 – 2013) and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah for the grounds stated herein.
5. Dismiss Zakat Payer's appeal on item (Related Parties of 2011 – 2013) and uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah for the grounds stated herein.

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

Income Tax



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-5

Case No. I-34233-2021

Principle No. 354

- In the event that Taxpayer is working independently of the Foreign Company and the provisions of the Agreement entered into between Taxpayer and that Company, did not establish the existence of a subordination relationship between Taxpayer and the British Company and that the agreed-upon services are delivered upon request from Taxpayer through an independent request letter, each service requested by Taxpayer is considered an independent contract and does not establish Taxpayer's subordination to that Company since the subordination relationship requires contracting in the name and for the benefit of the Principal "the Company," which determines the absence of the concept of permanent establishment.

Facts

The Department convened to consider the appeal filed on 29/05/1442 AH, corresponding to 12/01/2021 AD by Mr., holder of National ID No., in his capacity as the Appellant Company's ("Taxpayer") Attorney, under POA No., against Decision No. (IFR-2020-283) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (I-10756-2019) in connection with Tax Assessment of 2009 – 2017 AD, filed by Taxpayer against Zakat, Tax, and Customs Authority ("ZATCA"). The appealed decision ruled as follows:

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

1. Item (Non-Consideration of Taxpayer as Permanent Establishment for Company):

Taxpayer objects to the Primary Department's decision in question, claiming that the Primary Department did not provide reliable evidence proving that Taxpayer is operating as a Permanent Establishment for (..... Company), as the Primary Department's decision was only based on the Framework Agreement entered into with Taxpayer, which contradicts its conclusion. In addition, such an Agreement cannot only establish ongoing obligations or rights between its parties unless an independent purchase order is issued, which companies usually do. It also does not establish an obligation merely upon signing, which is endorsed by Article (2) thereto; thus, the provisions of Articles (2/C) and (4) of Income Tax Law and Article (5.3/B) of the "Convention Between The Government of The Kingdom of Saudi Arabia and The Government of The United Kingdom of Great Britain and Ireland Northern For The Avoidance of Double Taxation and Prevention of Tax Evasion with Respect to Taxes on Income and on Capital" do not apply to that Agreement. Moreover, the amounts received from Taxpayer for the benefit of (..... Company) are not subject to tax within the Kingdom, which is determined by the fact that Taxpayer is not considered a Permanent Establishment for (..... Company) as previously explained.

2. Item (Late Payment Fine):



Taxpayer contends that the fine should not be imposed due to the fact that the tax is not basically due from Taxpayer, which necessitates dismissing the fines resulting therefrom. Taxpayer concluded by requesting dismissal of the Primary Department's decision for the stated grounds.

Since the Department decided opening of pleadings, ZATCA submitted a Rejoinder on 22/08/1442 AH, corresponding to 04/04/2021 AD, to Zakat Payer's statement of appeal, a summary of which included that it adheres to the validity of the appealed decision in accordance with its grounds and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. ZATCA added that, with regard to the item in question, Article (5.1) of the "Convention Between The Government of The Kingdom of Saudi Arabia and The Government of The United Kingdom of Great Britain and Ireland Northern For The Avoidance of Double Taxation and Prevention of Tax Evasion with Respect to Taxes on Income and on Capital" has defined the permanent establishment as "a fixed place of business through which the business of an enterprise is wholly or partly carried on," while Article (5.3) of the same Convention clarified that the term "permanent establishment" includes "the furnishing of services, including consulting services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than (183) days within 12-month calendar period."

ZATCA added that Taxpayer's Agreement was concluded in 2009 under the name of a Services Agreement and remains in force from the date of its conclusion. ZATCA, having referred to Articles (3) and (5.5) of the said Convention and Taxpayer's Agreement, and based on Article (4/A) of Income Tax Law, found that every business or service is carried out by virtue of a separate written request from the non-resident company; hence, Taxpayer is considered an agent of the non-resident party. Accordingly, ZATCA has subjected the income generated by the permanent establishment of the non-resident party to income tax with an estimated profit of (20%) for the fee paid for consultants and (75%) for the fee paid for royalties based on Article (16) of the Implementing Regulations of Income Tax Law, and has applied the following fines in accordance with the said Implementing Regulations: 1. A fine for failure of submission of Tax Return as stipulated in Article (67); 2. A fine for late payment as stipulated in Article (68); and 3. A fine for failure of registration as stipulated in Article (65).

Furthermore, Taxpayer did not submit any documents to this Department supporting its claim filed before the Primary Department; Accordingly, ZATCA requests the Department to dismiss any new documents that have not been submitted to ZATCA during the examination and objection stage. ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Taxpayer's appeal be dismissed and the Primary Department's decision be upheld for the stated grounds.

On Wednesday, 07/03/1443 AH, corresponding to 13/10/2021 AD, the Department decided to hold a 10-day e-hearing session, wherein Taxpayer submitted a number of documents.

On Tuesday, 01/06/1443 AH, corresponding to 04/01/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and reviewed documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds

The Department, having taken cognizance of Case documents and statement of appeal submitted by Taxpayer, found that conditions for hearing appeal have been met in form in accordance with conditions stipulated in relevant laws, regulations, and decisions.



Therefore, the appeal is accepted in form for being filed by a party having capacity and within the prescribed statutory period.

On Merits:

As for Taxpayer's appeal against the Primary Department's decision, which includes its objection to the classification of the nature of the Agreement entered into with the foreign company as a permanent establishment and the imposition of income tax and late payment fines accordingly, while ZATCA argued that it adheres to the validity and soundness of its procedure and requests that Taxpayer's appeal be dismissed and the Primary Department's decision be upheld.

The Department, having taken cognizance of subject of dispute, documents included in Case file, and the Agreement submitted by Taxpayer, found that, since the Primary Department has concluded to uphold ZATCA in considering the British Company a permanent establishment for business carried out by the Taxpayer under the Agreement entered into with the British Company, from which the Primary Department concluded that there was an agency relationship between both parties and that Taxpayer was working on behalf of the non-resident company and entering into contracts on its behalf; and since the said Agreement concluded between both parties has shown that Taxpayer is working independently from the British Company; and since the provisions of that Agreement did not establish the existence of a subordination relationship between Taxpayer and the British Company since those services agreed upon in that Framework Agreement are delivered upon request from Taxpayer through an independent request letter, which indicates that each service requested by Taxpayer is an independent contract; hence, it does not establish Taxpayer's subordination to that Company, as the subordination relationship requires contracting in the name and for the benefit of the Principal "the British Company," which determines that the concept of permanent establishment defined in the "Convention Between The Government of The Kingdom of Saudi Arabia and The Government of The United Kingdom of Great Britain and Ireland Northern For The Avoidance of Double Taxation and Prevention of Tax Evasion with Respect to Taxes on Income and on Capital" has not been met; Therefore, the Department satisfies to accept Taxpayer's appeal and reverse the appealed decision as to conclusion it had in this regard. With regard to Taxpayer's appeal regarding the late payment fine; Since that fine was imposed based on ZATCA's Assessment in question; and since this Department has accepted Taxpayer's appeal by not considering the non-resident company as a permanent establishment, the associated fine is dismissed accordingly; Therefore, the Department satisfies to accept Taxpayer's appeal and reverse the appealed decision as to conclusion it had in this regard.

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

Decision

First:

Accept Taxpayer's (..... Company, C.R No., TIN No.) appeal against Decision No. (IFR-2020-283) delivered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in Case No. (I-10756-2019) in connection with Tax Assessment of 2009 – 2017 AD, in form.

Second: On Merits:

1. Accept Zakat Payer's appeal on item (Non-Consideration of Taxpayer as Permanent Establishment for Company) and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, for the grounds stated herein.



2. Accept Zakat Payer's appeal on item (Late Payment Fine) and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, for the grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-18

Case No. I-35358-2021

Principle No. 355

- In the event that the assignment of project works to the company was conditional on the principle of not violating joint liability and providing technical and financial support as the main contractor responsible before the project owner for carrying out the project in accordance with terms and obligations set forth in the contract, the foreign company is considered a permanent establishment.

Facts

The Department convened to consider the appeal filed on 13/06/1442 AH, corresponding to 26/01/2021 AD by Company (“Taxpayer”), against Decision No. (1901) of 1439 AH, delivered by the Tax Appellate Committee, in Case filed by Taxpayer against Zakat, Tax, and Customs Authority (“ZATCA”) in connection with Tax Assessment of 2008 – 2011 AD. The appealed decision ruled as follows:

First: In Form:

Accept Taxpayer’s (..... Company) appeal against Decision No. (8) of 1436 AH delivered by the Third Primary Committee for Zakat and Tax Objections in Riyadh.

Second: On Merits:

1. (A) Dismiss Taxpayer’s appeal and uphold the Primary Committee’s decision as to conclusion it had for dismissing Taxpayer’s objection to item (Consideration of “..... Company” as Permanent Establishment), for the grounds stated in the decision.

(B) Dismiss Taxpayer’s appeal and uphold the Primary Committee’s decision as to conclusion it had for dismissing Taxpayer’s objection to item (Estimated Tax Assessment of 2008 – 2011).

2. Dismiss Taxpayer’s appeal and uphold ZATCA’s decision regarding item (Late Payment Fine) by subjecting taxes resulting from ZATCA’s Estimated Assessment to a late payment fine of (1%) for every thirty (30) days of delay, to be calculated as of the date this Decision is final until the date of payment.

3. This decision shall be final and binding unless appealed before the Board of Grievances within sixty (60) days as of the date of notification of the decision.

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

Taxpayer objects to the Tax Appellate Committee’s decision in question, claiming the following:

1. Item (Consideration of “..... Company” as Permanent Establishment):

Taxpayer clarifies that the main executor of contracts is (..... Company). As with all major contracts, the contractor is always seeking to obtain all kinds of assurances, whether financial or technical, from external sources as mere performance bonds for reference in the event that the implementing party is unable to complete the project. Also, all payments collected by the Saudi Ports Authority (“MAWANI”) for (..... Company). The same



applies to the rest of its contracts with MAWANI and the Royal Commission for Jubail and Yanbu (“RCJY”).

2. Item (Estimated Assessment of 2008 – 2011):

Taxpayer clarifies that financial statements were not submitted in due date for the absence of a resident company, but rather, upon ZATCA’s request, financial statements and Tax Returns were submitted, as the contracts were fully assigned to (..... Company), were disclosed in the accounting records, and were included in the financial statements and Tax Returns. In addition, books and records are kept as required by Law of Commercial Books, and there is no condition set forth in Income Tax Law preventing the registration after the end of the fiscal year. Moreover, a Tax File was opened, and Tax Returns were submitted based on ZATCA’s request and insistence, and the due fines were paid before the issuance of an Estimated Assessment by ZATCA. Furthermore, the conditions of permanent establishment set forth in Income Tax Law have not been met to consider (..... Company) as a permanent establishment, and assuming, for the sake of argument, that there is a permanent establishment, how can the revenues of same contracts realized from one source be subject to tax twice within the same year, through (..... Company) and (..... Company).

3. Item (Late Payment Fine):

Taxpayer clarifies that the fine should not be imposed due to the existence of a difference in viewpoints regarding the items that resulted in the fine. Taxpayer concluded by requesting reversal of the Tax Appellate Committee’s decision in question for the stated grounds.

Since the Department decided opening of pleadings, ZATCA submitted a Rejoinder on 10/09/1442 AH, corresponding to 21/04/2021 AD, to Zakat Payer’s statement of appeal, a summary of which included that it adheres to its view presented before the Tax Appellate Committee and that claims raised by Zakat Payer are consistent with the earlier submissions, which ZATCA responded to at that time. It also included its response regarding the following:

1. Item (Consideration of “..... Company” as Permanent Establishment):

ZATCA clarifies that the Tax Appellate Committee’s conclusion is sound and valid, as it came in compliance with the provisions of Articles (1) and (2) of Income Tax Law and Article (4) of its Implementing Regulations.

2. Item (Estimated Assessment of 2008 – 2011):

ZATCA clarifies that the Tax Appellate Committee’s conclusion is sound and valid, as it came in compliance with the provisions of Articles (63/B) and (56.2) of Income Tax Law.

3. Item (Late Payment Fine):

ZATCA clarifies that the Tax Appellate Committee’s conclusion is sound and valid, as it came in compliance with the provisions of Article (77/A) and Article (68/B) of its Implementing Regulations.

ZATCA concluded by adhering to the validity and soundness of its procedure and requesting that Taxpayer’s appeal be dismissed and the Tax Appellate Committee’s decision in question be upheld for the stated grounds.

On Monday, 02/05/1443 AH, corresponding to 06/12/2021 AD, the Department decided to hold a 10-day e-hearing session, wherein Taxpayer submitted a number of documents.

On Sunday, 13/06/1443 AH, corresponding to 16/01/2022 AD, the Department, having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided to close pleadings and set a date for adjudication.

Grounds





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

On Merits:

As for Taxpayer's appeal regarding item (Consideration of "..... Company" as Permanent Establishment), wherein Taxpayer claimed that it is not the main executor of contracts subject to ZATCA's Assessment, while ZATCA argued that it adheres to validity and soundness of its procedure and requests that Taxpayer's appeal be dismissed and the Tax Appellate Committee's decision be upheld.

The Department, having taken cognizance of Case file, found that, since assignment of project works to (..... Company) was conditional on the principle of not violating joint liability and providing technical and financial support as the main contractor responsible before MAWANI for carrying out the project in accordance with terms and obligations set forth in the contract; Therefore, the Department satisfies by Majority to the validity and soundness of the Tax Appellate Committee's decision for considering (..... Company "China") as a permanent establishment and dismiss Taxpayer's appeal on the item in question.

As for Zakat Payer's appeal regarding item (Estimated Assessment of 2008 – 2011), wherein Zakat Payer's claimed that the revenues of same contracts realized from one source were subjected to tax twice within the same year, while ZATCA argued that it adheres to validity and soundness of its procedure and requests that Taxpayer's appeal be dismissed and the Tax Appellate Committee's decision be upheld. The Department, having taken cognizance of subject of dispute, found that, since Taxpayer objected to the Tax Appellate Committee's decision for upholding ZATCA in issuing an Estimated Assessment and imposing a late payment fine, as Taxpayer claimed that it did not execute any contracts within the Kingdom and that contracts signed with project owners in the Kingdom were all assigned to its subsidiary (..... Company) in which Taxpayer owns (75%) of its capital, and that Assignee Subsidiary has been registered with ZATCA as a permanent establishment, submitted its Tax Returns, and paid the due tax, while ZATCA contended that Taxpayer is required under the Law to register with ZATCA, and that it has issued the Estimated Assessment due to Taxpayer's failure to comply with requirements stipulated in Law of Commercial Books, as Taxpayer's activity is to execute contracts within the Kingdom, which requires a presence therein and the existence of a permanent establishment; and since ZATCA based its decision, when it disregarded Taxpayer's accounts, primarily on the fact that financial statements were prepared several years after the end of the fiscal years in question, which is neither a legal nor an accounting basis since the financial statements are merely extracts from accounting books, and their late preparation did not mean the absence of accounting books, as the existence of those financial statements, even with a late submission, does not necessarily entail that the accounts should be disregarded, as long as their lack of conformity to reality, the existence of a fraud, or evidence of a manipulation of their data to provide information contrary to the true nature of the activity has not been proven, which was not the case in light of the absence of hard evidence establishing the existence of fraud in those financial statements and deliberate delay for their submission to change their reality, especially since there is a genuine dispute between Taxpayer and ZATCA in determining whether considering the Company as a permanent establishment in light of relationship between Taxpayer and ZATCA on the matters and facts of business carried out by Taxpayer within the Kingdom after establishment of the other company in which it owns the majority of capital; and since disregarding accounts is considered an exemption to the established rule that requires justifications calling for deviating thereof; and since ZATCA's mere inference to



Taxpayer's late preparation of financial statements after the end of the fiscal years in question is not sufficient to claim absence of accounting books; and since the aforementioned is not affected by ZATCA's claim to support its decision to issue the Estimated Assessment that the contracts were assigned to another company, as such a late preparation is irrelevant to the disregard of accounts since Taxpayer has proved that the Assignee Company is a Subsidiary; thus, such an assignment is not considered a form of subcontracting, especially since accruals of these contracts are paid directly to Assignee Subsidiary, which in turn has submitted its Tax Returns to ZATCA and has paid the tax due, which determines that ZATCA's rejection of that assignment results in double taxation for the same contracts; hence, the financial statements submitted by Taxpayer must be taken into consideration and, by extension, invalidity of ZATCA's Estimated Assessment for lack of evidence leading to the adoption of such an Assessment as claimed by ZATCA; Therefore, the Department satisfies to decide invalidity of ZATCA's Estimated Assessment.

As late Taxpayer's appeal regarding item (Late Payment Fine), wherein Taxpayer claimed that the fine resulting from items that are subject to a disagreement of viewpoints should not be imposed until a final judgment is rendered resolving the dispute of these items, while ZATCA argued that it adheres to validity and soundness of its procedure and requests that Taxpayer's appeal be dismissed and the Tax Appellate Committee's decision be upheld.

The Department, having taken cognizance of subject of dispute, found that, since the Department has decided invalidity of ZATCA's Estimated Assessment; and since the late payment fine is a consequence of the items resulting therefrom; and since the established judicial principle stipulates "If a matter ceases to exist, that which is incidental thereto shall also cease to exist;" and since ZATCA's Estimated Assessment was invalid, the associated fines shall be dismissed accordingly.

In view of the foregoing, and in light of stated grounds, the Department by Majority decided as follows:

Decision

First:

Accept Taxpayer's (..... Company, C.R No., TIN No.) appeal against Decision No. (1901) of 1439 AH delivered by the Tax Appellate Committee in connection with Tax Assessment of 2008 – 2011, in form.

Second: On Merits:

1. Dismiss Taxpayer's appeal on item (Consideration of "..... Company" as Permanent Establishment) and uphold the Tax Appeal Committee's decision, for the grounds stated herein to grounds and reasons stated herein.
2. Accept Taxpayer's appeal on item (Estimated Assessment of 2008 – 2011) and reverse the Tax Appeal Committee's decision, for the grounds stated herein.
3. Accept Taxpayer's appeal on item (Late Payment Fine) and reverse the Tax Appeal Committee's decision, for the grounds stated herein.

while ZATCA argued that it adheres to validity and soundness of its procedure and requests that Taxpayer's appeal be dismissed and the Tax Appellate Committee's decision be upheld.

The Department, having taken cognizance of subject of dispute, found that, since the Department has decided invalidity of ZATCA's Estimated Assessment; and since the late payment fine is a consequence of the items resulting therefrom; and since the established judicial principle stipulates "If a matter ceases to exist, that which is incidental thereto shall also cease to exist;" and since ZATCA's Estimated Assessment was invalid, the associated fines shall be dismissed accordingly.

In view of the foregoing, and in light of stated grounds, the Department by Majority decided as follows:



Decision

First: First: In Form:

Accept Taxpayer's (..... Company, C.R No., TIN No.) appeal against Decision No. (1901) of 1439 AH delivered by the Tax Appellate Committee in connection with Tax Assessment of 2008 – 2011.

Second: On Merits:

1. Dismiss Taxpayer's appeal concerning (Considering ... Company) item and affirm the Tax Appeal Committee's decision, according to grounds and reasons stated herein.
2. Accept Taxpayer's appeal concerning (Estimated Tax Assessment for the years 2008 to 2011 AD) item and reverse the Tax Appeal Committee's decision, according to grounds and reasons stated herein.
3. Accept Taxpayer's appeal concerning (Delay Fine) item and reverse the Tax Appeal Committee's decision, according to grounds and reasons stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-227

Case No. I-29770-2020

Principle No. 356

- Given that Taxpayer, under its submitted return, adjusted the profit by including non-deductible expenses and ZATCA's addition of such expenses, within its adjustments, it becomes evident that ZATCA included an expense that was not originally deducted to calculate the taxable profit.

Facts

To consider the appeal presented on .././.... AH corresponding to .././.... AD by/ (...), holder of National ID No. (...), in his capacity as the attorney of the Appellant Company pursuant to PoA No. (...) and Appeal filed on .././.... AH, corresponding to .././.... AD by ZATCA against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (IFR-2020-127), issued in case No. (I-25-2018), regarding tax assessment for the years 2008 to 2013 AD, filed by the Appellant against ZATCA. Primary Department's decision stated the following:

First: Abolish Defendant's decision / GAZT against Plaintiff/ (...) Co., (TIN No.) related to the item of loss carryforward for the years 2009 to 2013 AD.

Second: Amend Defendant's decision / GAZT against Plaintiff/ (...) Co., (TIN No. ...), regarding late payment fines subject matter of the Case as stated in grounds.

III. Dismiss otherwise objections filed by Plaintiff/ (...) Company, (TIN No.) against Defendant's decisions/ GAZT under dispute.

Dissatisfied with this decision, both parties filed a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer's appeal involves: As for (Wages and Salaries for 2012 and 2013) item, Taxpayer claims that there is a clerical error in Primary Department's decision, as it is stated in Page (6) as follows: "Therefore, the Department accepts Plaintiff's objection and abolishes Defendant's decision", while it is stated in Page (10) as follows: "Dismiss otherwise objections submitted by Plaintiff". Regarding (Depreciation Variances for years from 2008 to 2013) item, Taxpayer claims that the value of depreciation was recorded in the return that matches fixed asset schedule. Regarding (Shareholders' Salaries) item, Taxpayer claims that salaries paid to shareholders were recorded in the return as non-deductible expenses, i.e., there are not tax variances. Regarding (Taxes and Fines for years from 2010 to 2012) item, Taxpayer claims that taxes and fines were recorded in the return as non-deductible expenses, i.e., there are not tax variances. Regarding (Withholding Taxes for 2013) item, Taxpayer claims that withholding taxes amounting to SAR 108,612 were paid by the Company on behalf of third parties that provide consulting services for the Company inside the Kingdom, while recording such taxes in the records in net value. Accordingly, the taxes are a part of cost of consulting services provided by such third parties. Regarding (Provision for Doubtful Debts) item, Taxpayer claims that doubtful debts for 2012 were recorded in the return as non-deductible expenses, i.e., there are not tax variances. Thereupon, Taxpayer requests overturning Primary's decision regarding items subject matter of appeal for the aforementioned reasons.



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

Regarding (Wages and Salaries without Documentary Evidence for years from 2008 to 2013 AD) item, ZATCA states that by comparing GOSI Certificate and the certificate submitted by chartered accountant with the amount objected by Taxpayer, it turns out that the amount stated in chartered account certificate is higher than the objected amount for 2008 AD. Since the dispute is related to documents and because the amount that Taxpayer declared does not align with the submitted documents, the document lacks legal validity and cannot be relied upon. As for (Carried Forward Losses for years from 2009 to 2013 AD), ZATCA states that the lack of answer to Taxpayer's objection is not considered that the objection is accepted according to Paragraph (2) of Article (2) of Tax Dispute and Violation Committee Procedures. In addition, the carried forward losses were handled according to provisions of Article (21) of Income Tax Law and Article (11) of its Implementing Regulations. Regarding (Late Payment Fine), ZATCA states that it imposed late payment fine on the unpaid variances within the statutory time-limit in accordance with Paragraph (a) of Article (77) of Income Tax Law and Paragraph (1/b) of Article (68) of its Implementing Regulations. Therefore, ZATCA insists on accuracy and correctness of its procedure, requests upholding its procedure and overturning Primary Department's decision regarding the subject matter of ZATCA appeal for the aforementioned reasons.

Since the Department decided opening of pleadings, ZATCA submitted a Reply dated 07/03/1443 AH corresponding to 13/10/2021 AD wherein replies to Taxpayer's appeal. The Reply is summed up in that ZATCA reiterates its previous position submitted in its memorandum before Primary Department. In addition, ZATCA insists on validity of Primary Department's decision that upholds ZATCA procedure regarding items subject matter of Taxpayer's appeal. Moreover, Taxpayer's arguments do not differ from what previously submitted, to which ZATCA has already answered at that time. Regarding (Depreciation Variances for years from 2008 to 2013 AD), Taxpayer had added the book value of furniture and equipment and recorded such value under Group Three in Depreciation Schedule No. (4), despite the fact that furniture belongs to Group Five of asset groups and is subject to a depreciation rate of 10%, not 25% as in Group Three. Therefore, the depreciation schedule for 2008 and subsequent years was adjusted to align with tax regulations, resulting in such variances. As for (Withholding Taxes for 2013), ZATCA states that this item was not previously contested by Taxpayer nor appealed before ZATCA. Therefore, ZATCA insists on accuracy and correctness of its procedure and requests dismissing Taxpayer's appeal and upholding Primary Department's decision regarding items subject matter of Taxpayer's appeal for the aforementioned reasons.

On .., .././.. corresponding to .././.., the Department decided holding remote litigation session for (10) days, but the period lapsed without submitting any addition by parties to the appeal.

On .., .././.. corresponding to .././..., regarding Taxpayer's appeal in terms of (Depreciation Variances for 2012 and 2013), the Department asked Taxpayer to submit fixed asset statement for 2013. Regarding Taxpayer's appeal in terms of (Withholding Taxes for 2013), this Department asked Taxpayer to provide what proves that Taxpayer had initially objected to this item before ZATCA, within ten (10) days of date.

On .., .././... Corresponding to .././.... AD. Since Taxpayer submitted a document that is unrelated to this Department's requests, the Department issued a second request to Taxpayer concerning the item of depreciation variances for 2012 and 2013 AD, asking for the fixed asset consumption schedule for 2013 AD. As for the item of withholding taxes for 2013 AD, this Department requested that Taxpayer provide evidence of an initial objection filed with ZATCA regarding this item. within ten (7) days of date.

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



Grounds

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

As for the merits of case, the Department, having examined the documents contained in the case file, regarding the appeal for the years 2008 to 2011 AD, found that tax returns for the years 2008 to 2011 AD were governed by the Income Tax Law and its Implementing Regulations, which regulate the process and procedure for assessment. Article (65/a) clearly states that ZATCA's right to assess must occur within five years from the final date set for submission of the tax return. Since the stability of the legal and financial positions is an essential goal confirmed by the Law, as it stipulates that ZATCA may not exceed the five-year period for Reassessment except in the case of a tax evasion, provided that it does not exceed ten (10) years to exercise such right. Since assessment was made in violation of the Law as stated above, with which the goal of stabilizing the financial and legal positions of Taxpayers will not be achieved. Therefore, the Department satisfies to decide that ZATCA has no right to make the Assessment for 2008 to 2011 AD, and to accept Taxpayer's appeal on all items appealed for the years 2008 to 2011 AD.

As for Taxpayer's appeal regarding (Wages and Salaries for 2012 and 2013 AD) item, Taxpayer's appeal involves objecting to material error in Primary Department's decision rendered on 28/02/1442 AH corresponding to 15/10/2020 AD. Such error is outlined in accepting Taxpayer's objection regarding this item in facts and dismissing such objection in wording. Having taken cognizance of subject matter of dispute, Case file and documents included therein, this Department found that there is a material error in Primary Department's decision, since Primary Department did not state its decision, in Page (10), regarding this item. Therefore, this Department remands the Case to the rendering department regarding this item for correction in accordance with Article (38) of Tax Dispute and Violation Committee Procedures.

As for Taxpayer's appeal regarding (Depreciation Variances for 2012 and 2013), Taxpayer's appeal involves that the value of depreciation stated in the return exactly matches fixed asset statement, while ZATCA argued that it insists on accuracy and correctness of its procedure and requests dismissing Taxpayer's appeal and upholding Primary Department's decision. Having taken cognizance of subject matter of dispute, since Taxpayer claims in its appeal that ZATCA did not elaborate the reason for adjusting return regarding this item. Having taken cognizance of Primary Department's decision, it turns out that ZATCA elaborated the reason for adjusting depreciation schedule resulting from Taxpayer's error in classifying assets in Groups according to requirements stipulated in tax regulations. In addition, Taxpayer's appeal did not include an objection to ZATCA procedure, but Taxpayer grounded its appeal on the matching of depreciation amount in the financial statements with depreciation amount in fixed assets statement. However, since depreciation rates and their application to different asset groups according to Income Tax Law may not necessarily align with what is shown in the financial statements prepared in accordance with the accepted standards, the matching of depreciation amount in the financial statements with that in the depreciation schedule does not constitute evidence of Taxpayer's correct application of depreciation rates in accordance with provisions of Income Tax Law. Therefore, this Department dismisses Taxpayer's appeal and upholds Primary Department's decision regarding this item.

As for Taxpayer's appeal regarding (Shareholders' Salaries) item, Taxpayer's appeal involves that item-related expenses were included in the return within non-deductible expenses, claiming that there are not tax variances, while ZATCA argued that it insists on accuracy and correctness of its procedure and requests dismissing Taxpayer's appeal and upholding Primary Department's decision. Having carefully considered the subject matter of the dispute and examined the documents contained in the case file, the Department finds that Taxpayer, under its submitted return, included partners' salaries as non-deductible expenses, which were used to adjust the profit. Additionally, it was found that ZATCA, in its adjustments, added the salaries paid to the partners,



effectively adding an expense that was not initially deducted in the calculation of taxable profit. Consequently, this Department concluded to accept Taxpayer's appeal and reverse Primary Department's decision in this regard.

Taxpayer's appeal, regarding (Taxes and Fines for 2012 AD), rests on the assertion that the expenses for this item were classified in the return as non-deductible expenses, thereby claiming that there are no tax differences. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding Primary Department's decision. Having carefully considered the subject matter of the dispute and examined the documents contained in the case file, the Department finds that Taxpayer, under its submitted return, included taxes and fines as non-deductible expenses, which were used to adjust the profit. Additionally, it was found that ZATCA, in its adjustments, added taxes and fines, effectively adding an expense that was not initially deducted in the calculation of taxable profit. Consequently, this Department concluded to accept Taxpayer's appeal and reverse Primary Department's decision in this regard.

Taxpayer's appeal, regarding (Withholding Taxes for 2013 AD), is based on the assertion that the withholding taxes were paid by the company on behalf of third parties that provide consulting services within the Kingdom and were recorded in the books at their net value, claiming that taxes are part of the cost of the consulting services provided by such parties. In contrast, ZATCA argues that this item was not previously contested nor appealed by Taxpayer. Having carefully considered the subject matter of the dispute and examined the documents contained in the case file and Primary Department's decision, it became apparent that the Department rejected Taxpayer's objection on the grounds that Taxpayer had not initially contested the matter before ZATCA. However, upon reviewing Taxpayer's objection submitted to ZATCA dated 15/10/1438 AH, corresponding to 09/07/2017 AD, it was found that Taxpayer had indeed raised an objection regarding this item titled (Taxes and Fines). Since Primary Department did not make a determination on this item, the dispute regarding this matter remains unresolved. This Department concludes that the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh should be canceled and the case is to be remanded to it for reconsideration of Taxpayer's objection on merits in order to ensure Taxpayer's right to appeal at two levels.

Taxpayer's appeal, regarding (Provisions for Doubtful Debts), rests on the assertion that the expenses for this item were classified in the return as non-deductible expenses, thereby claiming that there are no tax differences. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding Primary Department's decision. Having taken cognizance of subject matter of dispute, Case file and documents included therein, it turns out, through the return submitted by Taxpayer, that a provision for doubtful debts was recorded within non-deductible expenses in which profit was adjusted. In addition, it turns out that ZATCA added, within its amendments, the provision for doubtful debts. Therefore, it turns out that ZATCA added an expense that was not initially deducted to reach the taxable profit. Thereupon, this Department accepts Taxpayer's appeal and overturns Primary Department's decision regarding this item.

As for ZATCA appeal regarding (Wages and Salaries without Documentary Evidence for 2012 and 2013) item, ZATCA appeal involves objection to accepting Taxpayer's appeal regarding this item by Primary Department, claiming that the amount stated in the certificate of chartered accountant is higher than the objected amount for 2008. Having carefully considered the subject matter of the dispute and examined the documents contained in the case file and since Taxpayer submitted a report from a chartered accountant proving the incurred expenses in question and ZATCA failed to provide any evidence to challenge the validity of the findings in that report for 2012 and 2013 AD, this Department concluded that the conclusion reached by Primary Department is correct. Therefore, this Department resolves to dismiss ZATCA's appeal and uphold Primary Department's decision delivered in this regard.

ZATCA's appeal, regarding (Carried-Forward Losses for 2012 and 2013 AD), is based on its objection to Primary Department's acceptance of Taxpayer's objection regarding this item.



ZATCA claims that the lack of a response to the item does not constitute evidence of acceptance of the relevant objection. Having carefully considered the subject matter of the dispute and examined the documents contained in the case file and since Taxpayer is entitled to deduct carried forward losses from the taxable profit, not exceeding 25% of Taxpayer's annual profit, and upon reviewing the documents attached to the case file, this Department found that ZATCA failed to deduct the carried forward losses incurred in 2009 in the subsequent years. Given that this Department concluded that the conclusion reached by Primary Department is correct, this Department resolves to dismiss ZATCA's appeal and uphold Primary Department's decision delivered in this regard.

ZATCA's appeal, regarding (Late Payment Fine), is based on its objection to Primary Department's amendment of ZATCA's decision regarding this item, claiming that the late payment fine was imposed on the unpaid variances within the statutory time-limit in accordance with Paragraph (a) of Article (77) of Income Tax Law and Paragraph (1/b) of Article (68) of its Implementing Regulations. Having taken cognizance of subject matter of dispute and documents included in Case file, since this Department dismissed ZATCA appeal, since this fine is contingent upon the acceptance of ZATCA appeal regarding the appealed items, and since this Department did not accept any of the appealed items; therefore, this Department dismisses ZATCA appeal.

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

Decision

First: Accept appeal in from filed by Taxpayer (... Company), C.R. No. (...), TIN (...), and appeal filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (...) rendered in Case No. (...) regarding tax assessment for the years 2008 to 2013 AD.

Second: On Merits:

1. Accept Taxpayer's appeal regarding all appealed items for years from 2008 to 2011 and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh regarding such items according to the reasons and grounds stated herein.
2. Accept Taxpayer's appeal regarding (Wages and Salaries for 2012) item and remand the Case to the First Department for Determination of Income Tax Violations and Disputes in Riyadh for correction regarding this item according to the reasons and grounds stated herein.
3. Dismiss Taxpayer's appeal regarding (Depreciation Variances for 2012 and 2013) item and uphold the decision rendered by First Department for Determination of Income Tax Violations and Disputes in Riyadh according to the reasons and grounds stated herein.
4. Accept Taxpayer's appeal regarding (Shareholders' Salaries) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh according to the reasons and grounds stated herein.
5. Accept Taxpayer's appeal regarding (Taxes and Fines for 2012) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh according to the reasons and grounds stated herein.
6. Accept Taxpayer's appeal regarding (Withholding Taxes for 2013) item, overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh and remand the Case to the Department for reconsideration of this item on merits according to the reasons and grounds stated herein.
7. Accept Taxpayer's appeal regarding (Provision for Doubtful Debts) item and overturn the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh according to the reasons and grounds stated herein.
8. Dismiss ZATCA appeal regarding (Wages and Salaries without Documentary Evidence for 2012 and 2013) item and uphold the decision rendered by the First Department for



Determination of Income Tax Violations and Disputes in Riyadh according to the reasons and grounds stated herein.

9. Dismiss ZATCA appeal regarding (Carried Forward Losses for 2013) item and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh according to the reasons and grounds stated herein.
10. Dismiss ZATCA appeal regarding (Late Payment Fine) item and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh according to the reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-248

Case No. I-15285-2020

Principle No. 357

- The significant discrepancy between the amounts representing Taxpayer's revenues as stated in its tax returns and those reported in the financial statements submitted, coupled with Taxpayer's failure to initially file tax returns that included the revenues acknowledged in the financial statements, and the fact that these revenues differ substantially from what was previously declared in its tax returns submitted to ZATCA, constitutes prima facie evidence that Taxpayer submitted false tax returns with the intent of tax evasion.

Facts

To consider the appeal filed on ../../.. corresponding to ../../... by (...), holder of Resident ID No. (...), in his capacity as Manager of Appellant Company, under Company's memorandum of association, against Department for Determination of Income Tax Violations and Disputes in Riyadh Decision No. (IFR-2020-17) rendered in Case No. (I-9487-2019) related to tax assessment for years from 2009 to 2017 AD filed by Appellant against ZATCA. Primary Department decided as follows:

First: Reject Plaintiff's/ (...) company objection, (A Limited Liability Company, CR No. ...), against Defendant's decision/ ZATCA for expiration of the statutory period for tax assessment for the years in dispute.

Second: Reject Plaintiff's/ (...) company objection, (A Limited Liability Company, CR No. ...), against Defendant's decision/ ZATCA regarding the estimated assessment under dispute.

Dissatisfied with the decision, the Zakat PayerCompany filed a statement of appeal, the summary of which is as follows:

Taxpayer challenges the appealed primary decision, asserting that, regarding (Expiration of Statutory Period for Tax Assessment), the statutory period for reopening the assessment elapsed based on Article (65) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH. Taxpayer also states that the return was prepared in accordance with the provisions of the Income Tax Law. Taxpayer, regarding (Estimated Assessment), emphasizes the existence of documentary evidence that substantiates the accuracy of the balances, including financial statements and invoices supporting deposits and withdrawals. Accordingly, Taxpayer requests reversal of the primary decision for the aforementioned grounds.

The Department decided to open the pleadings, where ZATCA submitted a Reply dated ../../... AH, corresponding to ../../... AD, addressing Taxpayer's appeal by emphasizing its position presented in the Reply before the Primary Department, as its decision is in accordance with the provisions of Paragraph (a) of Article (65) of the Income Tax and Paragraph (b) of the same Article. Additionally, ZATCA, regarding (Estimated Assessment), reaffirms its position as presented in the Reply submitted to the Primary Department, whose decision aligns with Article (56) of the Implementing Regulations of the Income Tax Law, Paragraph (a) of Article (85) of the Income Tax Law, Paragraph (b) of Article (63) of the same law, and Paragraph (3) of Article (16) of the Implementing Regulations of the Income Tax Law. Accordingly, ZATCA insists on accuracy and



correctness of its procedures and requests dismissing Taxpayer's appeal and uphold the primary decision for the aforementioned grounds.

On .., ../../.. corresponding to ../.../..., the Department decided holding remote litigation session for (10) days. Therefore, Taxpayer submitted a supplementary memorandum that did not present any new arguments beyond what had already been submitted.

On .., ../.../... corresponding to ../.../..., having taken cognizance of appeal memorandums and reply thereto, and after reviewing documents included in Case file, the Department concluded that the Case has become ripe for adjudication on its merits. Therefore, the Department decided closing pleadings and setting a date for adjudication.

Grounds

Having reviewed the case papers and the statement of claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

Decision

On Merits: Regarding (Expiry of Statutory Period for Tax Assessment) item and (Estimated Assessment) item, Taxpayer's appeal is grounded on objecting to dismissing its objection by Primary Department regarding these two items. Taxpayer claims that it has properly applied provisions of the Law and its Implementing Regulations. On the other hand, ZATCA argued that it insists on accuracy and correctness of its procedure and requests dismissing Taxpayer's appeal and upholding Primary Department's decision. The Department, upon reviewing Taxpayer's appeal and examining the case file, noting a discrepancy between the initial returns submitted by Taxpayer and the unaudited income statements in which it acknowledged the revenues assessed by ZATCA and given that Taxpayer's reported revenues, before deducting expenses according to the statements submitted with its appeal, exceed one million riyals, and considering that Taxpayer failed to submit returns certified by a chartered accountant according to provisions of the Income Tax Law and its Implementing Regulations and the income statements provided were not part of audited financial statements and upon the Department's review of Taxpayer's returns for the disputed years and the income statements submitted with its appeal, in which it acknowledged the revenues assessed by ZATCA, identified a substantial discrepancy between the revenues reported in Taxpayer's returns and those reflected in the submitted statements. Since Taxpayer failed to initially submit returns, including revenues declared later in the submitted statements, and since such revenues differ significantly from those previously disclosed to ZATCA, this serves as evidence that Taxpayer submitted incorrect returns with the intent of tax evasion. Since Taxpayer failed to provide a justification for this discrepancy or for failure to comply with the regulations concerning the keeping of commercial books, this Department concludes that a case of tax evasion has been established for years in question. Since the years assessed by ZATCA fall within the statutory period of ten years from the specified deadline for filing returns, the Department dismisses Taxpayer's appeal regarding the two items (Expiry of Statutory Period for Tax Assessment and ZATCA Estimated Assessment), and upholds Primary Department's decision.

First: Accept Appeal in form filed by Taxpayer (... Company), C.R. No. (...), TIN (...), against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...) rendered in Case No. (...) regarding tax assessment for the years 2009 to 2017 AD.

Second: On Merits:

1. Dismiss Taxpayer's appeal regarding the item (Expiry of Statutory Period for Tax Assessment) and uphold the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the reasons and justifications stated herein.



2. Dismiss Taxpayer's appeal regarding (Estimated Assessment) item and uphold the decision rendered by the First Department for Determination of Income Tax Violations and Disputes in Riyadh according to the reasons and grounds stated herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-273
Case No. I-27403-2020

Principle No. 358

- The rent expense to be deducted from the tax base is the amount attributable to the rental period within that year, given that Taxpayer employs the accrual basis in preparing its financial statements.

Facts

The Department convened to consider the Appeal filed on .../.. /... AH corresponding to ../. AD, (...), National ID No. (...), In his capacity as the attorney of Appellant Company under POA No. (...), and appeal filed on 05/03/1442 AH, corresponding to 21/10/2020 AD. by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-106) rendered in Case No. (I-40-2018) related to tax assessment for years from 2011 to 2013 filed by Appellant against ZATCA. Primary Department decided as follows: First: formal aspect: Accept Plaintiff's (Branch of ... Company) case, C.R. No. (...), in form. Second: On Merits:

1. Dismiss Plaintiff's (Branch of ... Company) objection regarding unapproved salaries and equivalents of 2012 and 2013 AD.
2. Abolish Defendant's decision on item (overconsumption differences of 2013).
3. Amend Defendant's decision regarding equipment rentals for individuals for 2013 AD by abolishing Defendant's decision regarding the rental amount of (SAR 13,614) and dismissing Plaintiff's objection to equipment rentals for individuals in an amount of (SAR 9,500).
4. Amend Defendant's decision on item (overcharged rent of 2013).
5. Dismiss Plaintiff's (Branch of ... Company) objection concerning unapproved entertainment expenses, fines, and procurement expenses depreciation of 2013 AD.
6. Uphold Defendant's decision on imposing a late payment fine on Plaintiff for 2012 and 2013 AD, according to the stated conclusion reached herein.

Dissatisfied with this decision, both parties filed a statement of appeal summarized as follows: With regard to Zakat Payer's appeal against the Primary Department's decision, his appeal lies in the following: As for item (overconsumption differences of 2013), Taxpayer claims that the Primary Department failed to address the difference contained in the Tax Return. In addition, Taxpayer requests a clear statement of the approval of deduction of consumption difference contained the Tax Returns, as claimed by Taxpayer. As for item (rents of equipment paid to individuals of 2013), Taxpayer claims that the equipment was rented to meet the emergency requirements that occurred at the project site, as the company is committed to completing the project phases at the agreed-upon period, thus, the company had to rent some equipment from individuals for the purpose of completing the project phases. As for item (distributed excessive rents of 2013), Taxpayer claims that labor's housing rents were paid and calculated in the financial statements on an accrual basis. In addition, the lease contracts are renewed annually, hence, the entire rent amount must be deducted from Tax Base. As for item (unapproved entertainment expenses, fines, and procurement consumption expenses of 2013), Taxpayer claims that they are



entertainment expenses that were paid and represent a part of work development, and necessary to entertain employees in order to carry out their duties with required quality and speed, hence, they are considered necessary for company's work and relevant to its commercial activity. In addition, visa fees for employees were paid, and with regard to miscellaneous expenses, it was inadvertently mentioned as "consumption" in the Arabic translation, as they are in fact expenses incurred by the company to facilitate business activities. As for item (unapproved salaries and other similar of 2012 and 2013), Taxpayer claims that the company was awarded a contract to implement the first phase of Haramain Express Project as a subcontractor, and according to the terms of the contract, the main contractor is responsible for issuing the necessary visas to all subcontractors. Moreover, all workers and employees working on the project fall under the responsibility of the main contractor and transferred to the company's sponsorship after completing the first phase of the project. In addition, in order to carry out the necessary work for the project, the company incurred all costs related to workers and employees, including salaries, insurance, housing, and others, which are considered necessary expenses to enable the company to realize its revenues. As for item (late payment fine), Taxpayer claims that ZATCA has no right to claim tax differences and associated fine, which the company has proven to be invalid. Moreover, items in question are disputed in various respects and claiming thereof is not redeemed final until a final decision is issued. Based on the foregoing, Taxpayer requests that the Primary Department's decision be reversed on items in question for the stated grounds.

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

ZATCA, regarding (Overcharged Rent of 2013), clarifies that Primary Department erred in its reasoning upon relying on that the lease contract covers the period from 15/03/2013 to 15/03/2016 AD with an amount of SAR (80,000). However, the fiscal period in dispute runs from 01/04/2012 to 31/03/2013 AD, which limits the rental period relevant to the year to the span from 15/03/2013 to 31/03/2013, totaling 17 days. Given the lease contract duration is three years, the rental amount attributable to the disputed year is calculated as follows: The rent for the period from 15/03/2013 to 31/03/2013 AD is calculated as follows: $(80,000 \div 3) \times (17 \div 365) = \text{SAR } (1,242)$, which is contrary to the Department's decision. Consequently, the amount to be added to the net profit is $(80,000 - 1,242) = \text{SAR } (78,758)$, which is the amount claimed by ZATCA and overlooked by the Department that delivered the decision, which adjusted ZATCA's assessment assuming the full rental amount for 2013 was applicable, which ZATCA disagreed with. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests endorsement of its action, and seeks reversal of Primary Department's decision with respect to the contested items under ZATCA's appeal for the aforementioned reasons.

On Sunday 21/10/1443 AH corresponding to 22/05/2022 AD, the Department decided to hold a 10-day e-hearing. During that period, ZATCA submitted a reply in which it responded to Taxpayer's appeal, maintaining the accuracy and correctness of its procedures. ZATCA, regarding (Excess Depreciation Differences for 2013 AD), clarified there is no valid basis for Taxpayer's appeal is without merit as it is supported by evidence and there is no valid reason to appeal. ZATCA, regarding (3), maintains its position, as its decision aligns with the Jurisprudence Rule of "Onus of proof lies with the plaintiff". ZATCA, regarding (Overcharged Rent for 2013 AD), reiterates its position according to the details outlined in its memorandum appealing this item and further demonstrates that, regarding (Unapproved Entertainment Expenses, Fines, and Procurement Expenses Depreciation for 2013 AD), stands by its view as detailed in its memorandum, as its decision aligns with Paragraph (1/a) of Article (9) of the Implementing Regulations of the Income Tax Law. As for late payment fine, ZATCA maintains its position as detailed in its memorandum, as its decision is consistent with Paragraph (c) of Article (76) and Article (77) of the Income Tax Law. Moreover, ZATCA asserts that Taxpayer's arguments do not raise any new issues that have not already been addressed and responded to and requests that no new documents be accepted that were not submitted during the examination and objection phases. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests dismissing



Taxpayer's appeal and upholding the primary decision with respect to the contested items under Taxpayer's appeal for the aforementioned reasons. Taxpayer also submitted a Reply responding to ZATCA's appeal, a summary of which included that Taxpayer paid the rents related to labor's housing and calculated the rent amount within the financial statements on an accrual basis, as these rents are expenses of a revenue nature received in the course of normal business. Moreover, the lease contracts are renewed annually, as ZATCA took into consideration the rental expenses due from the date of the lease contract and omitted the rents due and paid for the entire fiscal year, which is contrary to the regulations and instructions. Based on the foregoing, Taxpayer requests that the ZATCA's appeal be dismissed and the Primary Department's decision be upheld on item in question for the stated grounds.

The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on Wednesday 06/01/1444 AH corresponding to 03/08/2022 AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

Grounds

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

As on Merits, ZATCA's appeal, regarding (Overcharged Rent for 2013 AD), is based on its objection to Primary Department's decision on this item, asserting that the number of days within the fiscal years covered by the lease contract amounts to 17 days, which reflects its procedure. Meanwhile, Taxpayer requests dismissal of ZATCA's appeal and affirmation of the primary decision. The Department, upon reviewing ZATCA's appeal and examining the Case file, finds that the dispute centers around a three-year lease contract between Taxpayer and (...) Establishment commencing on 04/05/1434 AH, corresponding to 15/03/2013 AD. It was also noted that Taxpayer's fiscal year begins on 10/05/1433 AH, corresponding to 01/04/2012 AD, and ends on 20/05/1434 AH, corresponding to 31/03/2013 AD. Therefore, the deductible rental amount for the year 2013 pertains to the rental period within that year, as Taxpayer employs the accrual basis in preparing its financial statements. Given these facts, and that the rental period falling within the fiscal year from the lease commencing on 15/03/2013 AD covers 17 days, which aligns with ZATCA's procedure regarding this item, the Department concluded to accept ZATCA's appeal and reverse the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Overconsumption Differences of 2013) item, is based on the objection to Primary Department's decision on this item, claiming that it overlooked addressing the difference reported in the return. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Having reviewed the appeal and examined the case file, including the attached documents, and considering that the primary decision abolished ZATCA's action and upheld Taxpayer's view by allowing the deduction of the excess depreciation differences amounting to SAR (871,760), and upon reviewing the initial objection submitted to Primary Department, it is evident that the Department's decision aligned with Taxpayer's position by accepting the contested amount of SAR (871,760), which is the same amount under appeal. Consequently, the Department concluded to dismiss Taxpayer's appeal regarding this item.

Taxpayer's appeal, regarding (Equipment Rentals for Individuals for 2013 AD) item, is based on the objection to Primary Department's decision on this item, claiming that the rent is a deductible expense, as it is documented and necessary for generating taxable income. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and



upholding the primary decision. Having reviewed the appeal and examined the case file, and given that the dispute is documentary on merits, and considering that Taxpayer provided proof of payment for the disputed amounts, this Department concluded to accept Taxpayer's appeal and reverse the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Distributed Excessive Rents for 2013 AD) item, is based on the objection to Primary Department's decision on this item, claiming that the rent is a deductible expense, as it is documented and necessary for generating taxable income. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. The Department, upon reviewing the appeal and examining the Case file, finds that the dispute centers around a three-year lease contract between Taxpayer and (...) Establishment commencing on 04/05/1434 AH, corresponding to 15/03/2013 AD and another lease contract with ... Commencing on 11/01/1434 AH, corresponding to 24/11/2012 AD, and ending on 06/06/1437 AH, corresponding to 15/03/2016 AD. Regarding the lease contract between Taxpayer and (...) Establishment, The Department addressed this matter when considering ZATCA's appeal and ruled in favor of ZATCA's procedure, accepting its appeal on this matter for the reasons outlined. As for the lease contract between Taxpayer and ..., given that Taxpayer's fiscal year commences on 10/05/1433 AH, corresponding to 01/04/2012 AD, and ends on 20/05/1434 AH, corresponding to 31/03/2013 AD, the rental amount to be deducted from the tax base for 2013 is that portion attributable to the rental period falling within that year, as Taxpayer employs the accrual basis in preparing its financial statements. Given these circumstances, and as Taxpayer's lacked specific details specifying the rental amount and period relevant under the accrual basis, this Department concluded to dismiss Taxpayer's appeal regarding this item.

As for Taxpayer's appeal regarding item (unapproved entertainment expenses, fines, and procurement consumption expenses of 2013), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that this item expenses are deductible, documented, and necessary to carry out the activity that generates taxable income, while ZATCA argued that it adheres to the validity of its procedure and requests that Taxpayer's appeal be dismissed and the appealed decision be upheld. Upon reviewing Taxpayer's appeal, and examining the case file by the Department, it found that, from the documents submitted, Taxpayer incurred expenses in the amount of (SAR 5,593), represented by payments for lunches and foodstuffs, expenses for visa fines and others in the amount of (SAR 2,210), and procurement expenses in the amount of (SAR 365,941); since the dispute is related to the documents submitted; and since Taxpayer has submitted the supporting documents; Therefore, the Department satisfies to accept Taxpayer's appeal and reverse the Primary Department's decision on item in question.

Taxpayer's appeal, regarding (Unapproved Salaries and Equivalents of 2012 and 2013 AD) item, is based on the objection to Primary Department's decision on this item, claiming that salaries are deductible expenses, as they are documented and necessary for generating taxable income. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Having reviewed the appeal and examined the case file, and given that the dispute is documentary on merits, and considering that Taxpayer provided proof of payment for the disputed salaries, this Department concludes that the appealed expenses are adequately documented. Accordingly, it concluded to accept Taxpayer's appeal and reverse the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Late Payment Fine) item, is based on the objection to Primary Department's decision on this item, claiming that the fine should only be imposed from the date the tax obligation becomes final. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Zakat Payer's appeal and upholding the primary decision. Having reviewed the appeal and examined the case file, and considering that this Department upheld Taxpayer's position on certain items of the appeal, the relevant fine shall be nullified when its basis is voided. As for the appeal regarding item (distributed excessive rents of 2013); since the Department decided to dismiss Taxpayer's appeal regarding the same; and since the Department



decided to accept ZATCA's appeal regarding item (overcharged rent of 2013); and since the amounts in question are related to leases contracts and known periods; hence, the fine is due for those items from the due date. Accordingly, the Department satisfies to dismiss Taxpayer's appeal on the fine related to these items; amend the Primary Department's decision by dismissing the late payment fine for items appealed against by Taxpayer and accepted by this Department; and impose a late payment fine for the item appealed against by Taxpayer and dismissed by this Department, as well as for the item appealed against by ZATCA and accepted by this Department, provided that the fine is calculated from the due date of tax to the date of payment.

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

Decision

First: Accept appeal in from filed by Taxpayer (... Company), C.R. No. (...), TIN (...), and appeal filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (...) rendered in Case No. (...) With relation to the tax assessment for the period (2011-2013 AD).

Second: On Merits:

1. Accept ZATCA's appeal on item (overcharged rent for year ending on 31/03/2013 AD), and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
2. Dismiss Taxpayer's appeal on item (overconsumption differences of 2013) according to the grounds stated in this decision.
3. Accept Taxpayer's appeal on item (rents of equipment paid to individuals of 2013), and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
4. Dismiss Taxpayer's appeal on item (distributed excessive rents of 2013), and uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
5. Accept Taxpayer's appeal on item (unapproved entertainment expenses, fines, and procurement consumption expenses of 2013), and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
6. Accept Taxpayer's appeal on item (unapproved salaries and other similar of 2012 and 2013), and reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
7. As for item (late payment fine):
 - A. Accept Taxpayer's appeal, reverse the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah, and dismiss the fine for items against which Taxpayer's appeal accepted by this Department, according to the grounds stated in this decision.
 - B. Dismiss Taxpayer's appeal, uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah, and impose the fine for the item against which Taxpayer's appeal dismissed and ZATCA's appeal accepted by this Department, in accordance with the grounds mentioned herein.

Similar Decisions
First Appellate Department for Income Tax
Violations and Disputes
IR-2022-306



Decision No. IR-2022-277
Case No. I-7854-2019

Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Principle No. 359

-Taxpayer's failure to maintain statutory accounts that can be relied upon for tax imposition, coupled with the lack of evidence to support its claim for a lower profit margin than determined by the Primary Committee that delivered the decision, results in the rejection of Taxpayer's request and affirmation of the appealed decision.

To consider the appeal filed on ../../.. corresponding to ../../... AD by/ ..., holder of Resident ID

Facts

No. (...), in his capacity as the owner of Appellant Establishment, against First Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (7/23) for 1439 AH, concerning the tax assessment for the years 2009 to 2014 AD, in the case filed by Appellant against ZATCA, in which the Primary Objections Committee decided as follows:

First: formal aspect:

Accept Taxpayer's objection received by ZATCA under No. (...) dated ../../... in form for been filed with capacity and within the period prescribed by law for filling, meeting the conditions stipulated in Articles (66/a) and (66/b) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH and Article (60/1) and (60/3) of Implementing Regulations of Income Tax Law issued by the Minister of Finance Decision No. (1535) dated 11/06/1425 AH.

Second: On Merits:

Uphold ZATCA by disregarding Taxpayer's accounts and charging thereof at an estimated basis of 2009 to 2014; charge Taxpayer on Tax Assessment at an estimated rate of (10%) of the total contracts without imposing a fine for failure of submission of Tax Return of 2009 to 2014; and uphold ZATCA in imposing late payment and fraud fines for of 2009 to 2014, according to the grounds stated in this decision.

Since this decision was not accepted by Taxpayer (... Est.), Taxpayer submitted a statement of appeal that included the following, in summary:

Taxpayer objects to the decision of the Objection Committee in question, claiming that: As for item (Estimated Assessment of 2009 to 2014), the accounts were disregarded, Tax Reassessment was made, and the tax was estimated arbitrarily. As a result, the amounts were claimed twice for the same period without making a deduction or calculating the prepaid amount. In addition, the profit ratio does not exceed (6%) at best. As for item (late payment and fraud fines of 2009 to 2014), Taxpayer claims that the appealed decision abolished the fine for failure of submission of Tax Return, whereas it imposed late payment and fraud fines, despite that these fines are subsets of the fine for failure of submission of Tax Return. Moreover, the tax is always paid on its due date, which is (30/4) of each year. In addition, documents and papers submitted show the absence of criminal intent by Taxpayer to deceive or mislead ZATCA, hence, the appealed decision lacks of a valid and sound basis. Based on the foregoing, Taxpayer requests that the Decision of the First Primary Committee for Zakat and Tax Objections in question be reversed for the stated grounds.

On/../... AH corresponding to ../../... AD, the Department decided to hold a 10-day e-hearing. During that period, ZATCA submitted a reply in which it responded to Taxpayer's appeal, summarizing that it argues that the First Primary Zakat and Tax Objection Committee in



Jeddah issued Decision No. (7/23) for 1439 AH on the same subject and for the same years. Therefore, ZATCA requests dismissal of the case due to it having been previously adjudicated. ZATCA, regarding (Estimated Assessment), also clarifies that its action was proper and in accordance with the legal requirements after the field inspection of Taxpayer. It was evident, upon comparing the data, information, and analyses, that Taxpayer had submitted financial statements that did not accurately reflect the scale of its operations, concealing substantial revenues that were not disclosed, in violation of Paragraphs (1) and (2) of Article (56) of the Implementing Regulations of the Income Tax Law, urging ZATCA to conduct an estimated assessment pursuant to Article (36), Paragraph (b) of the Income Tax Law. Moreover, ZATCA, regarding (Late Payment and Fraud Fines), imposed a 25% fraud fine on the resulting tax difference due to Taxpayer's submission of false information with the intent of tax evasion, in violation of Article 61, Paragraph (a) of the Income Tax Law and Paragraphs (1) and (4) of Paragraph (b) of Article (77) of the Income Tax Law. The late payment fine was imposed in accordance with Paragraph (a) of Article (77) of the Income Tax Law and Paragraph (1/b) of Article (68) of the Implementing Regulations of the Income Tax Law. ZATCA reiterates its stance previously presented before Primary Department, emphasizing that the arguments raised by Taxpayer do not differ from those previously addressed and answered by ZATCA at the time and requests the Department to reject any new requests from Taxpayer based on Article (186) of Law of Civil Procedures. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision for the aforementioned grounds.

On , .. / .. / .. AH The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on / .. / .. AH corresponding to .. / .. / .. AD. 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 claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

As on Merits, Taxpayer's appeal, regarding (Estimated Assessment for the years 2009 to 2014 AD), lies in Taxpayer's objection to Primary Objections Committee's decision regarding this item, claiming that its accounts were disregarded, resulting in a tax reassessment and repeated demands for payment for the same period, despite the profit rate not exceeding 6% at best. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding Primary Objections Committee's decision. Having carefully considered the matter in dispute, and given that the basis for calculating the tax base must be founded on data and documents, most importantly the financial statements audited by a chartered accountant, and upon reviewing the grounds of the dispute, it appears that Taxpayer's did not possess statutory accounts that could be relied upon for tax imposition. The committee had issued its decision by calculating the estimated net income at a rate of 10%. Taxpayer failed to provide evidence to support its claim that the profit rate should be calculated at a lower rate than that determined by the Primary Committee that delivered the decision. As for Taxpayer's argument that tax was imposed twice for the same period, a review of the invoices issued by ZATCA indicated that amounts paid were deducted from the amounts claimed after the reassessment, showing that tax was not imposed twice on the same amount. The Department found that the result reached by the Primary Committee was correct, leading it to conclude that Taxpayer's appeal should be dismissed and the decision of the First Primary Committee in Jeddah should be upheld regarding this matter.

As on Merits, Taxpayer's appeal, regarding (Fraud and Late Payment Fine for the years 2009 to 2014 AD), lies in Taxpayer's objection to Primary Objections Committee's decision regarding this



item, claiming that the late payment and fraud fines were imposed despite being secondary to the fine for failure to file the return, arguing that tax is always paid on time and there was no intentional fraud or deception. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding Primary Objections Committee's decision. Having reviewed the appeal and examined the case file, particularly with regard to the late payment fine, the Department finds that Taxpayer cannot be held liable for non-payment of tax until it is notified or should have been aware thereof. Accordingly, this Department concludes that the calculation of the late payment fine should be adjusted to be charged from the date Taxpayer was notified of ZATCA's assessment, which included the tax difference, until the date of payment. With regard to the fraud fine; and since the Case was filed in general regarding the same without attributing a clear specific act that can be charged against and defended by Taxpayer, which entails that Taxpayer is presumed innocent until proven guilty under compelling evidence that can be relied upon to support that claim; Therefore, the Department concludes that fraud has not been proven against Taxpayer. Accordingly, it satisfies to accept Taxpayer's appeal and reverse the Objection Committee's decision delivered in this regard.

In light of the above and considering the aforementioned grounds, the Department unanimously decided to as follows:

Decision

First: Accept Taxpayer's/... Est., C.R No. (...), TIN No. (...), appeal against Decision No. (7/23) of 1439 AH delivered by the First Primary Committee for Zakat and Tax Objections in Jeddah in connection with Tax Assessment of 2009 to 2014 AD, in form.

Second: On Merits:

1. Dismiss Taxpayer's appeal on item (Estimated Assessment of 2009 to 2014); and uphold the Decision of the First Primary Committee for Zakat and Tax Objections in Jeddah, according to the grounds stated in this decision.
2. Concerning (Late Payment and Fraud Fines for the years 2009 to 2014 AD) item:
 - A. Accept Taxpayer's appeal regarding late payment fine and amend the decision of the First Primary Zakat and Tax Objection Committee in Jeddah, by determining that the late payment fine shall be calculated from the date Taxpayer was notified of ZATCA's assessment, which included the tax difference, until the date of payment according to grounds and reasons stated herein.
 - B. Dismiss Taxpayer's appeal regarding the fraud fine and reverse the First Primary Zakat and Tax Objection Committee in Jeddah according to grounds and reasons stated herein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes
In Riyadh

Decision No. IR-2022-278
Case No. IW-25154-2020

Principle No. 360

- The expense that Taxpayer is entitled to deduct from its tax base is that incurred and supported by documentation. The deduction of salaries and wages does not require that the employee be registered in social insurance.

Facts

To consider the appeal presented on .././.... AH, corresponding to .././.... AD, by ... Company against the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISZR-2020-91), issued in case No. (IW-1895-2018), regarding tax assessment for 2009 and 2010 AD, filed by the Appellant against ZATCA. The primary decision stated the following:

First: Accept Plaintiffs/ ... Co., CR No. (...), claim in form.

Second: On Merits:

1. Its rejection with regard to the item (Salary Differences for 2009 and 2010 AD).
2. Its rejection with regard to the item (Withholding tax calculated on non-resident companies at a rate of 15%).
3. Confirm settlement of the dispute regarding the item (Withholding tax on amounts related to services provided by non-resident companies at a rate of 5%).
4. Its rejection with regard to the item (Imposition of Late Payment Fine), except for the late payment fine of the withholding tax on amounts related to services provided by non-resident companies at a rate of 5%, as the dispute was resolved.

Dissatisfied with the decision, the Zakat Payer..... Company filed a statement of appeal, which is summarized as follows:

Taxpayer objects to the Primary Department's decision in question, claiming that : As for item (Salary and Wage Differences); these differences represent incidental salaries related to employees contracted during the probationary period and are recorded in a separate item until the end of the probationary period and their appointment is officially approved. Moreover, the company's activity is a service that depends primarily on the human capital and it must hire some employees. Accordingly, skilled and trained workers must be available to carry out its business, hence, a probationary period is set for the employee to ensure his readiness, after which those salaries are classified as incidental salaries. In addition, employees' contracts stated they will be on probation. On the other hand, the company's accounts and books are audited by an auditor licensed to work within the Kingdom, who did not issue any reservations regarding those salaries. Moreover, the Committee stated that the salary differences represent commissions and bonuses, which is groundless of any fact, as these differences represent only salaries, not bonuses or commissions, which confirms that the Primary Department did not understand the type of expense to issue its decision thereon. With regard to the chartered accountant's certificate, it was submitted to ZATCA for salaries and wages included in the financial statements upon request; however, it did not include the incidental salaries, as they were classified in separate item other than the salaries and wages



item. In addition, the financial statements are considered a certificate issued from a licensed chartered accountant. As for item (Withholding Tax Charged on Non-Resident Companies); Taxpayer claims that services provided by Company (Egyptian) represent, according to the contract, the provision of software to Taxpayer for reselling thereof to its customers and does not include services, hence, they are not subject to withholding tax due to the lack of a source of income. As for services provided by Company (Egyptian), they represent the sale of Internet services that are classified as international telephone communications services, and this type of service is subject to a withholding tax of only (5%), not (15%). As for item (Withholding tax on amounts related to services provided by non-resident companies); Taxpayer claims that the dispute between Company and was resolved. With regard to Company, Taxpayer stated that the primary decision was mistaken regarding the tax charged on Taxpayer pursuant to ZATCA's Assessment, which the company agreed to pay to resolve the dispute, as the decision stated that the tax amount is (SAR 135,715), while the amount stated in ZATCA's Assessment and agreed to pay by the company is (SAR 13,256). Accordingly, the company requests that the amount of the tax that was agreed to be paid be amended to become (SAR 13,256). As for item (Late Payment Fine); Taxpayer claims that due to the existence of a real difference in views, the late payment fine may not be imposed except from the date of issuance of the final decision. Based on the foregoing, Taxpayer requests that the Primary Department's decision be reversed for the stated grounds.

On,./../.... AH corresponding to .././.... AD, the Department decided to hold a 10-day e-hearing. During that period, ZATCA submitted a reply in which it responded to Taxpayer's appeal summarizing that it argues, regarding (Salary Differences), that it disallowed the salary differences because the employees in question were not under the sponsorship of Taxpayer, who failed to provide supporting documentation, based on the provisions of Article (12) of the Income Tax Law and Articles (10) and (9) of its Implementing Regulations. ZATCA, regarding (Withholding Tax on Non-Resident Companies at 15%), calculated the withholding tax at 15% because the amounts were paid to a related company, in accordance with the provisions of Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law. Furthermore, the amounts owed between related companies do not require the conventional payment event because they are settled through accounting entries, without the need for a cash payment event. Additionally, Taxpayer's contracts did not indicate that these were international telecommunication services or purchases; instead, they were agreements for the use of software governed by these contracts. Based on Articles (2) and (68) of the Income Tax Law, Paragraph (a) of Article (5) of the same law, and Article (63) of its Implementing Regulations, the objection was rejected. As for (Withholding tax on amounts related to services provided by non-resident companies at 5%), ZATCA requests dismissal of Taxpayer's appeal, as Taxpayer had previously accepted ZATCA's procedure regarding this item before the Primary Department, in accordance with Article (108) of the Law of Civil Procedures. Moreover, ZATCA, regarding (Late Payment Fine), imposed such fine on the unpaid differences within the statutory period, based on Paragraph (a) of Article (77) of the Income Tax Law and Paragraph (1/b) of Article (68) of its Implementing Regulations. The arguments raised by Taxpayer do not differ from those previously addressed and answered by ZATCA at the time. ZATCA requests the Department to reject any new documents that were not submitted during the inspection and objection phases and further requests the Department to reject any new requests from Taxpayer based on Article (186) of Law of Civil Procedures. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision for the aforementioned grounds. On,./../.... /../...., The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on/../.... AH corresponding to .././.... AD. 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 claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

As on Merits, Taxpayer's appeal, regarding (Salary and Wage Differences for 2009 and 2010 AD) item, is based on the objection to Primary Department's decision on this item, claiming that such expenses should be deductible since they are supported by documentation and are necessary for the business activity generating the taxable income. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Having carefully considered the subject matter of the dispute and reviewed the appeal and the case file, the Department finds that the core of the dispute lies in the non-deduction of salaries and wages paid to employees who are not under the sponsorship of Taxpayer and the failure to provide certificates issued by social insurance. It is evident, upon examining the documents submitted in the case file, that wages were paid to employees who were not registered with the social insurance. Since the expense that Taxpayer is entitled to deduct from its tax base is the expense incurred and supported by documentation, and it is not a requirement for the deduction of salary and wage expenses that the employee be registered with social insurance, and since Taxpayer provided the supporting documents for the amounts in dispute, the Department concludes to accept Taxpayer's appeal and reverse the primary decision.

Taxpayer's appeal, regarding (Withholding Tax on Non-Resident Companies at 15%), is based on objecting to the decision made by the Primary Department on this item, claiming that the services provided by ... Company (Egyptian), as per the contract, involve supplying Taxpayer with software for resale to customers, which does not include services and, therefore, should not be subject to withholding tax due to the non-existence of a taxable income source. Furthermore, Taxpayer asserts that the services provided by ... Company (Egyptian) involve the sale of Internet services, which are classified as international telecommunication services and are subject to a 5% withholding tax, not 15%. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Upon careful examination of the dispute, the Department found that Taxpayer's appeal concerns transactions with two non-resident companies, including ... Company and ... Company. Regarding transactions with ... Company, and after the Department reviewed Taxpayer's appeal and examined the case file, and having considered ZATCA's opinion as outlined in the facts of the decision of Primary Department, which justified its decision to impose withholding tax on the disputed amounts on the grounds that they were paid to related parties, without specifying the nature of the transaction between the two parties and whether the transaction was among the services subject to withholding tax; and after examining the reasons for Primary Department, which supported ZATCA's action on the grounds that the non-resident entity had received those amounts from the resident entity in return for providing marketing services for software programs; and after the Department's review of the agreement terms between both parties, it was found that the entity providing the marketing services was Taxpayer and that the amounts received by the non-resident entity were in consideration of software sales to clients, not for marketing services. Since the agreement did not indicate that these amounts were paid in exchange for the use of intellectual property rights, they are not considered royalties subject to withholding tax. Therefore, the correct classification of this transaction is that it falls under the supply of goods, which does not obligate Taxpayer to withhold amounts for withholding tax when transferring funds to a non-resident. This classification is known to ZATCA, as reflected in its response to one of the most frequently asked questions (Question No. 82) related to the purchase of computer systems from abroad, in which ZATCA confirmed that such transactions are not subject to withholding tax. Given these considerations, the



Department concludes to accept Taxpayer's appeal and reverse the primary department ruled in this regard.

As for the transactions with ... Company, it was found that the services provided by the non-resident company consisted of internet services. Given that ZATCA's decision to subject the amounts in question to withholding tax was based on the assumption that the transaction was conducted with an unrelated entity, without clarifying the nature of the transaction between both parties, since the disputed transaction was regulated by Income Tax Law and its Implementing Regulations prior amendment that imposed a rate of (15%) on the amounts transferred to related parties, which was calculated based on a rate of (5%); since the amendments made to the Implementing Regulations of Income Tax Law were after the payment as well as the date of the Assessment on Taxpayer; and since the tax provisions are not applied retroactively; therefore, this Department satisfies that Taxpayer has the right to calculate a rate of (5%) on the amounts transferred to Company. Accordingly, the Department decided to accept Taxpayer's appeal and reverse the primary decision in this regard.

As for Taxpayer's appeal regarding item (Withholding tax on amounts related to services provided by non-resident companies at a 15% rate), which includes objection to the Primary Department's decision regarding the same, as Taxpayer claims that the primary decision was mistaken regarding the tax charged on Taxpayer pursuant to ZATCA's Assessment, which Taxpayer agreed to pay to resolve the dispute, while ZATCA argued that it adheres to the validity of its procedure and requests that Taxpayer's appeal be dismissed and the primary decision be upheld. The Department, upon careful examination of the dispute and reviewing Taxpayer's appeal as well as the case file, found that Taxpayer's appeal pertains to the amount related to ... Company. The primary decision had affirmed Taxpayer's agreement with ZATCA's position. However, the crux of Taxpayer's appeal is that the amount agreed upon, as stated in ZATCA's assessment, was SAR (13,256), not SAR (135,715) mentioned in the primary decision. Therefore, Taxpayer requests a correction to this discrepancy. Given that Taxpayer's appeal centers on the amount accepted by Primary Department and that such acceptance had concluded the dispute, the Department found that the amount stated in the assessment was indeed SAR (13,256). Therefore, the Department decided to refer Taxpayer's appeal back to the Department that delivered the decision for consideration in order to determine the correct amount that Taxpayer had agreed to pay.

Taxpayer's appeal, regarding (Late Payment Fine) item, is based on the objection to Primary Department's decision on this item, claiming that the fine, in the case of a genuine dispute, should only be imposed from the date of the final ruling. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Upon reviewing subject of dispute and Taxpayer's appeal, and examining the contents of the case file by the Department; it found that the Primary Department's decision regarding the late payment fine is related to items dismissed by the Department, which are (Salary and Wage Differences for 2009 and 2010 AD) and (withholding tax charged on non-resident companies at a 15% rate); and since this Department decided to accept Taxpayer's appeal on these two items, the associated fine is dismissed accordingly; Therefore, the Department satisfies to accept Taxpayer's appeal and reverse the primary decision in this regard.

In view of the foregoing, and in light of stated 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. (ISZR-2020-91), issued in Case No. (IW-1895-2018), related to tax assessment for 2009 and 2010 AD.

Second: On Merits:



d- Accept the appeal filed by Taxpayer regarding the item (Late payment fine), and overturn the decision taken by the second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

2. Regarding the item (Withholding tax imposed on nonresident companies at a 15% rate):

a- Accept the appeal filed by Taxpayer regarding transactions with (...) Company , and overturn the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

b- Accept the appeal filed by Taxpayer regarding transactions with (...) Company , and overturn the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

c- Accept the appeal filed by Taxpayer regarding the item (Withholding tax imposed on nonresident companies at a 15% rate), and cancel the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

d- Accept the appeal filed by Taxpayer regarding the item (Late payment fine), and overturn the decision taken by the second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

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



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Decision No.: IR-2022-283

Case No.: I-29439-2020

Principle No. 361

-The absence of profits from the sale, as per the agreed-upon amount, renders ZATCA's imposition of income tax on these amounts unjustified.
to consider the appeal filed on .../../. AH, corresponding to ../../. AD, by/ ..., against First

Facts

Primary Committee for Zakat and Tax Objections in Jeddah Decision No. (2/5) for 1434 AH, concerning the tax assessment for 2003 AD, in the case filed by Appellant against ZATCA, in which the Primary Objections Committee decided as follows:

First: formal aspect:

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

Second: On Merits:

1- Uphold ZATCA's decision to add capital gains of (SAR 14,570,297) to the Taxpayer's tax base for 2003.

2. Uphold ZATCA's decision to impose a concealment penalty on Taxpayer at a rate of 25% of the tax assessed for 2003 AD, according to the stated conclusion reached herein.

Dissatisfied with the decision, the Zakat Payer..... Company filed a statement of appeal, which is summarized as follows:

Taxpayer challenges the appealed primary decision, claiming that, regarding (Capital Gains Tax), the capital gains resulting from the foreign partner's exit were calculated without considering whether a loss was incurred and also requests that no tax be imposed on the exit, as a loss was sustained from the sale. Regarding (Late payment and concealment fine), Taxpayer argues that there is no justification for imposing the fine, as ZATCA already had all the relevant information prior to the assessment, and that there is a technical disagreement on the matter, which does not warrant a late payment fine. Therefore, Taxpayer requests the reversal of the appealed decision of the Primary Zakat and Tax Objection Committee for the aforementioned grounds.

Having opened the door for pleadings, the Department received a reply from ZATCA on 12/10/2021 AD, in which ZATCA responded to Taxpayer's appeal, emphasizing that it upholds the primary decision as it aligned with the provisions of law and issued circulars. Accordingly, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision for the aforementioned reasons.

On/../. AH corresponding to ../../. AD, the Department decided to hold a 10-day e-hearings. However, neither party to the appeal submitted any additional arguments.

On/../. AH The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on ../../. AH



corresponding to .././.... AD. 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 claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

As on Merits, Taxpayer's appeal, regarding (Capital Gains Tax), lies in Taxpayer's objection to Primary Objections Committee's decision regarding this item, requesting that no tax be imposed on the exit due to the loss incurred from the sale. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding Primary Objections Committee's decision. Having carefully examined the dispute and reviewed the appeal and the case file, the Department finds that the dispute centers on the calculation of capital gains arising from the foreign partner's exit. Taxpayer requests that income tax not be imposed on the exit due to a loss incurred from the sale, with the sale value being lower than the amount calculated by ZATCA. Upon reviewing the documents submitted by Taxpayer, including the Articles of Association, the audited financial statements for the period from .././.... corresponding to .././..., to .././..., corresponding to .././.... AD, and the sale agreement, which shows that the total amount transferred to ... for the sale of shares was USD (6,194,022), equivalent to SAR (23,227,583). The Department, upon comparing the book value to the amount paid, finds that no profit was realized from the sale based on the agreed-upon amount. Consequently, the Department concluded that ZATCA is not entitled to impose income tax on the amounts in dispute. As a result, the Department, by majority, decided to accept Taxpayer's appeal and reverse the decision of the First Primary Committee for Zakat and Tax in Jeddah.

Regarding the Taxpayer's appeal concerning the item (Late payment and concealment fine), the Taxpayer's appeal centers specifically on challenging the Primary Objections Committee's decision regarding this item. The Taxpayer claims that ZATCA had all necessary information before the assessment. Additionally, the taxpayer argues that there is a technical disagreement that does not justify imposing a late payment fine, whereas ZATCA maintains that its actions were correct and proper, and it requests to dismiss the Taxpayer's appeal and overturn the Primary Objections Committee's decision. Having reviewed the appeal and examined the case file; and as it has not been proven before this Department that the Taxpayer concealed any information that would affect the amount of tax imposed on it; and since the Department has accepted the Taxpayer's appeal regarding capital gains; and since the disputed fine is linked to that item, it shall be nullified when its basis is voided., therefore, this Department decides to accept the Taxpayer's appeal and overturn the decision of the Committee for Zakat and Tax Objections in Jeddah in this matter.

Decision

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

First: Accept the appeal in form filed by Taxpayer/ ... Company, CR No. (...), TIN No. (...), against the decision of the First Primary Zakat and Tax Objection Committee in Jeddah No. (2/5) of 1434 AH related to tax assessment for 2003 AD.

Second: On Merits:

1- Accept the appeal filed by the Taxpayer regarding the item (Capital gains tax), and overturn the decision of the First Primary Committee for Zakat and Tax Objections in Jeddah, in accordance with the grounds mentioned therein.



2- Accept the appeal filed by the Taxpayer regarding the item (Late Payment and Concealment Fine), and overturn the decision of the First Primary Committee for Zakat and Tax Objections in Jeddah, in accordance with the grounds mentioned therein.

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

Withholding Tax



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Decision No.: IR-2022-80

Case No.: ZIW-31523-2020

Principle No. 362

- Since withholding tax, if not deducted in accordance with regulatory requirements, remains a liability on the person responsible for its deduction, the provisions of the income tax law regarding the obsolescence do not apply to withholding tax.

Principle No. 363

- ZATCA's failure to clarify the error made by Taxpayer regarding the recognition of revenues from construction and contracting activities according to the percentage of work completed, as well as the lack of justification in ZATCA's assessment for modifying Taxpayer's return, and ZATCA's failure to challenge the financial statements, which serve as the primary document regarding the revenues recorded from long-term contracts in accordance with the approved accounting standards results in the cancellation of ZATCA's action regarding unrecognized revenues in the books on the grounds that ZATCA's action was not based on a valid reason that could justify overturning Taxpayer's return.

Facts

The Department convened its session to consider the Appeal filed on 25/04/1442 AH corresponding to 10/12/2020 AD, by (.....), holder of National ID No. (.....), in his capacity as the attorney of the Appellant company, under POA issued by the company and endorsed by official authorities in KSA, to challenge the First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (IZJ-2020-155) issued in Case No. (ZIW-4395-2019) with regard to the tax assessment for the period (2009-2013) filed by Appellant against ZATCA, in which the primary decision ruled as follows:

First: In Form:

Accept Plaintiff's (...) Co. case, C.R. No. (...), in form.

Second: On Merits:

1. Dismiss Plaintiff's/ (...) Company objection. regarding unrecognized revenues in the books.
2. Dismiss Plaintiff's/ (...) Company objection. regarding demolition costs.
3. Dismiss Plaintiff's/ (...) Company objection. Regarding returns on loans exceeding the permitted limit.

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

Taxpayer challenges the appealed primary decision, claiming that, regarding (Unrecognized revenues in the books), it calculated the revenues using the percentage of



completion method, and that the revenues disclosed in the tax returns match those in the financial statements. Taxpayer, regarding (Demolition Costs), claims that such expenses pertain to construction costs and the specific contract, which ZATCA rejected without providing clear justification. Taxpayer clarifies that such expenses are necessary to generate taxable income, as construction often requires demolition. Moreover, these expenses are typically treated as construction expenses in the industry. As for (Returns on loans exceeding the permitted limit), Taxpayer maintains that this amount represents bank commission expenses incurred during the financial period and is a production cost directly related to the business, duly recorded in the company's accounting books and accounting records. Additionally, part of these payments reflects currency conversion differences, which should not be considered as loan interest. Moreover, Taxpayer, regarding (Obsolescence for tax assessment for the years 2009 to 2012 AD), claims that the tax assessment was made after the statutory five-year period, as outlined in paragraph (A) of Article (65) of the Income Tax Law. Therefore, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds.

On Tuesday 29/06/1443 AH corresponding to 01/02/2022 AD, the Department decided to hold a 10-day e-hearing. During that period, ZATCA submitted a reply in which it responded to Taxpayer's appeal, maintaining its arguments raised before Primary Department. ZATCA, regarding (Unrecognized revenues in the books), clarified that the decision was in line with the provisions of Article (8) of the Income Tax Law and Paragraph (3) of Article (57) of its Implementing Regulations and further stated, concerning (Demolition Costs), that the decision was consistent with the provisions of Article (12) of the Income Tax Law and Paragraph (3) of Article (57) of its Implementing Regulations. Moreover, ZATCA, regarding (Returns on loans exceeding the permitted limit), mentioned that the decision aligned with provisions of Paragraph (2) of Article (9) of the Implementing Regulations of the Income Tax Law and Paragraph (3) of Article (57) of the same regulations. Additionally, ZATCA requested that the Department not accept any new documents from Taxpayer that were not previously submitted to ZATCA during the examination and objection phases. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision for the aforementioned grounds.

The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on Monday 20/07/1443 AH corresponding to 21/02/2022 AD. 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 claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

As on Merits, Taxpayer's appeal, regarding (Statute of limitations for the years from 2009 to 2012 AD), is based on the contention that the tax assessment was made beyond the prescribed five-year statutory period from the date the tax became due. However, ZATCA argued for dismissing Taxpayer's appeal and upholding the primary decision. Upon examining the dispute subject matter by the Department, it was evidenced by the appealed decision that ZATCA performed its assessment for the period (2009-2012 AD) after five years of the end of the prescribed period for submitting tax returns of disputed years, as ZATCA's assessment was performed on 21/08/1439 AH. The Department also determined that Taxpayer argued for assessment obsolescence before the Primary Department, and



therefore concluded that ZATCA has no right to make an assessment with regard to such amounts related to income tax base due to the lapse of the prescribed five-year period during which ZATCA was entitled to make a reassessment. Accordingly, the Department decided to cancel the Primary Department's decision with regard to these items for the period (2009-2012 AD) and confirm Taxpayer's right to hold accountable for these years in accordance with its tax returns submitted to ZATCA.

As for Taxpayer Appeal with regard to the withholding tax-related items, it turned out that Taxpayer submitted its supplementary objection after the expiration of the prescribed period scheduled for objection before ZATCA. Since the withholding tax shall remain a debt owed by the entity responsible for its deduction in case of failure to deduct the same in accordance with legal requirements, the obsolescence mentioned in the Income Tax Law is not related to the withholding tax. Therefore, the Department decided to dismiss the Taxpayer Appeal with regard to these items.

Taxpayer's appeal, regarding (Unrecognized revenues in the books for 2013 AD), lies in Taxpayer's objection to ZATCA's amendment of this item, as the revenues disclosed in the returns were consistent with the financial statements. Meanwhile, ZATCA argued for the dismissal of Taxpayer's appeal and affirmation of the primary decision. Upon careful examination of the subject matter of the dispute, and considering that Taxpayer's activity involves construction and contracting, and that revenues from such activities are accounted for based on the percentage of work completed in accordance with the requirements of the approved accounting standards, and given that ZATCA did not clarify the error committed by Taxpayer regarding the recognition of revenues from such activities, nor the violation of the relevant accounting standards, and considering that ZATCA's assessment lacked justification for its amendment of Taxpayer's return, and that the primary decision did not include an explanation of those reasons, and since the audited financial statements are presumed to be accurate and reliable and serve as the primary basis for recognized revenues from long-term contracts according to approved accounting standards, and given that ZATCA failed to provide any challenge to those statements, it is determined that ZATCA's action was not based on a valid justification to amend Taxpayer's return. Consequently, this Department concludes to accept Taxpayer's appeal and reverse the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Demolition Costs for 2013 AD) item, is based on the necessity of deducting this item as it is documented and essential for conducting the income-generating activity subject to taxation. However, ZATCA argued for the dismissal of Taxpayer's appeal and affirmation of the primary decision. Upon careful consideration of the subject matter of the dispute, and given that Taxpayer provided this Department with supporting documents for the direct and other costs related to the project construction contract, totaling SAR (15,778,247.29), including the invoice number, amount, and date, and also submitted copies of the invoices listed in the 2013 cost statement, and after examining the invoices, it was found that they matched the amounts stated in the project construction contract cost statement. Therefore, since Taxpayer submitted documents supporting its position, demonstrating that these expenses are deductible, and since ZATCA did not present any objections to Taxpayer's documents, this Department decided to accept Taxpayer's appeal and reverse the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Returns on loans exceeding the permitted limit for 2013 AD) item, is based on the necessity of deducting this item as it results from foreign exchange differences and should not be considered as returns on loans. However, ZATCA argued for the dismissal of Taxpayer's appeal and affirmation of the primary decision. Upon careful consideration of the subject matter of the dispute, and given that the allowable returns on loans deductible from the adjusted profit for tax purposes is determined by the equation specified in Paragraph (2) of Article (9) of the Implementing Regulations of the Income Tax Law and given that ZATCA based its action on the provisions of the



Implementing Regulations when calculating loan interest exceeding the permitted limit, where any excess is considered a non-deductible expense, and as Taxpayer did not provide any evidence to prove otherwise or to challenge the validity and accuracy of ZATCA's submissions, this department decided to dismiss Taxpayer's appeal and uphold the primary decision delivered in this regard.

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

Decision

First: Accept Appeal in form filed by Zakat Payer (..... Company), C.R No. (...), TIN (...), against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (...), issued in Case No. (...) regarding tax assessment for the years 2009 to 2013 AD.

Second: On Merits:

1. Regarding (Obsolescence for the years 2009 to 2012 AD) item,
 - A. Accept the appeal filed by Taxpayer regarding this item in relation to the income tax and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned herein.
 - B. Dismiss the appeal filed by Taxpayer regarding this item in relation to withholding tax and affirm the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned herein.
3. Accept the appeal filed by Taxpayer regarding (Unrecognized revenues in the books for 2013 AD) and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned herein.
4. Accept the appeal filed by Taxpayer regarding (Demolition Costs for 2013 AD) and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned herein.
5. Dismiss the appeal filed by Taxpayer regarding (Returns on loans exceeding the permitted limit for 2013 AD) and overturn the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned herein.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Decision No.: IR-2022-272

Case No.: Z-32429-2020

Principle No. 364

- Taxpayer's failure to provide supporting documentation demonstrating that the payments made to non-residents constitute wages and salaries results in the rejection of its request to exempt these payments from withholding tax.

Facts

The Department convened to consider the Appeal filed on ../.. /.... AH, corresponding to ../.. AD, (...), National ID No. (...), in his capacity as the legal representative of the Appellant Company by virtue of its AOA; and the appeal filed by ZATCA against Decision No. (IZJ-2020-175) delivered by the First Department for the Determination of Income Tax Violations and Disputes in Jeddah in Case No. (Z-10367-2019) in connection with Tax Assessment of 2014 to 2016 AD, filed by Taxpayer against ZATCA. The primary decision ruled as follows:

First: In Form: Accept Plaintiff's/ (...) Co. case, C.R. No. (...), in form.

Second: On Merits:

1. Dismiss the objection filed by Plaintiff \ Company C.R. No. (...), regarding the withholding tax.
2. Dismiss the objection filed by Plaintiff \ Company No. (...) regarding late payment fine item.
3. Accept the objection filed by Plaintiff (...) Company, CR No. (...), and cancel Defendant's decision regarding the concealment fine.

Dissatisfied with this decision, both parties filed a statement of appeal summarized as follows:

As for Zakat Payer's appeal against Primary Department's decision, Zakat Payer's appeal involves: Regarding the (Amount paid to (...) for the years 2014 to 2016 AD), Taxpayer claims that a contract was signed with (...) Company that is renewed annually and includes several services, some of which relate to consumables and spare parts, which, according to the Income Tax Law, are exempt from withholding tax when paid to a non-resident entity. Regarding visa fees and airfare costs, (...) Company incurred these expenses on behalf of (...) Company for the benefit of marine crew members, which should not be subject to withholding tax. With regard to shipping fees related to the import of tugboats to the Kingdom, the amount paid includes the Suez Canal's fees, thus, the shipping fees should be subject to withholding tax. In addition, insurance expense was paid by Company. According to Income Tax Law, insurance premium is subject to a withholding tax of (5%) instead of (20%), same as Company technical and consultancy fees, and the technical services obtained from a third party are subject to a withholding tax rate of 5% instead of 20%. Taxpayer, regarding (Amount paid to sailors individually, SAR (2,708,430)), claims that the operation of tugboats and small vessels requires qualified sailors and the company temporarily hired sailors, who typically return to their home countries after completing their contract period, as individuals due to the hazardous nature of the work and their continuous presence at sea. Taxpayer, concerning (Amounts paid to non-resident consultants for the years 2014 to 2016 AD), claims that the amounts paid are related to recruitment services and salary payments for the marine crew members. Taxpayer, regarding (Amounts paid to consultants for the years 2014 to 2016 AD),



argues that the amounts were paid to related companies for marine surveying and technical services and the technical services obtained from a non-resident third party are subject to a withholding tax rate of 5% in accordance with the Income Tax Law. Moreover, Taxpayer, regarding (Late Payment Fine), contends that the underlying basis of this item is subject to a technical dispute between Taxpayer and ZATCA. Accordingly, any withholding tax due arising from the dispute should not be subject to a late payment fine. Therefore, Taxpayer requests reversal of the appealed primary decision for the aforementioned grounds.

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

ZATCA, regarding (Concealment Fine), clarifies that the withholding tax in question pertains to the years 2014, 2015, and 2016 AD and Taxpayer failed to disclose this tax to ZATCA nor pay the same. ZATCA discovered and assessed such tax in 2019 after verification during the audit process. Since the tax is a liability owed by Taxpayer to the tax administration, even if it was not specifically requested to pay thereof, this constitutes a clear concealment of material information from ZATCA, which serves as conclusive evidence of an intent of tax evasion. ZATCA further reported that while Taxpayer claimed the existence of salaries for non-resident sailors and payments to non-resident consultants, it failed to provide the contracts signed with (...) Company nor any evidence of the residency status of these sailors and consultants, or that they were under its sponsorship, nor did it demonstrate that the terms of their employment contracts were applicable, despite that ZATCA had previously requested Taxpayer to provide supporting documents, including an auditor's certificate for the amounts paid to external entities. As a result, ZATCA imposed the concealment fine based on Paragraph (b) of Article (77) of the Income Tax Law. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests affirmation of its action and reversal of the primary decision with respect to the contested item under ZATCA's appeal for the aforementioned reasons.

When the Department decided to open the pleadings, Taxpayer presented a Reply dated 13/09/1442 AH, corresponding to 24/04/2021 AD, responding to ZATCA's appeal, summarizing that it confirms that it provided all the relevant information and supporting documents to ZATCA under its Letter No. (...). Taxpayer further argues that ZATCA should have imposed a lower withholding tax rate. However, Taxpayer, in good faith, decided to take advantage of the exemption initiative after it was canceled by the Primary Department. As a result, Taxpayer settled all withholding tax liabilities and submitted a request to ZATCA close the case, which was rejected by ZATCA on the grounds of concealment fines and the inapplicability of the exemption initiative. Therefore, Taxpayer requests dismissal of ZATCA's appeal and upholding the primary decision with respect to the contested item under ZATCA's appeal for the aforementioned reasons.

On .., ../../.. corresponding to ../../... AD, the Department decided to hold a 10-day e-hearings. During that period, ZATCA submitted a reply in which it responded to Taxpayer's appeal, summarizing that it insists on accuracy and correctness of its procedures, which are based on Article (3), Paragraphs (a-b) of the Income Tax Law, Paragraph (a) of Article (68) of the same law, and Paragraph (3) of Article (57) of the same law as well. Furthermore, ZATCA, regarding (Late Payment Fine), clarified that the fine was imposed in accordance with Paragraph (a) of Article (77) of the Income Tax Law and Paragraph (c) of Article (68) of its Implementing Regulations. ZATCA requests the Department to reject any new documents that were not submitted during the inspection and objection phases. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision with respect to the contested item under Taxpayer's appeal for the aforementioned reasons.

Grounds

On ..., ../../.. The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on/../... AH corresponding to ../../...



AD. Accordingly, the Department decided to close the pleadings and reserve the case for a final decision.

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

As for merits of the case, Taxpayer's appeal, regarding the item (Amount paid to (...) for the years 2014 to 2016 AD), is based on its objection to the Primary Department's endorsement of ZATCA's action in subjecting the amount of this item to withholding tax, arguing that it should not be. In contrast, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Upon reviewing Taxpayer's appeal and examining the case file by the Department; and since Taxpayer failed to provide proof supporting its claim; and since the Department found that the Primary Department's decision was valid and sound, and the grounds on which it was based were sufficient to uphold the same. Therefore, the Department satisfies to dismiss Taxpayer's appeal and uphold the Primary Department's decision in this regard.

Taxpayer's appeal, regarding (Amount paid to sailors as individuals, SAR (2,708,430)), is based on its objection to the Primary Department's endorsement of ZATCA's action in subjecting the amount of this item to withholding tax, arguing that operating tugboats and vessels necessitated temporarily hiring qualified sailors who typically return to their home countries after completing their contracts. On the other hand, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Upon reviewing Taxpayer's appeal and examining the case file by the Department; and since Taxpayer failed to provide proof supporting its claim that these amounts represent salaries and wages that are not subject to withholding tax; and since the Department found that the Primary Department's decision was valid and sound, and the grounds on which it was based were sufficient to uphold the same. Therefore, the Department satisfies to dismiss Taxpayer's appeal and uphold the Primary Department's decision in this regard.

As for Taxpayer's appeal regarding item (amounts paid to non-resident consultants of 2014 to 2016), which includes objection to the Primary Department's upholding of ZATCA's procedure represented in subjecting the item amount to the withholding tax, as Taxpayer claims that the amounts paid are related to services for employment and payment of salaries and wages to marine crew members, while ZATCA argues that it adheres to the validity of its procedure and requests that Taxpayer's appeal be dismissed and the appealed decision be upheld. Upon reviewing Taxpayer's appeal and examining the case file by the Department; and since the documents submitted by Taxpayer are inconsistent with amounts included in the objection regarding this item; and since the Department found that the Primary Department's decision was valid and sound, and the grounds on which it was based were sufficient to uphold the same. Therefore, the Department satisfies to dismiss Taxpayer's appeal and uphold the Primary Department's decision in this regard.

As for Taxpayer's appeal regarding item (amounts paid to consultants for the years 2014 to 2016 AD), is based on its objection to the Primary Department's endorsement of ZATCA's action in subjecting the amount of this item to withholding tax, arguing that the amounts were paid to related companies for marine surveying and technical services and the technical services obtained from a non-resident third party are subject to a withholding tax rate of 5% in accordance with the Income Tax Law. On the other hand, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Upon reviewing Taxpayer's appeal and examining the case file by the Department; and since Taxpayer provided evidence that the disputed amounts were paid for technical and consulting services, and considering that ZATCA failed to provide any evidence to support its claim that these amounts were paid to related companies, and based on the provisions of Article (63) of the Implementing Regulations of the Income Tax Law, this Department concludes that the correct withholding tax rate for amounts



paid to a non-resident is 5%. Therefore, this Department satisfies to accept Taxpayer's appeal and reverse the primary decision delivered in this regard.

Taxpayer's appeal, regarding (Late Payment Fine) item, is based on the objection to Primary Department's endorsement of ZATCA's action represented in imposing the late payment fine, claiming that the underlying basis for the fine is subject to a technical dispute, and any withholding tax resulting from this dispute should not be subject to a late payment fine. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Zakat Payer's appeal and upholding the primary decision. Since the Department found that the Primary Department's decision was valid and sound, and the grounds on which it was based were sufficient to uphold the same. Therefore, the Department satisfies to dismiss Taxpayer's appeal and uphold the Primary Department's decision in this regard.

ZATCA's appeal, regarding (Concealment Fine), is based on the objection to Primary Department's endorsement of Taxpayer's objection to this item, claiming that Taxpayer failed to disclose or pay the tax. However, ZATCA discovered such failure, indicating an intention of tax evasion. In response, Taxpayer requests dismissing ZATCA's appeal and upholding the primary decision. Upon reviewing Taxpayer's appeal and examining the case file by the Department; and since the Department found that the Primary Department's decision was valid and sound, and the grounds on which it was based were sufficient to uphold the same. Therefore, the Department satisfies to dismiss ZATCA's appeal and uphold the Primary Department's decision in this regard.

Decision

Based on the foregoing and considering the aforementioned reasons, the Department unanimously decided as follows:

First: Accept appeal in from filed by Taxpayer (... Company), C.R. No. (...), TIN (...), and appeal filed by ZATCA against First Department for Determination of Income Tax Violations and Disputes in Jeddah Decision No. (...) rendered in Case No. (...) regarding tax assessment for the years 2014 to 2016 AD.

Second: On Merits:

1. Dismiss Taxpayer's appeal on item (amount paid to of 2014 to 2016) and uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.
2. Dismiss the appeal filed by Taxpayer regarding (Amount paid to sailors individually, SAR (2,708,430))) and uphold the decision taken by the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the grounds mentioned herein.
3. Reject Taxpayer's appeal regarding the item "amounts paid to non-resident consultants for the years 2014 to 2016", and uphold decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the reasons and rationale stated in this decision.
4. Accept Taxpayer's appeal regarding the item "amounts paid to non-resident consultants for the years 2014 to 2016", and overturn decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the reasons and considerations outlined in this decision.
5. Reject Taxpayer's appeal regarding the item (Delay fine), and uphold decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah, in accordance with the reasons and justifications stated in this decision.
6. Dismiss ZATCA's appeal on item (concealment fine) and uphold the Decision of the First Department for Determination of Income Tax Violations and Disputes in Jeddah according to the grounds stated in this decision.



Appeal Committee for Tax Violations and Disputes
First Appellate Department for Income Tax Violations
and Disputes In Riyadh

Decision No.: IR-2022-278

Case No.: IW-25154-2020

Principle No. 365

- Taxpayer's payment of amounts to non-resident entities in return for software sales to customers, without proof that these amounts were for the use of intellectual property rights, means that characterizing this transaction as a royalty subject to withholding tax is incorrect. The correct characterization of this transaction is as a supply of goods, which does not impose an obligation on Taxpayer to withhold tax when transferring amounts to the non-resident entity.

Facts

To consider the appeal presented on .././.... AH, corresponding to .././.... AD, by ... Company against the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh No. (ISZR-2020-91), issued in case No. (IW-1895-2018), regarding tax assessment for 2009 and 2010 AD, filed by the Appellant against ZATCA. The primary decision stated the following:

First: Accept Plaintiffs/ ... Co., CR No. (...), claim in form.

Second: On Merits:

1. Its rejection with regard to the item (Salary Differences for 2009 and 2010 AD).
2. Its rejection with regard to the item (Withholding tax calculated on non-resident companies at a rate of 15%).
3. Confirm settlement of the dispute regarding the item (Withholding tax on amounts related to services provided by non-resident companies at a rate of 5%).
4. Its rejection with regard to the item (Imposition of Late Payment Fine), except for the late payment fine of the withholding tax on amounts related to services provided by non-resident companies at a rate of 5%, as the dispute was resolved.

Dissatisfied with the decision, the Zakat Payer..... Company filed a statement of appeal, which is summarized as follows:

Taxpayer objects to the Primary Department's decision in question, claiming that : As for item (Salary and Wage Differences); these differences represent incidental salaries related to employees contracted during the probationary period and are recorded in a separate item until the end of the probationary period and their appointment is officially approved. Moreover, the company's activity is a service that depends primarily on the human capital and it must hire some employees. Accordingly, skilled and trained workers must be available to carry out its business, hence, a probationary period is set for the employee to ensure his readiness, after which those salaries are classified as incidental salaries. In addition, employees' contracts stated they will be on probation. On the other hand, the company's accounts and books are audited by an auditor licensed to work within the Kingdom, who did not issue any reservations regarding those salaries. Moreover, the Committee stated that the salary differences represent commissions and bonuses, which is groundless of any fact, as these differences represent only salaries, not bonuses or commissions, which confirms that the Primary Department did not understand the type of expense to issue its



decision thereon. With regard to the chartered accountant's certificate, it was submitted to ZATCA for salaries and wages included in the financial statements upon request; however, it did not include the incidental salaries, as they were classified in separate item other than the salaries and wages item. In addition, the financial statements are considered a certificate issued from a licensed chartered accountant. As for item (Withholding Tax Charged on Non-Resident Companies); Taxpayer claims that services provided by Company (Egyptian) represent, according to the contract, the provision of software to Taxpayer for reselling thereof to its customers and does not include services, hence, they are not subject to withholding tax due to the lack of a source of income. As for services provided by Company (Egyptian), they represent the sale of Internet services that are classified as international telephone communications services, and this type of service is subject to a withholding tax of only (5%), not (15%). As for item (Withholding tax on amounts related to services provided by non-resident companies); Taxpayer claims that the dispute between Company and was resolved. With regard to Company, Taxpayer stated that the primary decision was mistaken regarding the tax charged on Taxpayer pursuant to ZATCA's Assessment, which the company agreed to pay to resolve the dispute, as the decision stated that the tax amount is (SAR 135,715), while the amount stated in ZATCA's Assessment and agreed to pay by the company is (SAR 13,256). Accordingly, the company requests that the amount of the tax that was agreed to be paid be amended to become (SAR 13,256). As for item (Late Payment Fine); Taxpayer claims that due to the existence of a real difference in views, the late payment fine may not be imposed except from the date of issuance of the final decision. Based on the foregoing, Taxpayer requests that the Primary Department's decision be reversed for the stated grounds.

On,.././.... AH corresponding to .././.... AD, the Department decided to hold a 10-day e-hearing. During that period, ZATCA submitted a reply in which it responded to Taxpayer's appeal summarizing that it argues, regarding (Salary Differences), that it disallowed the salary differences because the employees in question were not under the sponsorship of Taxpayer, who failed to provide supporting documentation, based on the provisions of Article (12) of the Income Tax Law and Articles (10) and (9) of its Implementing Regulations. ZATCA, regarding (Withholding Tax on Non-Resident Companies at 15%), calculated the withholding tax at 15% because the amounts were paid to a related company, in accordance with the provisions of Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law. Furthermore, the amounts owed between related companies do not require the conventional payment event because they are settled through accounting entries, without the need for a cash payment event. Additionally, Taxpayer's contracts did not indicate that these were international telecommunication services or purchases; instead, they were agreements for the use of software governed by these contracts. Based on Articles (2) and (68) of the Income Tax Law, Paragraph (a) of Article (5) of the same law, and Article (63) of its Implementing Regulations, the objection was rejected. As for (Withholding tax on amounts related to services provided by non-resident companies at 5%), ZATCA requests dismissal of Taxpayer's appeal, as Taxpayer had previously accepted ZATCA's procedure regarding this item before the Primary Department, in accordance with Article (108) of the Law of Civil Procedures. Moreover, ZATCA, regarding (Late Payment Fine), imposed such fine on the unpaid differences within the statutory period, based on Paragraph (a) of Article (77) of the Income Tax Law and Paragraph (1/b) of Article (68) of its Implementing Regulations. The arguments raised by Taxpayer do not differ from those previously addressed and answered by ZATCA at the time. ZATCA requests the Department to reject any new documents that were not submitted during the inspection and objection phases and further requests the Department to reject any new requests from Taxpayer based on Article (186) of Law of Civil Procedures. Therefore, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision for the aforementioned grounds. On,.././.... /./...., The Department, after reviewing the appeal memoranda and the responses, and after examining the documents and papers contained in the case file, decided that the case was ready for determination and the issuance of a ruling on its merits on/./.... AH corresponding



to .././... AD. 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 claims submitted by the Taxpayer, the Department found that the appeal had met its formal requirements in accordance with the conditions stipulated in the relevant laws, regulations and decisions, and thus the appeal is acceptable in from for being submitted with a person with a capacity and within the period prescribed by law.

As on Merits, Taxpayer's appeal, regarding (Salary and Wage Differences for 2009 and 2010 AD) item, is based on the objection to Primary Department's decision on this item, claiming that such expenses should be deductible since they are supported by documentation and are necessary for the business activity generating the taxable income. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Having carefully considered the subject matter of the dispute and reviewed the appeal and the case file, the Department finds that the core of the dispute lies in the non-deduction of salaries and wages paid to employees who are not under the sponsorship of Taxpayer and the failure to provide certificates issued by social insurance. It is evident, upon examining the documents submitted in the case file, that wages were paid to employees who were not registered with the social insurance. Since the expense that Taxpayer is entitled to deduct from its tax base is the expense incurred and supported by documentation, and it is not a requirement for the deduction of salary and wage expenses that the employee be registered with social insurance, and since Taxpayer provided the supporting documents for the amounts in dispute, the Department concludes to accept Taxpayer's appeal and reverse the primary decision.

Taxpayer's appeal, regarding (Withholding Tax on Non-Resident Companies at 15%), is based on objecting to the decision made by the Primary Department on this item, claiming that the services provided by ... Company (Egyptian), as per the contract, involve supplying Taxpayer with software for resale to customers, which does not include services and, therefore, should not be subject to withholding tax due to the non-existence of a taxable income source. Furthermore, Taxpayer asserts that the services provided by ... Company (Egyptian) involve the sale of Internet services, which are classified as international telecommunication services and are subject to a 5% withholding tax, not 15%. However, ZATCA insists on accuracy and correctness of its procedures and requests dismissing Taxpayer's appeal and upholding the primary decision. Upon careful examination of the dispute, the Department found that Taxpayer's appeal concerns transactions with two non-resident companies, including ... Company and ... Company. With regard to transactions with ... Company, after the Department reviewed Taxpayer's appeal, examined the contents of case file, and considered ZATCA's position as stated in the findings of the Decision Department, which justified its decision to impose withholding tax on the disputed amounts as they were paid to related parties without clarifying the nature of the transaction between the two parties or whether it was among the services subject to withholding tax. After reviewing the reasons behind Primary Department's decision, which supported ZATCA's action on the grounds that the non-resident entity received these amounts from the resident entity in exchange for providing marketing services for the software, and upon examining the terms of the agreement between the two parties, it became evident that Taxpayer was the one providing marketing services. The amounts received by the non-resident entity were for software sales to customers and not for marketing services. Since it was not established in the agreement that these payments were for the use of intellectual property rights, they are not considered royalties subject to withholding tax. Therefore, the correct characterization of this transaction is as a supply of goods, which does not impose an obligation on Taxpayer to withhold tax when transferring funds to a non-resident party. This characterization is known to ZATCA, as indicated in its response to one of the frequently asked questions (Question No. 82) regarding the purchase of computer systems from abroad, where ZATCA confirmed that such transactions are not subject to withholding tax. Given this



context, the Department concludes with accepting Taxpayer's appeal and overturning Taxpayer regarding this matter.

As for the transactions with ... Company, it was found that the services provided by the non-resident company consisted of internet services. Given that ZATCA's decision to subject the amounts in question to withholding tax was based on the assumption that the transaction was conducted with an unrelated entity, without clarifying the nature of the transaction between both parties, since the disputed transaction was regulated by Income Tax Law and its Implementing Regulations prior amendment that imposed a rate of (15%) on the amounts transferred to related parties, which was calculated based on a rate of (5%); since the amendments made to the Implementing Regulations of Income Tax Law were after the payment as well as the date of the Assessment on Taxpayer; and since the tax provisions are not applied retroactively; therefore, this Department satisfies that Taxpayer has the right to calculate a rate of (5%) on the amounts transferred to Company. Accordingly, the Department decided to accept Taxpayer's appeal and reverse the primary decision in this regard.

Regarding Taxpayer's appeal on the item (withholding tax on amounts related to services provided by non-resident companies at a rate of 5%), Taxpayer's appeal concerns the objection to Primary Department's decision on this item, claiming there was an error in Department's decision regarding the tax calculated according to the assessment agreed upon with ZATCA for dispute resolution. Meanwhile, ZATCA argues in favor of the accuracy and validity of its procedure and requests the dismissal of Taxpayer's appeal and the upholding of Primary Department's decision. Upon reviewing the matter of the dispute and after examining the Appeal and case file, the Department found that Taxpayer's appeal concerns the amount related to ... Company, which Primary Department's decision confirmed as being in line with ZATCA's viewpoint. Taxpayer's appeal centers on the amount agreed upon in ZATCA's assessment, which was SAR (13,256), not the SAR (135,715) stated in Primary Department's decision, and Taxpayer requests correction of this discrepancy. Since Taxpayer's appeal is focused on the amount accepted before the Primary Department and Taxpayer's acceptance resolved the dispute, this Department finds that the amount specified in the assessment was indeed SAR (13,256). Accordingly, the matter is referred back to the Primary Department to reassess the correct amount that Taxpayer agreed to pay.

Regarding Taxpayer's appeal concerning the "late payment fine," the Appeal is based on the objection to Primary Department's decision on this item. Taxpayer claims that the fine shall not be imposed during a genuine dispute and shall only be applied as of the date of final ruling. Meanwhile, ZATCA asserts the correctness and validity of its procedure and requests rejection of Taxpayer's appeal and confirmation of Primary Department's decision. Upon reviewing the matter of the dispute, examining the Appeal, and analyzing the case file, it was that Primary Department's decision regarding the delay fine is related to the items for which the Department rejected Taxpayer's objection, specifically (the salary and wage differential for 2009 and 2010) and (the withholding tax imposed on non-resident companies at a rate of 15%). Since this Department has decided to accept Taxpayer's appeal regarding these two items, the fine is thus dismissed as its basis has been nullified. Therefore, this Department concludes with accepting Taxpayer's appeal and overturning Primary Department's decision on this matter.

In light of the above and considering the aforementioned grounds, the Department unanimously decided to 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. (ISZR-2020-91), issued in Case No. (IW-1895-2018), related to tax assessment for 2009 and 2010 AD.

Second: On Merits:



d- Accept the appeal filed by Taxpayer regarding the item (Late payment fine), and overturn the decision taken by the second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

2. Regarding the item (Withholding tax imposed on nonresident companies at a 15% rate):

أ- **Accept Taxpayer's appeal regarding transactions with (...) Company, and overturn the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, based on the reasons and justifications stated in this decision.**

ب- **Accept Taxpayer's appeal regarding transactions with (...) Company, and overturn the decision of the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, based on the reasons and justifications stated in this decision.**

c- Accept the appeal filed by Taxpayer regarding the item (Withholding tax imposed on nonresident companies at a 15% rate), and cancel the decision taken by the Second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

d- Accept the appeal filed by Taxpayer regarding the item (Late payment fine), and overturn the decision taken by the second Department for Determination of Income Tax Violations and Disputes in Riyadh, in accordance with the grounds mentioned therein.

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

Value Added and Excise Tax



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

Decision No.: VA-2022-258

Case No.: V-52905-2021

Principle No. 366

- The apparent fact that tax invoices are associated with the company, as evidenced by supporting documents, can only be refuted by substantial evidence and strong indications.

Facts

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

First: In Form: Accept the case in form.

Second: On Merits: Reject objection of Plaintiff (.....) Company, Commercial Register No. (...),.

Whereas this decision was not accepted by the Appellant, it submitted an Appeal Statement to the Appellate Department, expressing its objection to Primary Committee's decision, which rejected her claim requesting annulment of the decision of the Defendant (Zakat, Tax, and Customs Authority ZATCA) regarding the reassessment of January 2019 and imposition of a late payment fine. The Appellant seeks annulment of Primary Committee's decision, asserting the validity of its deduction for the locally sourced purchases subject to the standard rate, as evidenced by its submitted documentation. The Appellant concluded by requesting acceptance of the Appeal and the reversal of Primary Department's decision Upon presenting Appeal Statement to the Appellee, they submitted a response memorandum summarized as follows: "1. ZATCA reaffirms its position as stated in the memorandum submitted before the Primary Committee regarding the items under appeal. 2. The Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, in its Decision No. (232-2021-VTR), upheld ZATCA's action, as the decision is in line with provisions of the Law. Therefore, ZATCA stands by the rationale provided therein, affirming the validity and soundness of its actions.

We also inform your esteemed Department that the points raised by the Plaintiff in its Appeal do not depart from those previously presented before the Primary Committee to which ZATCA responded to at that time. 4. ZATCA acted in accordance with the provisions of Paragraph (1) of Article (26) of VAT Law, which states: "ZATCA may make a Tax assessment of a Taxable Person

irrespective of a Tax Return filed by him". and Paragraph (1) of Article (64) of the Implementing Regulations of VAT Law states: "ZATCA may make an assessment of the VAT obligations of a Person in respect of one or more Tax Periods". As a result, the item of locally sourced purchases subject to the standard tax rate was adjusted by excluding amounts that violate the provisions of Article (48) of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC), which stipulates in paragraph (a) the requirement of a tax invoice for the purpose of exercising the right of deduction. The



amounts also contravened Article (53) of the Implementing Regulations of VAT Law, which in paragraph (5/e) mandates that the tax invoice must state the name and address of both the supplier and the customer. It is evident that the invoices submitted by the Appellant are in breach of the explicit provisions of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC) and the Implementing Regulations of VAT Law, as the invoices are issued in a non-Arabic language and do not bear the name of the Appellant as recorded in the commercial register. Consequently, the Appellant is unable to exercise the right to deduct input VAT on these supplies. Regarding Appellant's claim that ZATCA accepted prior periods and relevant guidance documents, ZATCA reaffirms that the provisions of the Agreement, the Law, and Regulations are mandatory and cannot be overridden by agreement. 5 - After reviewing Plaintiff's return for the disputed tax period and upon identifying its inaccuracy, ZATCA found it necessary to amend Appellant's tax return due to discrepancies between the calculated tax and the payable tax that was not settled by the regulatory deadline. A late payment fine was imposed for the months following the disputed tax period in accordance with Article (43) of VAT Law, which states: "Any Person who fails to pay the Tax due during the period specified by the Regulations shall be liable to a fine equal to 5% of the value of the unpaid Tax for each month or part thereof for which the Tax has not been paid", concluding with a request to dismiss Plaintiff's claim.

On Monday, 02/05/1443 AH, corresponding to 06/12/2021, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the Appeal submitted via video conferencing, pursuant to paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which states: "Sessions of the Department may be held through modern technical means provided by the General Secretariat." The case file, all memoranda, and documents were reviewed, along with Primary Department's decision under appeal. The Parties were summoned, while Appellant's Representative /(...), holding National ID No. (...), attended under Power of Attorney No. (...). Also (...) holding National ID No. (...), appeared as Representative of Appellee Zakat, Tax, and Customs Authority ZATCA, by virtue of Authorization Letter No. (...) dated (...), issued by the Deputy Governor for Legal Affairs, with a copy included in case file. The Department then decided to open the pleading by questioning Appellant's Representative about the claim, to which he responded: Consistent with the statements previously made, he expressed reliance on appeal statement and memoranda submitted through the General Secretariat's tax committees' portal, adhering to the evidence and defenses therein. When presented with this by Appellee's Representative, he replied similarly, aligning with what was previously stated in the response memorandum, relying on the memoranda submitted through the General Secretariat of Tax Committees' portal, and adhering to the evidence and defenses presented therein. After discussion and deliberation, the Department decided to adjourn the case for a later session and instructed ZATCA's representative to respond to the following inquiries: 1. Is the branch of the company treated as a separate tax entity from the parent company? 2. Does the branch submit tax returns independently from those of the parent company? .

On 17/01/2022, the Appellee submitted a memorandum summarized as follows: "With regard to appeals filed by (...) Company, TIN (...), As the esteemed Department requested the Zakat, Tax, and Customs Authority (ZATCA) in the previous session to respond to several inquiries regarding the subject of the appeal, ZATCA summarizes its response as follows: Regarding the tax transaction of the branch and the parent company: - In response to Department's inquiry about the tax transaction of the branch and the parent company, ZATCA wishes to clarify that, in principle, branches of a legal entity are considered part of a single taxable person for VAT purposes. If the legal entity has multiple subsidiary commercial registrations, the main commercial registration of the entity must be used for VAT registration purposes. Taxpayer is obligated to register and update registration



information with ZATCA in accordance with the provisions of Article (8) of the Implementing Regulations of VAT Law. However, if Taxpayer registers company's branch for VAT independently under a separate TIN, ZATCA will treat each activity as an individual entity, with each submitting its own returns independently of the other business activity registered under a different TIN. - In this regard, ZATCA wishes to clarify that Commercial Register No. (...) referenced in the documents submitted by the Plaintiff with its appeal statement appears to be registered with ZATCA under TIN (...). ZATCA reiterates its previous response, emphasizing that the invoices provided by the Appellant violate the explicit provisions of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC), the VAT Law, and Implementing Regulations thereof, as these invoices are in Arabic and do not bear Appellant's name as registered in the commercial register. ZATCA further notes that Article (4) of the Law of Trade Names mandates that the trade name must consist of Arabic words. Additionally, the Law of Commercial Register affirms the validity of the information recorded in the commercial register, stipulating in Article (13) that: "Data recorded in the commercial register shall be binding on the merchant or against them from the date of its entry and no person may invoke any information that requires registration or notation unless this procedure has been completed." Accordingly, Taxpayer's deduction of tax invoices issued in a name other than their own is inconsistent with the provisions of the VAT Law, its Implementing Regulations, and all related laws, as outlined above.

On Monday, 14/06/1443 AH, corresponding to 06/12/2021, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held its session to consider the Appeal submitted via video conferencing, pursuant to paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which states: "Sessions of the Department may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, and documents were reviewed, along with Primary Department's decision under appeal. The parties were summoned, with Appellant's Representative/ (...), holding National ID No. (...), appeared under Power of Attorney No. (...). Also (...) holding National ID No. (...), attended as Representative of the Appellee (Zakat, Tax, and Customs Authority ZATCA), by virtue of Authorization Letter No. (...) dated (.....) issued by the Deputy Governor for Legal Affairs, with a copy included in case file. The Department then decided to open the pleading by questioning Appellant's Representative about the claim, to which he responded: Consistent with the statements previously made, he expressed reliance on appeal statement and memoranda submitted through the General Secretariat's Tax Committees Portal, adhering to the evidence and defenses therein. When presented with this, Appellee's Representative replied in line with her previous statements in the response memorandum, relying on the memoranda submitted through the General Secretariat of tax committees' portal and adhering to the evidence and defenses therein. After discussion and deliberation, the Department decided to adjourn the case to a later session and instructed Appellee's representative to submit a detailed response memorandum addressing the defenses raised by the Appellant Company in its Appeal Statement.

On 01/03/2022, the Appellee submitted a memorandum summarized as follows: "With regard to appeals filed by (...) TIN (...), and whereas the esteemed Department requested Zakat, Tax, and Customs Authority (ZATCA) in the session held on 17/01/2022 to submit a detailed memorandum in response to Appellant Company's Appeal Statement, ZATCA summarizes its response as follows: (a) ZATCA reaffirms its position as stated in the memorandum submitted to the Primary Committee and the memoranda presented before the Appellate Department concerning the items under appeal. (...), Legal Basis for ZATCA's Action to Amend the Item of Locally Sourced Purchases Subject to the Standard Tax Rate: ZATCA amended the item of locally sourced purchases subject to the standard tax rate by excluding the purchase of travel tickets for the tax periods under dispute. It was



found that the company was purchasing tickets, reselling them with a commission, and then declaring the total value of the tickets sold along with the collected commission amount. Upon examining the tax invoices, ZATCA discovered that the invoices were issued in a language other than Arabic and did not include the Appellant's name as the customer. Accordingly, and based on Article (48) of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC), which states: "1. For purposes of exercising the right of deduction, the Taxable Person must hold the following documents: a) the Tax Invoice received pursuant to the provisions of this Agreement; as stated in Article (23) of the VAT Law, which provides: "The regulations shall specify the following: 1- The contents and form of tax invoices." Additionally, Article (53) of the Implementing Regulations of VAT Law requires that tax invoices be issued in Arabic, in addition to any other language used, and mandates that the invoice must include the names and addresses of both the supplier and the customer. Therefore, the Appellant cannot exercise the right to deduct input VAT on these supplies due to the lack of a deduction document (tax invoice) that complies with the provisions of the VAT Law and Implementing Regulations thereof. (c) Regarding Appellant's justification in its Appeal Statement that the tax invoice was issued by the supplier in English and that the obligation falls on the supplier to meet tax invoice requirements, ZATCA emphasizes that the provisions of the Law and Regulations apply equally to all parties, and all taxpayers must comply with the terms and conditions therein. As for any other requirements from third parties necessitating the issuance of invoices in a non-Arabic language, we draw the esteemed Department's attention to Article (53) of the Implementing Regulations of VAT Law, which mandates that tax invoices must be in Arabic in addition to any other language used. Therefore, Taxpayer is responsible for providing tax invoices in Arabic to the tax authority, even if they are required to issue them in another language for any reason. (...) In response to Appellant's claim in its appeal statement regarding the branch in whose name the invoices were issued and the statements provided by other parties to support this, ZATCA upholds the validity of its decision as previously explained, emphasizing that the invoices do not bear Appellant's name as registered in the commercial register. ZATCA also notes that the Law of Commercial Register affirms the validity of the information recorded in the commercial register, stipulating in Article (13) that: "Data recorded in the commercial register shall be binding on the merchant or against them from the date of its entry, and no person may invoke any information that requires registration or notation unless this procedure has been completed." (...) In response to Appellant Company's reference to previous audit findings, ZATCA emphasizes that the absence of amendments to a taxpayer's tax return following an audit shall not be construed as an acknowledgment by ZATCA of the accuracy of Taxpayer's submitted return. Audits and inspections, in general, are conducted based on the information and documentation available to ZATCA at the time. Issuing a decision for reassessment thereafter aligns with the explicit provisions of the VAT Law, which grants ZATCA the right to issue a tax assessment regardless of Taxpayer's return, in addition to its right to amend previous assessments. Article (26), paragraph (2), states: "ZATCA may make a new Tax assessment to amend a previous assessment made by it".

On Tuesday 28/07/1443 AH, corresponding to 01/03/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, and documents were reviewed, along with Primary Department's decision under appeal. The parties were summoned, with Appellant's Representative/ (...), National ID No. (...), under the power of attorney No. (...), and upon verification, it was found that it expired on (...). Also attended / ... holding National ID No. (...), attended as Representative of the Appellee (Zakat, Tax, and Customs Authority



ZATCA), by virtue of Authorization Letter No. (...). dated 04/06/1442 AH, issued by the Deputy Governor for Legal Affairs, a copy of which is included in the case file. In this session, the Department reviewed the detailed response memorandum and the memorandum responding to the Department's inquiries submitted by ZATCA's representative. The Department decided to instruct the appellant company to submit a written reply to the contents of these documents, to be uploaded on the portal of the General Secretariat for Zakat, Tax, and Customs Committees, and adjourned further consideration of the appeal pending receipt of this response.

On 03/03/2022, the appellant submitted a response memorandum summarized as follows: "With reference to Response Memorandum No. 2 submitted by the Zakat, Tax, and Customs Authority regarding the appeal filed by (...) Company against the decisions of the Committee for Determination of Zakat and Tax Violations and Disputes concerning the final assessment issued against the company for its VAT returns for the years 2018 and 2019, we would like to present our response to the contents of Response Memorandum No. 2 as follows:" The response memorandum from ZATCA stated that Commercial Register No. (...) is registered with ZATCA under TIN (...) which differs from (...) Company's TIN We wish to inform your esteemed committee that ZATCA did not specify the date when the new TIN was recorded. We clarify that the new TIN was actually linked to the commercial registration starting from August 2021. - The branch of (...) Company transferred this registration to another company, thus placing this registration under the TIN of the transferee company. As your esteemed committee is aware, the claims before you pertain to the years 2018 and 2019, prior to the transfer of the commercial registration to another company, which invalidates ZATCA's claim of a different TIN associated with the commercial registration during the contested periods. Subject: Reply of (...) Company to Reply Memorandum No. (...) submitted by Zakat, Tax, and Customs Authority (ZATCA). With reference to Reply Memorandum No. 3 submitted by the Zakat, Tax, and Customs Authority regarding the appeal filed by (...) Company against the decisions of the Committee for Determination of Zakat and Tax Violations and Disputes concerning the final assessment issued against the company for its VAT returns for the years 2018 and 2019, we would like to present the following to your esteemed committee: First: - Response to the contents of Reply Memorandum No. (...) In Reply Memorandum No. (...) issued by ZATCA, it is stated that ZATCA denied the company's VAT deduction based on Article 48 of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC) and Article 53 of the Implementing Regulations of VAT Law in Saudi Arabia. We wish to inform your esteemed Committee that ZATCA referenced only a portion of the mentioned articles without addressing the other provisions included in these articles of the Agreement or the Implementing Regulations, as ZATCA overlooked other relevant provisions in these materials, which are: 1. Paragraph 2 of Article 48 of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC) states: "Each Member State may allow the Taxable Person to exercise the right of deduction in the event that a Tax Invoice is not available or does not meet the requirements provided for in this Agreement, provided that the value of

Tax due can be established by any other means." 2. Based on this provision, the Implementing Regulations further interpret in Paragraph 7 of Article 53 of the Implementing Regulations of VAT Law that, in cases where Taxpayer does not possess the specific documents required by the Agreement, they may claim the deduction if they are able to provide alternative evidence, such as other commercial documents permitted at ZATCA's discretion, that substantiate Taxpayer has been correctly charged and has paid the relevant VAT. We would also inform your esteemed committee that the Zakat, Tax, and Customs Authority has previously issued a guidance document, which the company relied on, regarding input tax deductions, published on ZATCA's website. The guidance



document states the following: "Input VAT Deduction on Invoices in a Language Other than Arabic"

Tax invoices must include the required information in Arabic, in addition to any other language used. This means that an invoice issued without information in Arabic will not be considered a valid tax invoice for VAT purposes in the Kingdom. In all cases, a taxable person receiving a supply of goods or services must retain a valid tax invoice in Arabic to substantiate the right to deduct input VAT. However, if an invoice is retained in a language other than Arabic but meets all other requirements for invoices as set out in the Implementing Regulations, ZATCA may, at its discretion, allow the customer to use this invoice as an alternative document to prove that Taxpayer has received the supply and incurred the input VAT. Accordingly, Taxpayer may use this invoice to exercise the right to deduct input VAT, provided the following criteria are met: 1. The invoice must meet the requirements for issuing tax invoices as stated in the Implementing Regulations, other than being in Arabic. 2. Taxpayer must have additional proof that the VAT due has been paid to the supplier (such as commercial documents like a bank statement or a receipt from the supplier). Proof of payment has been provided to both the Primary Committee and ZATCA, and the company is fully prepared to provide any documents deemed appropriate by your esteemed committee. 3. Taxpayer must provide ZATCA, upon request, with a certified translation of any invoice requested by ZATCA during an audit or for any other reason (the company is fully prepared to translate any invoice requested by your esteemed committee or ZATCA). 4. Taxpayer is not required to obtain prior approval from ZATCA to use invoices in a language other than Arabic as alternative proof for deducting input VAT, provided that each invoice meets all the criteria mentioned above. As explained to your esteemed committee, (...) Company and regarding (...) Travel and Tourism Agency, the dispute with ZATCA is due to circumstances beyond company's control. The company is obligated to purchase from airlines that issue invoices according to the instructions of the International Air Transport Association (IATA) and the (...) system adopted by IATA. It would be more appropriate for the Zakat, Tax, and Customs Authority (ZATCA) to require local airlines to issue their sales invoices for tickets in Arabic, rather than penalizing travel and tourism agents by denying them the right to deduct VAT paid on invoices issued by airlines. Secondly: Inquiries Raised by Your Esteemed Committee During the Discussion Sessions: 1. Has ZATCA previously accepted the action taken by the company to deduct VAT on purchase invoices issued by airlines in English and in the name of (...) Travel Agency? ZATCA issued the final assessment for all periods of 2018 and 2019, which is currently under appeal before your esteemed committee, in May 2020. We inform you that in May 2019, the Zakat, Tax, and Customs Authority conducted an assessment of the tax returns for January and February 2019, concluding that there was no need for any adjustments to the return. This finding indicates that ZATCA previously accepted the purchase invoices on which input VAT was deducted in these returns. Enclosed are the final assessment notices issued by ZATCA in this regard. During the final assessment of the January and February returns, ZATCA raised no concerns regarding the purchase invoices for which the company claimed VAT deductions. We acknowledge that the Reply Memorandum No. (...) submitted by ZATCA states that ZATCA reserves the right to conduct a new tax assessment that amends a previous assessment. However, during the assessment conducted in 2019, ZATCA did not inform the company of any errors in the tax return. 2. Is the procedure taken by ZATCA, in rejecting invoices issued in English, applied to all travel and tourism agents? Through our communication with several travel and tourism agents, and as you know, this sector deals with local airlines in the same manner as we do through the International Air Transport Association (IATA) and the clearing system between member companies namely (...), we have been informed that during several assessments of these agents' returns, ZATCA has not previously rejected invoices issued in English by local airlines.



On Tuesday 04/09/1443 AH, corresponding to 05/04/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, and documents were reviewed, along with Primary Department's decision under appeal. The parties were summoned, with Appellant's Representative/ (...), National ID No. (...), under Power of Attorney No. (...), while/ (...) holding National ID No. (...) also attended as a representative of Defendant (Zakat, Tax, and Customs Authority), by virtue of Authorization Letter No. (...) dated 04/06/1442 AH, issued by the Deputy Governor for Legal Affairs, with a copy included in the case file. Accordingly, the Department decided to open the pleading by questioning Appellant's representative about the case, to which he responded: Consistent with the statements previously made, he expressed reliance on appeal statement and memoranda submitted through the General Secretariat's Tax Committees Portal, adhering to the evidence and defenses therein. When this was presented to Defendant's representative, it replied in line with its previous statements in the response memorandum, relying on the memoranda submitted through the General Secretariat of Tax Committees' portal and adhering to the evidence and defenses therein. When both parties were asked if they wished to add anything further, they both responded that they were satisfied with what had been previously submitted. Accordingly, the Department closed the floor for oral arguments and adjourned the session for review, deliberation, and issuance of the decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.

On merits, after the Appellate Department reviewed case documents, examined the contents of the records and evidence, and reviewed the memoranda and responses submitted by both parties, it found that the decision issued by the Decision Department ruled to dismiss the claim filed by the Plaintiff Company/(...). against the Zakat, Tax, and Customs Authority (ZATCA), where the Appellant objects to rejection of its objection regarding the final assessment outcome for January 2019 and the imposition of a late payment fine, specifically concerning the item of locally sourced purchases subject to the standard tax rate. The Appellant requests annulment of Primary Department's decision, asserting the validity of its deduction for the purchases item based on the submitted documents. The Appellate Department observed that the decision under appeal concluded by supporting the position of the Appellee (Zakat, Tax, and Customs Authority), on the grounds that the tax invoices the Appellant seeks to deduct do not bear a name that exactly matches Appellant's name as the customer. Upon examining the submitted documents, the Appellate Department found that the invoices the Appellant seeks to deduct are issued in the name of (...). The Appellant submitted a trademark registration certificate issued by the Saudi Authority for Intellectual Property, showing (...) as a branch of (...) Company. Additionally, letters from Appellant's customers (...) confirm that the trade name (...) is linked to the Appellant Company. The submitted sample documents demonstrate that the Appellant Company purchased airline tickets per purchase invoices that meet the conditions for tax invoices and sold these to its customers for a service fee, including a commission for the company, along with journal entries and bank account statements.



Given Appellant's business activity, as per airline policies are in compliance with International Air Transport Association (IATA) requirements and the Sales Settlement System (...). The decisive factor lies in verifying the facts that establish the tax liability. Therefore, the apparent association of these tax invoices with the Appellant Company, based on the supporting documents, cannot be refuted except by substantial and compelling evidence. Consequently, the Appellate Department concludes with accepting the Appeal and overturning Primary Department's decision.

Regarding Appellant's objection to Primary Department's decision, which denied Plaintiff/ ... Company's request to cancel the late payment fine related to the disputed tax period, the above item resulted in acceptance of the Appeal and annulment of Primary Department's decision. Since related matters are governed by the same ruling, the Department sees fit to accept the Appeal.

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

Decision

First: Accept, in form, the Appeal submitted by/(...) Company C.R. No. due to submission within the period specified by law.

Second: Accept, in form, the case filed by (...)/, C.R. No. regarding the final assessment for January 2019, annulment of the decision of the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (VTR-2021-232), and cancellation of the decision of Appellee (Zakat, Tax, and Customs Authority).

III. Accept, in form, the case filed by (...)/, C.R. No. regarding the late payment fine, annulment of the decision of the Third to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (VTR-2021-232), and cancellation of the decision of Appellee (Zakat, Tax, and Customs Authority) in accordance with the outcome stated in item (Second).



First Appellate Committee for Determination of Income Tax Violations and Disputes First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No.: VA-2022-207

Case No.: V-63338-2021

Principle No. 367

- Contracts entered into with government entities before 30/5/2017 are subject to a zero rate as long as they meet the conditions of Paragraph (3) of Article (79) of the Implementing Regulations VAT Law. This applies provided that the government entity is a VAT-registered customer and has presented the supplier with a written certificate confirming the ability to deduct the full input VAT on the supply.

Facts

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

First: In Form: Accept the case in form.

Second: On Merits: Dismiss the Case of Plaintiff (.....) Company, C.R. No. Regarding local sales subject to the standard tax rate for the tax period under dispute.

As this decision was not accepted by the Appellant, it submitted an Appeal Statement to the Appellate Department, objecting to Primary Committee's decision, which rejected its claim requesting annulment of Appellee's (Zakat, Tax, and Customs Authority) decision regarding the reassessment of January 2018 and imposition of VAT. It also requests annulment of Primary Committee's decision on the grounds that VAT at the standard rate shall not be applied to supplies under contracts made with the Ministry of Environment, Water, and Agriculture, as they fall under the transitional provisions in Article (79) of the Implementing Regulations. The Appellant concluded by requesting acceptance of the Appeal and annulment of the Committee's decision.

Upon presenting Appeal Statement to the Appellee, they submitted a response memorandum summarized as follows: "Appellant's Appeal is limited to the aspect of Primary Department's decision that dismissed the claim on substantive grounds, based on paragraph (3) of Article (79) of the Implementing Regulations of VAT Law. Primary Department's decision was in compliance with the provisions of the VAT Law and its Implementing Regulations. Therefore, ZATCA summarizes its response to the Appeal Claim as follows: **The Plaintiff submitted their tax return for the disputed tax period within the regulatory timeframe. Based on paragraph (1) of Article (26) of the VAT Law, which states:** "1. ZATCA may make a Tax assessment of a Taxable Person irrespective of a Tax Return filed by him". Additionally, paragraph (1) of Article (64) of the Implementing Regulations of VAT Law states: **"ZATCA may make an assessment of the VAT obligations of a Person in respect of one or more Tax Periods..."**, Accordingly, ZATCA reclassified the amounts declared by the Plaintiff under the item of local sales subject to the zero rate and included them under the item of local sales subject to the standard tax rate. This adjustment was made after the Plaintiff submitted to ZATCA a written certificate for the supply; however, the certificate did not specify customer's eligibility to deduct input VAT, as required by paragraph (3) of Article (79) of the Implementing Regulations of VAT Law. This was established by the Primary Department in its decision. Furthermore, the Primary Department based its decision on paragraph (5)



of Article (9) of the Implementing Regulations of VAT Law, which states “Any activity exercised by a government body in its capacity as a public authority shall not be considered to be an Economic Activity for the purposes of the Law and these Regulations” Since the Appellant's customer (a government entity) is operating under this contract in its capacity as a public authority, the customer is not entitled to deduct input VAT for the supplies under the contract. This is consistent with Zakat, Tax, and Customs Authority’s letter titled "Circular to All Government Entities and Departments," which the Appellant submitted in case file. Regarding the late payment fine and the fine for submitting an incorrect tax return: after reviewing Plaintiff's tax return and finding it inaccurate, a final assessment notice was issued, resulting in a discrepancy in the VAT due, which was not paid by the regulatory deadline. Accordingly, a late payment fine was imposed for the months following the disputed tax period as explained previously, in accordance with Article (43) of the VAT Law, which states, “ Any Person who fails to pay the Tax due during the period specified by the Regulations shall be liable to a fine equal to 5% of the value of the unpaid Tax for each month or part thereof for which the Tax has not been paid”. The fine for submitting an incorrect return was imposed based on paragraph (1) of Article (42), which states, “Any Person who files an incorrect Tax Return to ZATCA, amends a Tax Return after filing or files any document with ZATCA in relation to the Tax due by him which results in an error in the calculation of the Tax amount resulting in an amount that is less than the Tax due shall be liable to a fine equal to (50%) of the value of the difference between the calculated Tax and the Tax due”.

On Tuesday 25/04/1443 AH, corresponding to 05/04/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: " Department sessions may be held using modern technological means provided by the General Secretariat." The case file, all memoranda, documents, and Primary Department's decision under appeal were reviewed. After discussion and deliberation, the Department decided to adjourn the case for further consideration and in-depth review.

On Tuesday 05/08/1443 AH, corresponding to 05/04/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: " Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, documents, and Primary Department's decision under appeal were reviewed. After discussion and deliberation, the Department decided to adjourn hearing of the case to Tuesday, 26/08/1443 AH, corresponding to 29/03/2022, at 1:00 p.m., with notification to be sent to the parties to attend.

On Tuesday 04/09/1443 AH, corresponding to 29/03/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: " Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, documents, and Primary Department's decision under appeal were reviewed. The parties were called, and (...) appeared, ... (Saudi national) holding National ID No. (...) under Power of Attorney No. (...) , and (...) Holder of National Identity No (...) attended as a representative of the Defendant. under authorization letter No. (...) dated 17/08/1442 AH and issued by the Deputy Governor for Legal Affairs. Case file, all memoranda, documents, and Primary Department's decision under appeal were reviewed. The Department then decided to open the pleading by questioning Appellant’s representative. It responded in line with previous statements, relying on Appeal Statement and memoranda submitted through the General Secretariat



of Tax Committees' portal, adhering to the evidence and defenses presented therein. When presented with this by Appellee's Representative, he replied similarly, In line with the previous statements in the response memorandum, relying on the memoranda submitted through the General Secretariat of Tax Committees' portal, and adhering to the evidence and defenses presented 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 session for review, deliberation, and issuance of the decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.

On merits, after the Appellate Department reviewed case documents, examined the records and evidence, and considered the memoranda and responses submitted by both parties, it found that the Primary Department ruled to dismiss the claim filed by Plaintiff/(...) against Zakat, Tax, and Customs Authority. The Appellant objects to the rejection of its objection regarding the final assessment outcome for January 2018 and requests that the standard VAT rate not be applied to the contract with the Ministry of Environment, Water, and Agriculture, claiming it is subject to a zero rate according to paragraph (3) of Article (79) of the Implementing Regulations of VAT Law. The Appellate Department observed that the decision under appeal upheld the tax transaction as determined by the Appellee, as Appellant's customer is a government entity with public authority status and was not registered for VAT. However, it was established that the government entity (Ministry of Environment, Water, and Agriculture) is registered for VAT, according to the submitted documents, and that a certificate was issued by the Ministry in accordance with paragraph (c) of Article (79) of the Implementing Regulations of VAT Law. Consequently, the Appellate Department concludes with accepting the appeal and overturning Primary Department's decision. For the aforementioned grounds, and after legal deliberation, the Department unanimously decided as follows:

Decision

First: Accept, in form, the Appeal submitted by/(...) C.R. No. as it was submitted within the legally specified period for locally taxable supplies.

Second: Accept the Appeal filed by/ (...) C.R. No. Regarding local sales subject to the standard tax rate, annulment of the decision of the Second Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (VSR-2021-311), and considering the contract with the Ministry of Environment, Water, and Agriculture as subject to the zero tax rate.



First Appellate Committee for Determination of Income Tax Violations and Disputes First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No.: VA-2022-319

Case No.: V-71493-2021

Principle No. 368

- It is unreasonable to expect VAT to be anticipated in contracts concluded before the adoption and publication of the Common VAT Agreement in the Official Gazette on 21/4/2017, particularly when the term "taxes" appears in these contracts in a general sense without specification. Such references are understood to mean the taxes applicable at the time the contract was signed.

Facts

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

First: In Form: Accept the case in form.

Second: On Merits:

Uphold cancellation of late payment fines totaling SAR (688,120.86), authorized by the General Authority of Zakat and Tax in this case.

Reject the request of Plaintiff (...) Company, Commercial Registration No. (...), to cancel ZATCA's decision regarding reassessment of the tax period for June 2018 and the imposition of VAT in the amount of SAR (183,229).

As this decision was not accepted by the Appellant, it submitted an Appeal Statement to the Appellate Department, objecting to Primary Committee's decision, which rejected its claim requesting annulment of Appellee's (Zakat, Tax, and Customs Authority) decision regarding the reassessment for June 2018 and the imposition of VAT. It requests annulment of Primary Committee's decision on the grounds that the contract was concluded before application of VAT and meets the conditions specified in paragraph (3) of Article (79) of the Implementing Regulations of VAT Law. The Appellant concluded by requesting acceptance of the Appeal and annulment of Committee's decision.

Upon presenting Appeal Statement to the Appellee, they submitted a response memorandum summarized as follows: "Appellant's Appeal is summarized in the following items: 1. Local sales subject to the standard tax rate. ZATCA summarizes its response as follows: 1. Regarding Appellant's appeal concerning local sales subject to the standard tax rate, ZATCA informs the esteemed Department that it upholds Primary Committee's decision, as the decision aligns with the provisions of Article (79) of the Implementing Regulations of VAT Law. 2. The Appellant objects to the inclusion of contract's supplies under local sales subject to the standard tax rate and the non-application of the transitional provisions stated in Article (79) of the Implementing Regulations." After reviewing the contract concluded by the Plaintiff with (...), it is clear that Article (60) addresses the issue of tax, stating as follows: "The contractor is subject to the Kingdom's tax and fee regulations and is responsible for paying them within their specified deadlines and in the required amounts to the relevant authority. If there is an increase or decrease in taxes and



fees in the Kingdom after the date of tender, the contract value shall increase or decrease accordingly by the difference ...” . 3. ZATCA affirms that the term "taxes" used in the contract is general, and the general remains as such unless there is evidence to specify otherwise, encompassing all types of taxes, including VAT. Consequently, the application of VAT became an anticipated matter, and therefore, the supply cannot be treated as zero-rated, as the primary condition (unanticipated application of VAT) is not met. 4. Based on all the above, and given the explicit language in paragraph (3) of Article (79) of the Implementing Regulations of VAT Law stating, "Any Supply of Goods or services made in respect of a contract which does not anticipate the application of VAT to the Supply may be treated as zero-rated by the Supplier", ZATCA upholds the validity and correctness of its decision.

On Tuesday 11/09/1443 AH, corresponding to 12/04/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held using modern technological means provided by the General Secretariat." The case file, all memoranda, documents, and Primary Department's decision under appeal were reviewed. Accordingly, the Department decided to adjourn the session for deliberation and issuance of the decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.

On merits, after the Appellate Department reviewed case documents, examined the contents of the records and evidence, and reviewed the memoranda and responses submitted by both parties, it found that the decision issued by the Primary Department ruled to dismiss the claim filed by the Plaintiff / Company(...) against Zakat, Tax, and Customs Authority. The Appellant objects to the rejection of its objection concerning the final assessment for June 2018, and requests that VAT at the standard rate not be imposed on the contract concluded with (...) on 01/05/2015, as it claims it shall be subject to the zero rate. The Appeal is based on the inclusion in the contract of the phrase "all types of taxes," with the term "taxes" stated generally without specification. Since, according to the documents submitted, the contract was entered into before 30/05/2017 and before the approval and publication of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC) on 21/04/2017 regarding the unified imposition of VAT in the GCC, it is unreasonable to have anticipated the application of VAT at that time, as the plain meaning of the text includes all taxes imposed at that time. Consequently, the Department sees fit to accept the Appeal on this item and overturn Primary Committee's decision.

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

Decision



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

Second: Accept the Appeal submitted by/ (...) , with Commercial Register No. (...) Regarding local sales subject to the standard tax rate, annulment of the decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (VR-2021-254), and cancellation of ZATCA's decision regarding the reassessment for the tax period of June 2018, considering the contract with (...) as subject to the zero tax rate.



First Appellate Committee for Determination of Income Tax Violations and Disputes First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No.: VA-2022-147

Case No.: V-74341-2021

Principle No. 369

- Most contracts with government entities do not allow the supplier to amend or add to the terms, as they are subject to the Government Tenders and Procurement Law, making them difficult to modify. Consequently, Appellant's failure to declare or pay the tax liabilities on time for the relevant tax period does not stem from a failure to fulfill tax obligations, especially since this pertains to the first year of law's implementation, which may have led to ambiguity in application by government entities. Therefore, fine imposition is not warranted.

Facts

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

First: In Form: Accept the Case in form.

Second: On Merits: Dismiss the Case submitted by Plaintiff/(...), National ID No. (...), as the owner of (...) Group Commercial Register No. (...),.

As this decision was not accepted by the Appellant, it submitted an Appeal Statement to the Appellate Department, objecting to the Committee's decision to reject his objection to Appellee's decision regarding the final assessment notice for the tax period of March 2018 and the associated fines. The Appellant disputes the application of VAT at the standard rate on amounts that shall be subject to the zero rate, as they represent payments for government contracts with (...). The Appellant concluded by requesting acceptance of the Appeal and annulment of Committee's decision.

Upon presenting Appellant's statement to the Appellee, the Appellee replied as follows: "1. Regarding Appellant's Appeal on local sales subject to the standard tax rate, ZATCA informs the esteemed Department that it upholds Primary Committee's decision, as it is consistent with the provisions of Article (79) of the Implementing Regulations of VAT law. 2. During its review of the tax return, ZATCA identified a discrepancy in sales between Appellant's tax returns and financial statements for 2018. The Appellant explained that this discrepancy represents revenue from (...) project with the Ministry of (...) prior to May 30, 2017. When asked for the written certificate during the review phase, the Appellant indicated that it was not available, which constitutes a violation of paragraph (3) of Article (79) of the Implementing Regulations of VAT Law, which states:" "Any Supply of Goods or services made in respect of a contract which does not anticipate the application of VAT to the Supply may be treated as zero-rated by the Supplier until the earlier of the time the contract expires, is renewed or 31 December 2018 provided that: a. the contract was entered into before 30 May 2017; b. the Customer is entitled to deduct Input Tax in respect of the Supply of Goods or services in full or is an Eligible Person entitled to a refund of the Tax; and c. the Customer provides a written certification to the Supplier that Input Tax is able to be deducted or refunded in full on the Supply." 3. ZATCA notes that the Appellant



submitted an objection to the reassessment notice, providing ZATCA with a written certificate issued by the (Ministry of ...) dated 17/05/2020 during the objection phase. However, this certificate did not indicate customer's (Ministry's) ability to deduct input VAT. Therefore, since the Appellant did not possess this certificate at the time of submitting the tax return, and as the certificate did not meet the requirements specified in paragraph (3) of Article (79) of the Implementing Regulations of VAT Law, ZATCA upholds the validity and soundness of its decision.

On Tuesday 05/08/1443 AH, corresponding to 05/04/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Primary Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.

Regarding the subject matter, after the Appellate Department reviewed the case documents, examined the records and evidence, and considered the memoranda and responses submitted by both parties, it found that the Primary Committee ruled to dismiss the claim filed by the Plaintiff/ (...). The Appellant objects to the rejection of its objection regarding the final assessment notice for the tax period of March 2018 and the imposition of a late payment fine, specifically concerning local sales subject to the standard tax rate. The Appellant argues that its sales shall be subject to the zero tax rate. However, it is established that the decision under appeal regarding the current dispute aligns with the Law and is based on sound reasoning sufficient to support its conclusion. The issuing Department examined the core of the dispute and reached the conclusion stated in its decision. The Appellate Department did not find any grounds for revision or further comment based on the defenses presented before this Department. Consequently, this Department concludes that decision's outcome remains unaffected. Based on the foregoing, the Department concludes to reject the Appeal and uphold the decision of the Primary Committee, as supported by its reasoning.

Regarding Appellant's objection to Primary Committee's decision, which denied request of the Plaintiff/ (...) to cancel the late payment fine related to the disputed tax period. The Appellant requests cancellation of the fines resulting from Appellee's reassessment of the tax period under dispute, which included additional revenue from contracts with a government entity and imposed a late payment fine. Given that, in most contracts with such entities, the supplier has no authority to amend or add to these contracts—since they are subject to the Government Tenders and Procurement Law and are difficult to modify—the Department finds that Appellant's failure to pay or declare the due tax obligations on time for the tax period does not stem from a failure to meet tax obligations. As this pertains to the first year of Law implementation and the potential for misinterpretation in application by government entities, the Department concludes with accepting the Appeal. For the aforementioned grounds, and after legal deliberation, the Department unanimously decided as follows:



Decision

First: Accept, in form, the Appeal submitted by/(...) National ID No. (...) in his capacity as owner of (...) Group, C.R. No. due to submission within the period specified by law.

Second: Reject the Appeal submitted by/ (...), National ID No. (...), Owner of (...) C.R. No. Regarding local sales subject to the standard rate for the tax period of March 2018, and upholding the decision of the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (VTR-2021-778).

III. Accept the Appeal submitted by/(...). National ID No. (...) in his capacity as owner of (...) Group, C.R. No. Regarding the late payment fine resulting from the final assessment notice for the tax period of March 2018, annulment of the decision of the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (...), and cancellation of the decision of the Appellee(Zakat, Tax, and Customs Authority) regarding the imposed fine amount.



First Appellate Committee for Determination of Income Tax Violations and Disputes First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No.: VA-2022-54

Case No.: V-74089-2021

Principle No. 370

- The provisions of the articles in the Agreement, the Law, and the Regulations place the burden of tax liability and payment on the supplier of the good (the seller), who collects it from the recipient of the good or service (the buyer). Furthermore, the Appellate Department has consistently ruled that the buyer is obligated to bear the burden of paying the tax to the seller.

Facts

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

First: In Form: Accept Plaintiff's Case in form.

Second: On Merits:

Dismiss the Case submitted by Plaintiff/ (...) Holder of National Identity No (...) Against the Defendant/ (...) Commercial Register No. (...),

As this decision was not accepted by the Appellant, it submitted an Appeal Statement to the Appellate Department, objecting to Primary Committee's decision, which dismissed its claim against the Appellee(...). The Appellant requests annulment of Committee's decision, asserting its right to claim the VAT amount resulting from the sale of property to the Appellee, along with submitting all supporting documents for the claim. It concluded by requesting acceptance of the Appeal and annulment of Primary Committee's decision. On Tuesday 07/07/1443 AH, corresponding to 08/02/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Adjudication Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.

On merits, after the Appellate Department reviewed case documents, examined the contents of the records and evidence, and reviewed the memoranda and responses



submitted by both parties, it found that the decision issued by the Primary Committee ruled to dismiss the claim filed by the Appellant (...) Against the Appellee (...) The Appellant seeks the annulment of Committee's decision, arguing its right to claim the VAT amount resulting from the sale of property to the Appellee. The provisions of the articles in the Agreement, the Law, and the Regulations place the burden of tax liability and payment on the supplier of the good (the seller), who collects it from the recipient of the good or service (the buyer). The sale in question has been established according to Property Transfer Deed No. (...), and it is confirmed that the Appellant has paid the VAT due to Zakat, Tax, and Customs Authority for the real estate transaction in question. As the Appellate Department has consistently ruled that the buyer bears the responsibility of paying the tax to the seller, the Department finds reason to accept the appeal and annul Primary Department's decision in this case.

Decision

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

First: Accept, in form, the Appeal submitted by/(...) Holder of National Identity No (...) due to submission within the period specified by law.

Second: Accept the Appeal filed by/ (...) Holder of National Identity No (...) and annulment of the decision of Second Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (VSR-2021-492), and obliging the Appellee, (...), Commercial Register No. (...), to pay the Appellant, (...) Holder of National Identity No (...) an amount of SAR (127,500) one hundred twenty-seven thousand five hundred riyals, representing the tax amount due for the real estate transaction.

This decision was issued in the presence of both parties and is considered final and enforceable pursuant to Article 47 of Tax Dispute and Violation Committee Procedures

Similar Decisions

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

VA-2022-41

VA-2022-40



First Appellate Committee for Determination of Income Tax Violations and Disputes First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No.: VA-2022-130

Case No.: V-69771-2021

Principle No. 371

The fines resulting from the reassessment of revenues from contracts with a government entity are to be canceled, as these were subjected to the standard tax rate instead of the zero rate due to the contracts not meeting the conditions of paragraph (3) of Article (79) of the Implementing Regulations VAT Law. Most contracts with these entities are adhesion contracts in which the supplier has no authority to amend or add to the terms, and they are subject to the Government Tenders and Procurement Law, making amendments difficult. Consequently, the failure to declare or pay tax liabilities on time within the relevant tax period cannot be attributed to company's failure to fulfill its tax obligations.

Facts

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

First: In Form:

Accept the Case in form.

Second: On Merits:

Dismiss the Case submitted by Plaintiff/ (...) Commercial Register No. (...),.

As this decision was not accepted by the Appellant, she submitted an appeal brief to the Appellate Department, objecting to the committee's decision to reject its objection to the Appellee's decision regarding the final assessment notice for the tax period related to the fourth quarter of 2018 and the associated fines. The Appellant disputes the application of VAT at the standard rate on amounts that shall be subject to the zero rate, as they represent payments from government contracts. The Appellant concluded by requesting acceptance of the Appeal and annulment of Committee's decision.

Upon presenting Appellant's statement to the Appellee, the Appellee replied as follows: ZATCA informs the esteemed Department that it upholds Primary Committee's decision, which confirmed the validity of ZATCA's decision to reassess the fourth quarter of 2018 for the Plaintiff. The reassessment was conducted after ZATCA determined that Taxpayer's initial declaration was inaccurate, resulting in the imposition of a late payment fine as required by Article (43) of the VAT Law, which states: "Any Person who fails to pay the Tax due during the period specified by the Regulations shall be liable to a fine equal to 5% of the value of the unpaid Tax for each month or part thereof for which the Tax has not been paid". This position was upheld by the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, where the Plaintiff acknowledged that the contracts presented as zero-rated sales, intended for deduction from the VAT due, did not meet one of the regulatory conditions granting the customer the right to deduct input VAT. Given that the breach of these conditions nullifies the right to claim the deduction, regardless of the reason, ZATCA decided to reject the objection.



On Tuesday 05/08/1443 AH, corresponding to 05/04/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Primary Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.

On merits, after the Appellate Department reviewed the case documents, examined the records and evidence, and considered the memoranda and responses submitted by both parties, it found that the Primary Committee ruled to dismiss the claim filed by/ (...) Company. The Appellant objects to the rejection of its objection regarding the final assessment notice for the tax period related to the fourth quarter of 2018 and the imposition of a late payment fine, specifically concerning local sales subject to the standard tax rate. The Appellant argues that its sales shall be subject to the zero tax rate. However, it is established that the decision under appeal regarding the current dispute aligns with the Law and is based on sound reasoning sufficient to support its conclusion. The issuing Department examined the core of the dispute and reached the conclusion stated in its decision. The Appellate Department did not find any grounds for revision or further comment based on the defenses presented before this Department. Consequently, this Department concludes that decision's outcome remains unaffected. Based on the foregoing, the Department concludes to reject the Appeal and uphold the decision of the Primary Committee, as supported by its reasoning.

Regarding Appellant's objection to the Decision issued by the Primary Committee rejecting the request of (...) Company to cancel the late payment fine related to the disputed tax period. The Appellant requests cancellation of the fines resulting from Appellee's reassessment of the tax period under dispute, which included additional revenue from contracts with a government entity and imposed a late payment fine. Given that, in most contracts with such entities, the supplier has no authority to amend or add to these contracts, since they are subject to the Government Tenders and Procurement Law and are difficult to modify, the Department finds Appellant's failure to pay or declare the due tax obligations on time for the tax period does not stem from a failure to meet tax obligations. As this pertains to the first year of Law implementation and the potential for misinterpretation in application by government entities, the Department concludes with accepting the Appeal.

Decision

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

First: Accept, in form, the Appeal submitted by/(...) Company C.R. No. due to submission within the period specified by law.

Second: Reject the Appeal filed by/ (...) Company C.R. No. Regarding local sales subject to the standard rate for the tax period of the fourth quarter of 2018, and uphold the



decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh (...).

III. Accept the Appeal filed by/ (...) Company C.R. No. Regarding the late payment fine resulting from the final assessment notice for the tax period of the fourth quarter of 2018, annule the decision of the Third Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (...), and cancel the decision of the Appellee (Zakat, Tax, and Customs Authority) regarding the imposed fine amount.



First Appellate Committee for Determination of Income Tax Violations and Disputes First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No.: VA-2022-162

Case No.: V-80806-2021

Principle No. 372

- Services related to the determination and distribution of social assistance, daycare for individuals with special needs, child adoption, and counseling services provided by service providers affiliated with the Ministry of Human Resources and Social Development are exempt from VAT. This exemption is based on Royal Order No. (A/86) dated (18/4/1439 AH), which decrees that the state shall bear VAT for Saudi citizens on private education without restriction. Furthermore, the Ministry of Human Resources and Social Development does not pay VAT for the private sector's services in rehabilitating individuals with disabilities and daycare programs, as health and educational services are exempt from VAT.

Facts

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

First: In Form: Accept the case in form.

Second: On Merits:

- Dismiss the Case filed by Plaintiff/ (...) Holder of National Identity No (...) On merits.

As this decision was not accepted by the Appellant, it submitted an appeal statement to the Appellate Department, objecting to Committee's decision to reject its objection to cancel Appellee's decision regarding the final notice for the tax period related to the first quarter of 2019. The Appellant requests that no adjustments be made to the item of local sales subject to the standard tax rate, as the supplies are exempt from tax under Royal Order No. (A/86) dated 18/04/1439 AH. Furthermore, the Ministry of Labor and Social Development does not pay tax, as it is exempt from VAT. The Appellant concluded by requesting acceptance of the Appeal and the annulment of Committee's decision.

Upon presenting Appellant's statement to the Appellee, the Appellee replied as follows:

"The Appellant provides services to beneficiaries at discounted or subsidized rates in exchange for supplies, which constitutes an economic activity subject to VAT at the standard rate. The Appellant claims that the state has borne the cost of fees for services related to the economic activity of the Plaintiff, specifically daycare fees during school terms for individuals with disabilities, which the state covered on behalf of the service beneficiaries (individuals with disabilities). This shall be considered as received revenue rather than falling under the category of governmental support and assistance outlined above. Furthermore, the Appellant claims these are educational services for which the state bears the tax; however, ZATCA asserts that Royal Order No. (A/86) and the services provided by the Appellant fall outside the scope of this Royal Order, as the Appellant's



license was issued by the Ministry of Labor and Social Development and operates under its supervision."

After the Appellee's response was presented to the Appellant, it submitted a counter memorandum summarized as follows: "1. ZATCA claimed that the Appellant provides services to beneficiaries at discounted or subsidized rates, which is an incorrect conclusion, as the Appellant does not receive any funds from the beneficiaries nor issues any invoices to them. 2. The payment for the services is made by the state to Appellant's center without VAT, so how can Appellant's center and its activities be responsible for paying the tax?"

On Tuesday 28/07/1443 AH, corresponding to 01/03/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Sessions of the Department may be held via modern technological means provided by the General Secretariat". Case file, along with all memoranda and documents, was reviewed, as well as decision of the Primary Department under appeal. After discussion and deliberation, the Department decided to adjourn the session and issue a decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.

On merits, after the Appellate Department reviewed case documents, examined the records and evidence, and considered the memoranda and responses submitted by both parties, after allowing them sufficient time to present their cases, it found that Primary Department's decision dismissed the claim filed by (...). The Appellant objects to the committee's decision rejecting his objection to cancel the Appellee's decision regarding the final notice for the tax period related to the first quarter of 2019, specifically concerning local sales subject to the standard tax rate. The dispute centers on whether Appellant's supplies related to education and training services, in addition to healthcare services for Saudi citizens, fall under the scope of Royal Order No. (A/86). The commercial registration reveals that Appellant company's activities involve the determination and distribution of social assistance, daycare for individuals with special needs, child adoption, and consulting services. Given that the disputed amounts pertain to Saudi citizens according to the case details and submitted data, and considering that Royal Order No. (A/86) dated (18/4/1439 AH) states that the state shall bear VAT for Saudi citizens on private education without restriction, and given that the Ministry of Human Resources and Social Development does not pay VAT for the private sector's rehabilitation services for individuals with disabilities and daycare programs, since health and educational services are exempt from VAT, the Appellate Department concludes with accepting the appeal and overturning Committee's decision.

Decision

First: Accept, in form, the Appeal submitted by/(...) Holder of National Identity No (...) due to submission within the period specified by law.

Second: Accept the Appeal filed by/ (...) Holder of National Identity No (...) and the annul the decision of the Second Department to Adjudicate Value Added Tax Violations and



Disputes in Riyadh, Decision No. (VSR-2021-689), and cancel Zakat, Tax, and Customs Authority's reassessment decision for the disputed period.



First Appellate Committee for Determination of Income Tax Violations and Disputes First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No.: VA-2022-175

Case No.: V-70546-2021

Principle No. 373

- The supply of real estate is not subject to VAT if it is proven that the property was used by the heirs of the property owner as a permanent residence prior to the supply, in accordance with paragraph (7) of Article (9) of the Implementing Regulations of VAT Law.

Facts

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

First: In Form:

Accept Plaintiff's Case in form.

Second: On Merits:

Dismiss the Case submitted by Plaintiff (...) National ID No. (...), obliging the Defendant (...), National ID No. (...), to return the value added tax amount of SAR (89,062,50).

As this decision was not accepted by the Appellant, it submitted an appeal statement to the Appellate Department, objecting to Primary Committee's decision, which dismissed his claim against the Appellee (...). It requests annulment of Committee's decision, arguing that the property in dispute is exempt from VAT due to its use by the heirs of the owner as a permanent residence, based on the provisions of paragraph (7) of Article (9) of the VAT Implementing Regulations. It concluded by requesting acceptance of the appeal and the annulment of Primary Committee's decision.

On Tuesday 02/06/1443 AH, corresponding to 05/01/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held using modern technological means provided by the General Secretariat." The case file, all memoranda, documents, and Primary Department's decision under appeal were reviewed. After discussion and deliberation, the Department decided to adjourn hearing of the case to Tuesday, 29/06/1443 AH, corresponding to 01/02/2022, at 1:00 p.m., with notification to be sent to the parties to attend.

On Tuesday 29/06/1443 AH, corresponding to 01/02/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, and documents were reviewed, along with Primary Department's decision under appeal. The parties were summoned, with Appellant's Representative/ (...), holding National ID No.: (...) appeared, while the Appellee did not attend despite being duly notified of the session date. Accordingly, the Department



decided to open the floor for oral arguments by questioning the appellant about the claim, to which he responded: Consistent with the statements previously made, he expressed reliance on appeal statement and memoranda submitted through the General Secretariat of Tax Committees' portal, adhering to the evidence and defenses therein. After discussion and deliberation, the Department decided to grant the Appellee another opportunity to attend the session and adjourned the hearing to Tuesday, 15/02/2022, at 1:00 p.m.

On Tuesday 14/07/1443 AH, corresponding to 15/02/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, and documents were reviewed, along with Primary Department's decision under appeal. The parties were summoned, with Appellant's Representative/ (...), holding National ID No.: (...), The Appellee did not attend despite being duly notified of the session date. Accordingly, the Department decided to open the pleading by questioning the Appellant about the claim, to which it responded: Consistent with the statements previously made, he expressed reliance on appeal statement and memoranda submitted through the General Secretariat of Tax Committees' portal, adhering to the evidence and defenses therein. After discussion and deliberation, the Department decided to adjourn the hearing of the case for reflection and further study.

On Tuesday 19/08/1443 AH, corresponding to 22/03/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, and documents were reviewed, along with Primary Department's decision under appeal. The parties were summoned, with Appellant's Representative/ (...), National ID No. (...), on his own behalf, and the Appellee/ (...), National ID No. (...), attended on his own behalf, the Department decided to open the pleading by asking the Appellant about the Case, to which it replied: Consistent with the statements previously made, he expressed reliance on appeal statement and memoranda submitted through the General Secretariat of Tax Committees' portal, adhering to the evidence and defenses therein. When presented with this by Appellee's, it replied: ZATCA is Appellant's opponent, and the house sold consists of two deeds, one of which was sold to Appellant. VAT was charged on the sale transaction. Due to uncertainty about whether the house was subject to VAT, it consulted ZATCA, who advised him to collect the tax since the house consists of two deeds, with both deeds sold to the Appellant and another buyer. It delayed remitting the tax to ZATCA until he could verify whether the house was indeed subject to tax, as it was occupied by the heirs of (...) and had not been rented out. When both parties were asked if they wished to add anything further, they responded that they were satisfied with their previous submissions. Accordingly, the pleading was closed, and the session was adjourned for review, deliberation, and issuance of the decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.



On merits, after the Appellate Department reviewed case documents, examined the contents of the records and evidence, and reviewed the memoranda and responses submitted by both parties, it found that the decision issued by the Primary Department ruled to dismiss the claim filed by the Appellant (...) against the Appellee (...), the appellant requests annulment of Committee's decision, arguing that the property in dispute is exempt from VAT due to its use by the heirs of the owner as a permanent residence before the supply, based on paragraph (7) of Article (9) of the Implementing Regulations of VAT Law. The Appellant submitted electricity bills for the disputed property in the name of (...), and during the proceedings before the Primary Department, the Appellee did not deny that the property in dispute was a residence for the heirs or one of them. Paragraph (7) of Article (9) of the Implementing Regulations of VAT Law states, "A person who supplies or intends to supply real estate is considered to be engaging in an economic activity for the purposes of registration under the law and these regulations, except in cases where the property was used or intended to be used as a permanent residence for that person or a close family member, as defined in paragraph (2) of Article (37) of these regulations, before the real estate supply." The Appellate Department found that the disputed property qualifies as an exception to VAT under paragraph (7) of Article (9) of the Implementing Regulations of VAT Law. Consequently, the Department sees fit to accept the appeal and overturn the Primary Department's decision in this case.

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

Decision

First: Accept, in form, the Appeal submitted by/(...) Holder of National Identity No (...) due to submission within the period specified by law.

Second: Accept the Appeal filed by/ (...) Holder of National Identity No (...) and annul the decision of First Department to Adjudicate Value Added Tax Violations and Disputes in Riyadh, Decision No. (VR-2021-337), and obliging the Appellee (...), National ID No. (...) To return the amount of the tax in dispute totaling (...) ... For the Appellant (...), National ID No. (...)

This decision was issued in the presence of both parties and is considered final and enforceable pursuant to Article 47 of Tax Dispute and Violation Committee Procedures



First Appellate Committee for Determination of Income Tax Violations and Disputes First Appellate Department for Value Added and Excise Tax Violations and Disputes in Riyadh

Decision No.: VA-2022-182

Case No.: V-54483-2021

Principle No. 374

Revenues from contracts for labor supply services provided by an external service provider are not subject to VAT. This includes wages and salaries related to the service provider's employees who are seconded to work for the client requesting the service. Under the service contract, the role of the external service provider is to employ workers by conducting job interviews and completing hiring procedures based on instructions from the client receiving the service. Once a candidate is accepted, an employment contract is signed between the employee and the service provider to work for the service provider's client (the client company). This arrangement establishes an employment relationship between the contracting client and the seconded employee in accordance with the concept in paragraph (6) of Article (9) of the Implementing Regulations of VAT Law.

Facts

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

First: In Form: Accept the case in form.

Second: On Merits: Reply to the Case filed by Plaintiff/ (...) Company, Commercial Register No. (...) to prove the validity of Defendant's decision for the tax period in question.

As this decision was not accepted by the Appellant, it submitted an appeal brief to the Appellate Department, objecting to the Primary Committee's decision, which dismissed its claim requesting annulment of Appellee's (Zakat, Tax, and Customs Authority) decision regarding the reassessment for February 2018. It seeks annulment of the Primary Committee's decision, arguing that the added amounts shall be exempt from VAT as they pertain to employee salaries and incentives, in addition to there being a case of double taxation regarding the contracts of (...) Company, and ended with a request to accept the Appeal and cancel Committee's decision.

Upon presenting Appeal Statement to the Appellee, they submitted a response memorandum summarized as follows: "First: formal aspect: ZATCA requests the esteemed Appellate Department to verify whether the Plaintiff submitted Appeal request to the General Secretariat of Tax Violations and Disputes Committees within the specified period according to Article (40) of Tax Violations and Disputes Committee Procedures: We would also like to draw the attention of the esteemed Appellate Department to the fact that case No. 23809-2020-V, as indicated in the system of the General Secretariat for Tax Committees' Portal, is currently in the "Session Ongoing" stage, which means that this case cannot be reviewed as it has not yet been adjudicated. Secondly: On Merits: ZATCA presents its perspective on the appeal statement submitted by the Plaintiff as follows: 1. Upon reviewing Plaintiff's appeal statement, it appears that no new arguments were presented, as all defenses had previously been raised before the Primary Committee,



discussed, and addressed through the memoranda submitted. The Plaintiff elaborated on concepts regarding the application of the Labor Law and related orders, as well as tax treatment mechanisms, citing ZATCA's guidance documents. However, it overlooked the fact that these guidance documents were issued for instructional purposes to clarify ZATCA's perspective on certain cases, and it is explicitly stated at the beginning of these documents that they are not binding on ZATCA's tax treatment due to variations in scenarios and applications of VAT accounting. 2. For further clarification to the esteemed Department: the core of the existing dispute lies in Plaintiff's interpretation of her transactions under the provisions of Article (9), paragraph (6), which states the following: "The economic activity does not include activities carried out by employees or other persons insofar as they are contractually linked to an employer or bound by any other legal arrangement that establishes the relationship between the worker and the employer concerning working conditions, wages, and employer responsibilities, for registration purposes under the law and these regulations". Regarding case context and its relevance to legality of the accounting treatment applied by the Plaintiff, it has been determined that, upon reviewing the contracts concluded by the Plaintiff with its customers, some contracts represent supplies of services and goods subject to the standard tax rate. For example, in the contract with (...) Bank, Plaintiff's obligations were defined as providing "debt collection services and operational tools and supplies." Additionally, ZATCA found that certain contracts concluded by the Plaintiff with its clients, such as the contract with (...) Bank, did not result in establishment of an employment relationship between the contracting customer "the Bank" and the employee "assigned by the Plaintiff," similar to the employment contractual relationship between an employee and an employer as per the provisions of Article (9), Paragraph (6). The contracts explicitly state "no direct or indirect employment relationship exists between Plaintiff's customer and the employee" and confirm that the employees are affiliated with the Plaintiff Company, which bears sole responsibility for all their rights and contractual obligations. For example, we provide some samples of contracts and the observations derived from them, which demonstrate the inapplicability of the provisions of Article (9), Paragraph (6) of the regulations to Plaintiff's supplies, as shown in the table below:

Contract/Agreement	Service
(...) Bank	Appointing a contact company to perform services, not to provide employees
(...) Company	The quotation and contract indicate provision of review services, not employees, and there is no employer-employee relationship with its employees.
(...) Company	The contract is not an employee-related contract, and it does not mention employees or any employer-employee relationship.
(...) Company	The contract pertains to the rental of platforms, not the provision of employees, and there is no employer-employee relationship.
(...) Colleges	The purpose of the contract is management and operational services, specifically "operational services."
(...) Authority	The purpose is to operate a contact center, including the provision of services, equipment, and materials.
(...) Bank	Appointing a contact company to perform services, not to provide employees



Accordingly, and based on Article (14) of the Implementing Regulations of VAT Law, which stipulates: "Without prejudice to Article two of the Law, for the purposes of applying the Agreement and the Law in the Kingdom, the Tax is imposed on all Taxable Supplies of Goods and Services made by a Taxable Person in the Kingdom in the course of carrying on their Economic Activity or those received by a Taxable Person in the Kingdom ..."

ZATCA subjected the revenues to the standard tax rate. 3. ZATCA reaffirms its position as outlined in the memorandum submitted before the Primary Department regarding the contested items. The First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah previously upheld ZATCA's actions, finding its decision consistent with the provisions of the law. Accordingly, ZATCA maintains the reasoning provided, which supports the validity and soundness of its actions. Third: Requests: Based on the above, ZATCA requests the esteemed Appellate Department to verify that the Plaintiff submitted the Appeal request within the statutory period in accordance with Article (40) of Tax Dispute and Violation Committee Procedures. Additionally, ZATCA requests rejection of Plaintiff's Appeal and affirmation of Primary Department's decision on the contested items. Furthermore, ZATCA reserves its right to present additional responses and clarifications before closure of pleadings.

On Tuesday 10/09051443 AH, corresponding to 14/12/2021 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, and documents were reviewed, along with Primary Department's decision under appeal. The parties were summoned, with Appellant's Representative/ (...), Holder of National Identity No (...) attending under Power of Attorney No. (...). Also attended / (...) (Saudi National) Holding National ID No. (...), appeared in his capacity as Defendant (ZATCA)'s representative, by virtue of Authorization Letter No. (...) dated../../.., issued by the Deputy Governor for Legal Affairs, with a copy included in case file. The Department then decided to open the floor for pleading by questioning Appellant's Representative about the claim, to which he responded: Consistent with the statements previously made, he expressed reliance on appeal statement and memoranda submitted through the General Secretariat of Tax Committees' portal, adhering to the evidence and defenses therein. When presented with this by Appellee's Representative, he replied similarly, In alignment with the arguments previously stated in the reply memorandum, and relying on the submissions made through the General Secretariat of Tax Committees' portal, the Appellee adheres to the presented evidence and defenses. Accordingly, after discussion and deliberation, the Department decided to postpone the hearing to Monday, 21/06/1443 AH (24/01/2021), at 4:00 PM, to allow the Appellant to provide the requested documents.

On Tuesday 04/09/1443 AH, corresponding to 29/03/2022 AD, the First Appellate Department for Value Added and Excise Tax Violations and Disputes held a session to consider the appeal submitted via video conference, based on Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which stipulates that: "Department sessions may be held through modern technical means provided by the General Secretariat." Case file, all memoranda, documents, and Primary Department's decision under appeal were reviewed. The parties were called, and (...) Saudi national holding Civil registration No. (...) appeared as representative of the Company under Power of Attorney No. (...); and declared his appearance by virtue of National ID No. (...) as attorney for Defendant, under authorization letter No. (...) dated../../.., issued by the Deputy Governor for Legal Affairs. Case file, all memoranda, documents, and Primary Department's decision under appeal were reviewed. The Department then decided to open the pleading by questioning Appellant's representative: It responded in line with previous statements,



relying on Appeal Statement and memoranda submitted through the General Secretariat of Tax Committees' portal, adhering to the evidence and defenses presented therein. When presented with this by Appellee's Representative, he replied similarly, In line with the previous statements in the response memorandum, relying on the memoranda submitted through the General Secretariat of Tax Committees' portal, and adhering to the evidence and defenses presented 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 session for review, deliberation, and issuance of the decision.

Grounds

Based on the Income Tax Law, issued under Royal Decree No. (M/1) dated 15/01/1425 AH, and amended by Royal Decree No. (M/113) dated 02/11/1438 AH, and after reviewing Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

Since the appeal was submitted by an authorized party within the specified legal period and met all statutory requirements in accordance with Paragraph (2) of Article (40) of Tax Dispute and Violation Committee Procedures, it is therefore accepted in form.

On merits, by reviewing case files and examining the documents they contained, and after reviewing the memoranda and responses submitted by the two parties, the Department found that the decision issued by the Primary Department ruled to accept the case filed by the Plaintiff/ (...) Company **Against Zakat, Tax and Customs Authority**, and where **The Appellant contests the rejection of its objection concerning the final assessment for February 2018, specifically related to revenue from labor supply contracts. The Appellant demands that the standard VAT rate not be applied to the revenue from the contract with (...). Contract of (...) Company, (...) Bank, (...) Bank Contract, (...) Bank Contract, (...) Bank Contract, This is because the revenues in question consist of employee salaries. Based on the data and evidence provided in the case, the Appellate Department found that the Appellant employs its workers under contractual agreements in accordance with the regulations of Human Resources and Ministry of Labor. This was demonstrated through a sample of contracts and invoices submitted, wherein the Appellant subjected commissions and other amounts collected to VAT while excluding salaries and wages. The core of the dispute lies in the fact that the contracting companies (customers of the Appellant Company) rely on an external service provider (the Appellant) to carry out activities under a service agreement. The external service provider is responsible for conducting interviews and recruitment procedures with qualified individuals (based on instructions received from the entity receiving the service). Upon acceptance, an employment contract is signed for the individual to work for Appellant's customer. As a result, this establishes an employment relationship between the contracting customer and the seconded employee, in accordance with provisions of paragraph (6) of Article (9) of the Implementing Regulations of VAT Law. This confirms the validity of Appellant Company's position in requesting that VAT not be applied to salaries and wages for the disputed contracts. Regarding the contract signed with (...) Bank, Primary Department's decision concluded as follows: "It is evident from the contract signed with (...) Bank, that the second party is (...) Company, not (...) Company represented by the Plaintiff, which is relied upon for providing workforce."** Upon reviewing the documents submitted in the case, the Appellate Department determined that the Appellant Company is a party to the contract and that (...) Company is a sister company. Since the issued invoices are in the name of the Appellant company, (...) Company, the Appellate Department finds merit in the appeal and decides to overturn Primary Department's decision regarding this item.

Regarding the issue of double taxation on the contracts with (...) Company and Colleges (...), it was evident from the submitted Appeal and the contested decision that the dispute



revolves around Appellant's objection to the action taken by the Appellee (Zakat, Tax, and Customs Authority) in amending the contracts signed with (...) Company and (...) Colleges Incorrectly, by recalculating the tax on the same contracts for which the Appellant had already remitted the tax to ZATCA, according to its claim. Upon review, the Appellate Department found that the Committee that issued the decision did not address the details of this point, as it appears to have issued its decision based on the totality of the contracts, despite the differing circumstances of the objection. Since the Department did not fully exercise its judicial authority regarding the point under appeal concerning the objection to double taxation, the Appellate Department concludes that the Appeal submitted on this point is accepted.

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

Decision

First: Accept, in form, the Appeal submitted by/(...) Company, Commercial Register No. (...), due to submission within the period specified by law.

Second: Accept the Appeal filed by/ (...) Company Commercial Register No. (...), Regarding the revenue from labor contracts, the decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah, No. (VJ-2021-766), is annulled, along with the decision of Zakat, Tax, and Customs Authority related to this item.

III. Accept the Appeal filed by/ (...) Company Commercial Register No. (...), Regarding double taxation on the contracts of (...) Company and (...) Colleges, the decision of the First Department to Adjudicate Value Added Tax Violations and Disputes in Jeddah, No. (VJ-2021-766), is annulled, and the case is referred back to the Department that issued the decision for further review.



Detailed Index of Principles

Principle No.	Principle	Subject
	Formal	
279	The statutory period for conducting the assessment is five years from the end of the deadline for filing the declaration. Zakat Payer's error in applying the law does not justify conducting the assessment after expiration of five years from the date Zakat Payer submitted their declaration.	Assessment Period
280	Failure to notify Zakat Payer of the hearing before the Determination Department establishes that the case was not ready for resolution, necessitating the case to be reconsidered.	Failure of notification
281	The lack of justification for ZATCA's assessment results in a procedural defect in the assessment, thereby invalidating its status as a proper administrative decision.	Justification of ZATCA's assessment.
282	Failure to send the electronic link for the hearing before the Primary Department to Zakat Payer to attend the session, and the failure to grant Zakat Payer sufficient time and verify their ability to attend the hearing, invalidates dismissal of the case due to absence of Zakat Payer's representative.	Email Link
283	The acceptance or rejection of receiving an objection due to non-payment of the undisputed amount falls under jurisdiction of Tax Dispute and Violation Committees , based on the relevant regulations.	Acceptance or rejection of receiving an objection due to non-payment of the undisputed amount.
284	Zakat Payer's failure to object to the assessment before ZATCA prior to filing their case with the Primary Department indicates that Zakat Payer prematurely filed their case as a result of not initially objecting before the administrative authority.	Filing the Case prematurely
285	The legislator's provision to shield ZATCA's assessment decision from appeal after the expiration of the statutory objection period applies only if the decision is valid and its legally prescribed elements are complete. In the	Appeal against the decision to link ZATCA



	event the appealed decision is seriously flawed, such decision shall be appealable without being bound by procedural time limits specified by law.	
286	The confirmation that Zakat Payer filed their case within the statutory period from the date of being notified of the rejection of the settlement request necessitates referring the case back to the Primary Department for substantive review.	Filing the case within the statutory period.
287	The absence of a legal entity on which the assessment could be imposed for the year under appeal, due to transformation of the institution targeted by ZATCA's assessment decision into a different legal entity, indicates the invalidity of ZATCA's assessment. This is because the decision was not issued against a zakat payer subject to zakat. Consequently, ZATCA's assessment decision is flawed due to a defect in its reasoning, rendering it an invalid administrative decision due to the absence of a fundamental element of an administrative decision.	Lack of legal person
288	The case cannot be reconsidered regarding an issue that has already been adjudicated.	Previously Adjudicated
289	Primary Department's consideration of two elements as a single issue, without providing justification in the reasoning of its decision for not addressing these issues separately, led Zakat Payer to file an appeal on part of this issue. This necessitates referring the case back to the Primary Department for separate consideration of each issue.	Primary Department's consideration of two elements as a single issue.
290	If a final judicial ruling has already been issued in the matter of the dispute, the decision acquires ZATCA of res judicata, resulting in the invalidity of imposing the assessment on Zakat Payer in the case at hand.	Invalidity of imposing the assessment on Zakat Payer.
291	If the item was not included among the contested items when the dispute was reviewed by the Department that issued the decision, it is considered a new request and shall not be accepted.	Failure to include the item among the contested items before the Primary Department.
292	Zakat Payer's request to suspend the proceedings in the case, citing their submission	Suspension of proceedings.



	of a request to initiate financial reorganization procedures under the Bankruptcy Law and its Implementing Regulations, along with the issuance of a ruling by the Commercial Court appointing two bankruptcy trustees to conduct company's financial reorganization, and the failure to respond to Department's inquiry regarding whether to proceed with the appeal within 30 days, results in Zakat Payer forfeiting their right to appeal.	
293	ZATCA's right to amend the assessment within ten years from the end of the deadline for filing the declaration for the tax year applies only in cases where Zakat Payer has not submitted their declaration at all or if the declaration is incomplete or incorrect with the intent of tax evasion. Reopening the assessment without relying on what has been stipulated by the legislator, as outlined above, does not achieve the objective of ensuring the financial and legal stability of zakat payers.	Assessment within ten years
	Substantive	
	Zakat	
294	The absence of zakatable funds owed by Zakat Payer for the disputed years, along with Zakat Payer providing evidence indicating the cessation of their activity, such as a certificate of closure of the business, results in the conclusion that the estimated zakat assessment does not fairly reflect Zakat Payer's activity.	Estimated zakat assessment.
295	Zakat Payer's failure to substantiate their claim that the amounts upon which zakat was calculated in the institution's account do not entirely represent its revenues results in the invalidity of their argument that the estimated assessment amounts in question do not fully represent the revenues earned during the zakat year.	Estimated zakat assessment.
296	Zakat Payer's substantiation of incurring expenses for salaries and allowances of board members with supporting documents is not undermined by the non-registration of the recipients of those salaries and allowances in social insurance. This is because such non-registration does not affect Zakat Payer's right	Salaries and allowances of board members.



	to deduct those expenses, as long as Zakat Payer's incurrance of them is proven.	
297	<u>Zakat Payer has the right to present evidence supporting their claim at any stage of the litigation process.</u>	Submission of Proof
298	The fundamental principle for calculating Zakat on Zakat Payers is to rely on supporting evidence and documents.	Zakat Base
299	If Zakat Payer submits audited financial statements for the disputed years and ZATCA does not challenge these statements or their contents, then Zakat Payer is entitled to have their Zakat base calculated based on the information provided in the audited financial statements.	Audited financial statements.
300	Zakat Payer is subject to the regulations governing the collection of Zakat, under which the amounts owed by Zakat Payer are considered for Zakat calculation. In calculating Zakat base, the source of income is not taken into account.	Zakat Base
301	In conducting zakat assessment for a zakat payer based on his accounts, the principle of budget balance should be upheld. This means that if the deduction of an acquisition asset is disallowed, the corresponding addition of its financing amount must also be disallowed. Alternatively, the Authority may directly assess the zakat using the zakatable assets in the zakat base	Deduction of amounts related to capital projects under construction
302	If the Authority fails to establish a clear connection between the loans acquired during the year and the asset deducted from the zakat base, and does not provide justification for amounts differing from those declared by the zakat payer, the zakat payer's declaration will be accepted unless evidence to the contrary is presented.	Authority fails to establish a clear connection between the loans
303	The zakat payer's contribution to covering the losses of subsidiary companies, whether required to comply with the Companies Law or made voluntarily, is treated as an investment in those companies and is deducted from the zakat payer's zakat base.	Contributions including loans from partners



304	The issue of the legality of bonuses and incentives, and the requirement for them to align with labor law, is unrelated to the calculation of zakat, whether or not their amount is included in the zakat base of the zakat payer. This is because these procedures are designed for a different objective, namely, to safeguard the rights of workers in organizations, as intended by the law.	Bonuses and incentives
305	If the zakat payer fails to provide audited financial statements for the foreign company from a chartered accountant in the country of investment, that investment will not be deducted from the zakat base.	Foreign Investment
306	The law does not mandate that the litigant submit all documents to the administrative authority at the outset to prove his claim.	Accounts payable
307	Accounts payable constitute a component of zakat base, provided that a lunar year has passed thereover or that such funds are used to finance fixed assets that are included in zakat base.	Accounts payable
308	If Zakat Payer fail to raise any objection to the disputed item before the Primary Department, Zakat Payer subsequent appeal on the same item will be considered a new claim, and consequently, it will be dismissed.	Zakat payer's failure to object to the disputed item before the primary committee
309	Any asset recognized in the statement of financial position shall have a corresponding funding source that ensures the equation balances. Consequently, if a non-zakatable asset is not accepted to be deducted from zakat base, an equivalent amount shall be excluded from funding sources.	Lands
310	Zakat Payer shall have the right to deduct assets that are not offered for sale in their present condition.	Projects under construction
311	If Zakat Payer failed to provide evidence of payment of zakat on foreign investments, Zakat Payer shall have no right to deduct the same from zakat base.	Investments
312	Zakat shall be imposed on assets upon absolute ownership thereof, and upon distribution of profits,	Distribution of dividends



	ownership is transferred to shareholders, thus ownership requirement is terminated.	
313	Short-term loans shall not be added to zakat base if paid before completing a lunar year.	Short-term loans
314	In accordance with applicable fatwas, Zakat Payer may not exclude debt from its zakat base unless it can prove that debtor has been deliberately delaying payment or is insolvent	Payments made to affiliated companies
315	If Zakat Payer argues it made payments to a subsidiary company at a specific percentage, such percentage of the due amount shall be excluded from zakat base of the subsidiary company.	Not deducting accounts receivable from an affiliated company and the accounts receivable from a subsidiary company from the zakat base.
316	Land and investment properties are considered acquisition assets by default and are not subject to zakat unless they are intended for trading purposes. If there is no evidence of the sale of these properties based on the zakat payer's audited financial statements, and no supporting evidence to justify an exception to this general rule or the information provided in the zakat payer's financial statements, then the amounts must be deducted from the zakat base.	Other deductions - Land and investment properties
317	If asset financing is included as a zakatable item in the zakat base, the source of that financing must be excluded from the base if the assets themselves cannot be deducted, in order to maintain the principle of budget balance.	Other deductions - Land and investment properties
318	The zakat assessment for carried forward losses must be based on the amounts of those losses included in the zakat payer's calculations, to avoid making the assessment for the disputed year contingent upon uncertain future events. The Authority, however, reserves the right to claim any zakat differences arising from the determination of carried forward losses, once final decisions are made regarding their amount. The final assessment may be adjusted for each year the Authority requests the zakat payer to settle any differences.	Accumulated losses



319	Zakat is not due on yields of endowment (Waqf).	Subject yield of charitable endowment to Zakat
320	When Zakat Payer submits audited financial statements that prove the correction of error for the year, in question, specifically the omission of investments in the financial statements for that year, and ZATCA does not provide any objections to the audited financial statements provided by Zakat Payer, this entitles Zakat Payer to deduct investments from zakat base.	Investments
321	Failure of Primary Department to adjudicate the dispute regarding the contested item leaves the associated claim unresolved on its merits. To ensure Zakat Payer's right to a two-tier litigation process, the Case shall be remanded to the primary department for reconsideration of objection to that item.	Primary Committee didn't decide upon the item in dispute.
322	Disallowing deduction of deducting real estate properties from zakat base on the grounds that they are not used in business activity should be balanced by excluding the same amount from total equity according to balance sheet principle, as every asset in the balance sheet has corresponding funding on the liabilities and equity side.	Investments
323	If revenues are not decreased by zakat expenses in zakat declaration, zakat expense should not be added to the net profit.	Zakat Expenses
324	The discrepancy between amounts in the trial balance and the financial statements does not justify amending Zakat Payer's declaration, as the existence of amounts in the trial balance does not mean that they are final, due to the fact that the trial balance cannot be considered a final financial statement due to its susceptibility to adjustment as per accounting practices.	Trial balance
325	The accounting treatment for unrealized losses in investments requires recording loss in the statement of income and decreasing investment balance by the amount of loss. Therefore, Zakat Payer is entitled to deduct the loss for zakat calculation purposes corresponding to deducting investment from zakat base, which has already been adjusted by that loss.	Unrealized losses in investments



326	Zakat Payer is entitled to deduct investments in shares of Saudi companies from zakat base if it turns out that such shares were not held for trading purposes and there is no evidence on active sale activity related to such shares.	Investments in Saudi companies shares
327	Payer's grounds for challenging information relied upon in the financial statements do not undermine this, as Zakat Payer has not proven inaccuracy of such financial statements by any competent authority confirming the alleged forgery.	Re-assessment due to financial statements approved by an unauthorized person
328	The decisive factor is the figures reflected in Zakat Payer's accounts. This is not undermined by Zakat Payer's claim that such funds do not pertain to the enterprise.	Current Account
329	Modest bonuses, relative to the scale of business activities and customary for companies to incur as employee incentives, are considered deductible expenses.	Bonuses
330	The fact that a full lunar year has not passed on sukuk, and the lack of evidence of a direct relation between sukuk and assets deducted from zakat base, entails that such sukuk are not added to zakat base.	Subjecting Sukuk to Zakat
331	Deferred capital expenditures are amounts paid by Zakat Payer for future goods or services that are not subject to zakat and do not outline a financial debt on a third party that would result in a financial inflow to Zakat Payer. Accordingly, such expenditures should be deducted from zakat base.	Deferred capital expenditures
332	Failure to prove that lands are intended for trading, and failure to exclude the financing corresponding to this deduction, entails Zakat Payer's right to deduct lands from his Zakat container.	Deduction of lands
333	Calculation of net base entails exclusion of fixed assets, regardless of how they are financed to be added to zakat base, without being affected by whether net of that base is less than the adjusted profit.	Fixed assets within ownership limits



334	Dividends are not added to zakat base if it is proven that they are distributed and transferred to accounts separate from Zakat Payer's account.	Dividends
335	Sales returns are part of business nature, and are processed by reducing sales and adjusting cost of sales by value of returned goods.	Sales returns differences in excess
336	Absence of a link between existence of sales returns and corresponding effect of such returns on cost of sales would result in invalidity of Zakat Payer's request to indicate returns recorded in terms of calculating, unless there is a problem with accounting proof of corresponding and adjusted amounts of the general effect of returns on Zakat Payer's profit.	Sales returns differences in excess
337	Failure of ZATCA to provide an analysis of its amendments to depreciation tables prepared by Zakat Payer, showing errors made by Zakat Payer and how those errors could be corrected so as to raise a reasoned objection to its procedure, would result in cancelation of ZATCA's action on the value of fixed assets deducted from zakat base.	Fixed asset value
338	If Zakat Payer submits documents supporting write-off of debt subject of dispute and submits evidence of debt's cancellation, bad debts shall be considered as deductible expenses.	Bad debts
339	Fixed assets and the like are acquisition assets that assist in current and future production regardless of their source of financing. Limit of modified profit base, if the base is less than that profit, has no legal or statutory basis, which entails Zakat Payer being entitled to deduct net fixed assets and acquisition investments without a certain limitation.	Zakat base assessment based on adjusted profit
340	As long as Zakat Payer has calculated zakat on his share in foreign investments, he is entitled to deduct loans provided to subsidiaries according to his investment rate therein.	Deducting long-term advances from the zakat base
341	Application of fatwas on debt to Zakat Payer requires considering whether a year has passed thereon or whether they are used to finance assets deducted from the base. Requirement of perfect ownership is not related to the extent to	Trade and other creditors and advances from customers



	which debts are included in Zakat Payer's zakat base.	
342	Zakat Payer shall be entitled to submit the audited financial statements as proof of his claim. This is not affected by preparation of such financial statements at a date later than the date of submitting the declaration.	Financial statements
343	Zakat Payer's submission of a document proving the loss of its regular books as a result of a fire at its premises without the existence of any negligence or deliberate from Zakat Payer to destroy those documents results in its entitlement to pay Zakat according to the financial statements on which ZATCA relied when making its Assessment.	Financial statements
344	Zakat Payer's claim of incorrectness and exaggeration of the new information is not accepted, as long as it has not provided evidence of rectification of these financial statements after claiming of the existence of errors included therein.	Financial statements
345	The trial balances are merely internal drafts for the purpose of preparing the financial statements that do not amount to be used as evidence against the audited financial statements.	Financial statements
346	The financial liability of the Institution is inseparable from the liability of its owner, as the Zakat due is considered a personal debt on the owner of the Institution during the years subject to Assessment, which determines ZATCA's ineligibility to claim Zakat from Zakat Payer, to whom ownership of the Institution has been transferred, for the years preceding the transfer of its ownership to Zakat Payer.	Zakat Assessment
347	The general rule for real estate is that they are not for trading unless intended for profit and trading	Deducting long-term investments from the zakat base
348	The interest shall be deducted when calculating the Zakat profit, and the non-addition of the debt arising from the unpaid obligations is considered double deduction from Zakat Base	Adding interest to the zakat base



349	Zakat Payer's request to have its accounts audited by more than one certified accountant for the same year without any reference in the subsequent financial statements to the reasons for adjustment of balances reflected in the previous financial statements, is considered evidence of its intention to come up with a predetermined financial position or financial performance that is not reflected in the actual economic transactions and figures reflected in commercial books.	Approval of final financial statements
350	The preparation of more than one set of financial statements for the same year with different financial data, is considered a valid reason for disregarding the same if the subsequent financial statements do not include objective reasons for amending the previous ones.	Approval of final financial statements
351	Zakat is imposed on capital and realized revenues. However, Zakat Payer's failure to provide proof of payment of Zakat on these foreign investments results in subjection of these funds to Zakat.	Revenues realized outside the Kingdom
352	Determining the adjusted net profit to be the Zakat Base is groundless of any fact or law since the profits generating from the revenues may not exist at the end of the Zakat Year when they are disbursed by Zakat Payer to purchase a deductible asset from Zakat Base.	Assessment based on adjusted profit
353	Zakat Payer is held accountable as per its regular accounts and financial statements, the accounts receivable shall be implicitly added to Zakat Base and shall be not be deducted therefrom.	Sales differences according to debtors
Income tax		
354	In the event Taxpayer is working independently of the Foreign Company and the provisions of the Agreement entered into between Taxpayer and that Company, did not establish the existence of a subordination relationship between Taxpayer and the British Company and that the agreed-upon services are delivered upon request from Taxpayer through an independent request letter, each service requested by Taxpayer is considered an	Tax assessment



	independent contract and does not establish Taxpayer's subordination to that Company since the subordination relationship requires contracting in the name and for the benefit of the Principal "the Company," which determines the absence of the concept of permanent establishment.	
355	In the event that the assignment of project works to the company was conditional on the principle of not violating joint liability and providing technical and financial support as the main contractor responsible before the project owner for carrying out the project in accordance with terms and obligations set forth in the contract, Considering a foreign company a permanent establishment	Considering a foreign company as a permanent establishment
356	- Given that Taxpayer, under its submitted return, adjusted the profit by including non-deductible expenses and ZATCA's addition of such expenses, within its adjustments, it becomes evident that ZATCA included an expense that was not originally deducted to calculate the taxable profit.	Partners Remuneration
357	The significant discrepancy between the amounts representing Taxpayer's revenues as stated in its tax returns and those reported in the financial statements submitted, coupled with Taxpayer's failure to initially file tax returns that included the revenues acknowledged in the financial statements, and the fact that these revenues differ substantially from what was previously declared in its tax returns submitted to ZATCA, constitutes prima facie evidence that Taxpayer submitted false tax returns with the intent of tax evasion.	Estimate zakat assessment.
358	The rent expense to be deducted from the tax base is the amount attributable to the rental period within that year, given that Taxpayer employs the accrual basis in preparing its financial statements.	Overstated rentals
359	Taxpayer's failure to maintain statutory accounts that can be relied upon for tax imposition, coupled with the lack of evidence to support its claim for a lower profit margin than determined by the Primary Committee that	Estimate zakat assessment.



	delivered the decision, results in the rejection of Taxpayer's request and affirmation of the appealed decision.	
360	The expense that Taxpayer is entitled to deduct from its tax base is that incurred and supported by documentation. The deduction of salaries and wages does not require that the employee be registered in social insurance.	Salaries Differences
361	The absence of profits from the sale, as per the agreed-upon amount, renders ZATCA's imposition of income tax on these amounts unjustified.	Capital Gains Tax
Withholding Tax		
362	Since withholding tax, if not deducted in accordance with regulatory requirements, remains a liability on the person responsible for its deduction, the provisions of the income tax law regarding the obsolescence do not apply to withholding tax.	Items related to withholding tax
363	ZATCA's failure to clarify the error made by Taxpayer regarding the recognition of revenues from construction and contracting activities according to the percentage of work completed, as well as the lack of justification in ZATCA's assessment for modifying Taxpayer's return, and ZATCA's failure to challenge the financial statements, which serve as the primary document regarding the revenues recorded from long-term contracts in accordance with the approved accounting standards results in the cancellation of ZATCA's action regarding unrecognized revenues in the books on the grounds that ZATCA's action was not based on a valid reason that could justify overturning Taxpayer's return.	ZATCA failed to prove the fault made by the zakat payer regarding the recognition of his revenues.
364	Taxpayer's failure to provide supporting documentation demonstrating that the payments made to non-residents constitute wages and salaries results in the rejection of its request to exempt these payments from withholding tax.	The amount paid to sailors in their personal capacities
365	Taxpayer's payment of amounts to non-resident entities in return for software sales to customers, without proof that these amounts were for the use	Withholding tax imposed on nonresident companies at a 15% rate



	of intellectual property rights, means that characterizing this transaction as a royalty subject to withholding tax is incorrect. The correct characterization of this transaction is as a supply of goods, which does not impose an obligation on Taxpayer to withhold tax when transferring amounts to the non-resident entity.	
	VAT Law	
366	The apparent fact that tax invoices are associated with the company, as evidenced by supporting documents, can only be refuted by substantial evidence and strong indications.	Result of Final Assessment
367	- Contracts entered into with government entities before 30/5/2017 are subject to a zero rate as long as they meet the conditions of Paragraph (3) of Article (79) of the Implementing Regulations VAT Law. This applies provided that the government entity is a VAT-registered customer and has presented the supplier with a written certificate confirming the ability to deduct the full input VAT on the supply.	Result of Final Assessment
368	- It is unreasonable to expect VAT to be anticipated in contracts concluded before the adoption and publication of the Common VAT Agreement in the Official Gazette on 21/4/2017, particularly when the term “taxes” appears in these contracts in a general sense without specification. Such references are understood to mean the taxes applicable at the time the contract was signed.	Application of Common VAT Agreement of GCC States
369	Most contracts with government entities do not allow the supplier to amend or add to the terms, as they are subject to the Government Tenders and Procurement Law, making them difficult to modify. Consequently, Appellant's failure to declare or pay the tax liabilities on time for the relevant tax period does not stem from a failure to fulfill tax obligations, especially since this pertains to the first year of law's implementation, which may have led to ambiguity in application by government entities. Therefore, fine imposition is not warranted.	Late Payment Fine



370	The provisions of the articles in the Agreement, the Law, and the Regulations place the burden of tax liability and payment on the supplier of the good (the seller), who collects it from the recipient of the good or service (the buyer). Furthermore, the Appellate Department has consistently ruled that the buyer is obligated to bear the burden of paying the tax to the seller.	Sale of Property
371	The fines resulting from the reassessment of revenues from contracts with a government entity are to be canceled, as these were subjected to the standard tax rate instead of the zero rate due to the contracts not meeting the conditions of paragraph (3) of Article (79) of the Implementing Regulations VAT Law. Most contracts with these entities are adhesion contracts in which the supplier has no authority to amend or add to the terms, and they are subject to the Government Tenders and Procurement Law, making amendments difficult. Consequently, the failure to declare or pay tax liabilities on time within the relevant tax period cannot be attributed to company's failure to fulfill its tax obligations.	Penalties resulting from reassessment
372	Services related to the determination and distribution of social assistance, daycare for individuals with special needs, child adoption, and counseling services provided by service providers affiliated with the Ministry of Human Resources and Social Development are exempt from VAT. This exemption is based on Royal Order No. (A/86) dated (18/4/1439 AH), which decrees that the state shall bear VAT for Saudi citizens on private education without restriction. Furthermore, the Ministry of Human Resources and Social Development does not pay VAT for the private sector's services in rehabilitating individuals with disabilities and daycare programs, as health and educational services are exempt from VAT.	Local sales subject to tax at the basic rate
373	The supply of real estate is not subject to VAT if it is proven that the property was used by the heirs of the property owner as a permanent residence prior to the supply, in accordance with paragraph (7) of Article (9) of the Implementing Regulations of VAT Law.	Supply of real estate

374	<p>Revenues from contracts for labor supply services provided by an external service provider are not subject to VAT. This includes wages and salaries related to the service provider's employees who are seconded to work for the client requesting the service. Under the service contract, the role of the external service provider is to employ workers by conducting job interviews and completing hiring procedures based on instructions from the client receiving the service. Once a candidate is accepted, an employment contract is signed between the employee and the service provider to work for the service provider's client (the client company). This arrangement establishes an employment relationship between the contracting client and the seconded employee in accordance with the concept in paragraph (6) of Article (9) of the Implementing Regulations of VAT Law.</p>	Revenues from labor supply contracts
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May Allah's blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions



Successfully Completed, Thanks to Allah